

UNITED NATIONS

IT-95-14/1-T
DS-1/2706bis
03 November 1998

DS/2706bis



International Tribunal for the Prosecution
of Persons Responsible for Serious
Violations of International Humanitarian
Law Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-95-14/1-T

Date: 22 October 1998

English
Original: French

IN THE TRIAL CHAMBER

Before: Judge Almiro Simões Rodrigues, Presiding
Judge Lal Chand Vohrah
Judge Rafael Nieto Navia

Registrar: Mr. Jean-Jacques Heintz, Deputy Registrar

Order of: 22 October 1998

THE PROSECUTOR

v.

ZLATKO ALEKSOVSKI

DECISION GRANTING LEAVE FOR THE ADMISSION OF EVIDENCE

The Office of the Prosecutor:

**Mr. Grant Niemann
Mr. Anura Meddegoda
Ms. Ann Sutherland**

Defence Counsel:

**Mr. Goran Mikuličić
Mr. Srdan Joka**

TRIAL CHAMBER I *bis* (hereinafter “the Trial Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (hereinafter “the Tribunal”);

PURSUANT to Articles 20 and 21 of the Statute of the Tribunal and Rule 89 of the Rules of Procedure and Evidence (hereinafter “the Rules”),

NOTING the Motion of the Defence requesting leave of the Trial Chamber for the admission of evidence, that is, the testimony of Admiral Davor Domazet “an expert witness in the *Blaškić* case, IT-95-14” filed on 29 September 1998 (hereinafter “the Motion”),

NOTING the Response of the Prosecutor dated 6 October 1998 (hereinafter “the Response”),

RENDERS THE FOLLOWING DECISION.

I. BACKGROUND

In the Motion, the Defence requests leave of the Trial Chamber to admit as evidence the testimony of Admiral Domazet, whom it characterises as an expert witness in the case *The Prosecutor v. Blaškić*. The said testimony could be obtained from the Registry of the Tribunal in the form of a transcript and a video-recording of the hearing in question and presented at the hearing in the present case before being tendered into the case-file together with all the documents used as evidence during the testimony of the expert witness, Admiral Domazet.

The Defence submits that the legal conditions required for the presentation of that evidence have been satisfied since it learned of the existence of the testimony of Admiral Domazet only on 10 September 1998, that is, after the completion of the presentation of evidence, but, in the interests of justice, Sub-rule 85(A) permits the Trial Chamber to authorise the presentation of evidence in a different sequence; and because, the Trial Chamber, pursuant to Sub-rule 89(C), may admit any evidence

which it deems to have probative value since the provisions of Sub-rule 94(B) permit the Trial Chamber to grant the Motion in any event.

In its Response, the Prosecution objects to the Motion of the Defence by asserting that Rule 89, which is a general provision concerning the admissibility of evidence, must be subordinate to Rule 90 which covers the hearing of eyewitnesses and expert witnesses such as Admiral Domazet; that Sub-rule 94(B) is not applicable in the case in point, and that if the Trial Chamber grants leave to tender the testimony of Admiral Domazet as evidence at trial, the Prosecution requests leave to cross-examine the witness pursuant to Sub-rule 85(B).

II. EVALUATION

Two issues must be considered:

1. The probative value of the evidence in question.
2. The need to ensure a fair trial.

1. The probative value of the evidence

Pursuant to Sub-rule 89(C), the Trial Chamber may admit any relevant evidence which it deems to have probative value.

The Trial Chamber notes that the trial has reached its final phase.

The Trial Chamber also notes that the ascertainment of the truth is an essential principle of criminal procedure.

Lastly, the Trial Chamber observes that the accused is charged with three crimes, two of which are recognised by Article 2 of the Statute, and consequently, the issue of the international armed conflict is fundamental.

In the interests of a proper administration of justice, the value of the testimony of Admiral Domazet is indisputable insofar as it may clarify for the Trial Chamber the national or international nature of the armed conflict in the region of the municipality of Busovaca during the period under consideration.

The Trial Chamber must also safeguard respect for the provisions of Article 20 of the Statute which state that the trial must be fair and expeditious. At this point, the Trial Chamber finds itself in an exceptional situation due both to the nature of the duties of the witness, which affects his availability, and to the fact that the trial has reached its final phase, with the accused having been in detention at the United Nations Detention Unit since 29 April 1997.

The issue which has yet to be resolved is not the probative value of the evidence in question but the weight the Judges would give to it should it be admitted.

To that end, at the close of trial, the Judges will consider all the evidence in their possession and the manner it was presented to them.

2. The need to ensure a fair trial

The Prosecution claims the right to cross-examine Admiral Domazet should the Motion of the Defence be granted.

The admission of that evidence does not however call into question the right of the Prosecution to cross-examine the Defence witnesses. The Office of the Prosecutor has already had the opportunity to cross-examine the witness in the case *The Prosecutor v. Blaškić* and cannot, at this stage, invoke the right to cross-examination without threatening the balance between the parties and the application of the principle of equality of arms in the cases pending before the Tribunal.

Nonetheless, there is no reason to present the transcripts, video-recording of the witness testimony, and exhibits admitted during his testimony in the case *The Prosecutor v. Blaškić* during the hearing of the present case. The admission of the said evidence will permit the Judges to examine such evidence during their deliberations.

In such circumstances, granting the Motion would be consistent with the interests of justice and the need for fairness and expediency provided for in Article 20 of the Statute.

III. DECISION**FOR THE FOREGOING REASONS****THE TRIAL CHAMBER**

ORDERS that the testimony of Admiral Domazet, including its video-recording and exhibits, which is of a public nature in the case *The Prosecutor v. Blaškić*, be admitted as documentary evidence into the case-file of the case *The Prosecutor v. Aleksovski*.

CALLS upon the Registrar to make the necessary arrangements to that end and to assign a single Defence exhibit reference number to all the evidence.

Done in French and in English, the French version being authoritative.

Done this twenty-second day of October 1998
At The Hague
The Netherlands

(Signed)

Almiro Simões Rodrigues
Presiding Judge Trial Chamber I bis

(Seal of the Tribunal)