

**UNITED  
NATIONS**



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-95-11-T

Date: 25 October 2006

Original: English

**IN TRIAL CHAMBER I**

**Before:** Judge Bakone Justice Moloto, Presiding  
Judge Janet Nosworthy  
Judge Frank Höpfel

**Registrar:** Mr. Hans Holthuis

**Decision of:** 25 October 2006

**PROSECUTOR**

**v.**

**MILAN MARTIĆ**

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**DECISION ON DEFENCE'S SUBMISSION REGARDING  
THE TESTIMONY OF WITNESS MILE DAKIĆ**

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**The Office of the Prosecutor:**

Mr. Alex Whiting  
Ms. Anna Richterova  
Mr. Colin Black  
Ms. Nisha Valabhji

**Counsel for the Accused:**

Mr. Predrag Milovančević  
Mr. Nikola Perović

**TRIAL CHAMBER I** (“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 (“Tribunal”);

**BEING SEISED** of the “Defence’s Submission Regarding the Testimony of Defence Witness Mile Dakić”, filed on 23 October 2005 (“Submission”), in which the Defence informs the Trial Chamber that it “intends to perform a short additional direct examination on three topics which are not covered in the Witness’ 92 *ter* statement”;

**NOTING** that while the Trial Chamber has not been provided with a copy of the summary of the evidence that the Defence intends to lead in its additional direct examination, the Submission states that “[o]n Friday 20 October 2006 the Prosecution was provided with the summary of the evidence that the Defence intends to lead *viva voce*, and seemed to have no objection to that”;<sup>1</sup>

**NOTING** the “Prosecution’s Response to Defence’s Submission Regarding the Testimony of Witness Mile Dakić”, filed on 23 October 2006 (“Response”), in which the Prosecution informs the Trial Chamber that it does not oppose the Defence request;

**NOTING** that the Prosecution informs the Trial Chamber that “in general” it will not oppose oral examination of 92 *ter* witnesses where

1) the proposed evidence is relevant and probative within the meaning of Rule 89 and not otherwise inadmissible under the Rules and jurisprudence of the Tribunal; and

2) the Prosecution is provided with sufficient notice of the content of the solicited testimony, in the form of a summary, so as to allow adequate preparation for cross-examination and thus avoid any prejudice to the Prosecution

and that these conditions are satisfied in the current circumstances;<sup>2</sup>

**NOTING** that the Trial Chamber received the 92 *ter* summary of the testimony of Witness Mile Dakić on 13 October 2006,<sup>3</sup> and that on 19 October 2006 the Trial Chamber was informed of the change in witness order which resulted in witness Mile Dakić appearing on 23 October 2006;<sup>4</sup>

**CONSIDERING** that on 20 October 2006, the Trial Chamber learned by email that only one of the three topics upon which the Defence intends to conduct additional examination-in-chief was included in the 65 *ter* summary provided to the Trial Chamber on 19 July 2006;

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<sup>1</sup> Submission, footnote 2.

<sup>2</sup> Response, para 2.

<sup>3</sup> Defence’s Motion for Admission of Statement of Witness MM-084 (Mile Dakić) Pursuant to Rule 92 *ter*, filed on 13 October 2006.

<sup>4</sup> Hearing, 19 October 2006, T. 2-3.

**CONSIDERING** that in its Oral Decision of 12 October 2006, the Trial Chamber held that only issues included in the witness' *65 ter* summary may be led in evidence-in-chief;<sup>5</sup>

**CONSIDERING** that Trial Chamber was informed of the Defence's intentions by email very shortly before the witness was scheduled to testify;

**NOTING** that it is not clear to the Trial Chamber for what reason the Defence has not been able to provide the Trial Chamber with this information at an earlier stage of the proceedings, especially given that the Defence must have spoken with the witness on several occasions prior to his arrival in the Hague;

**NOTING** that the Defence has not provided the Trial Chamber with a summary of the additional topics, thereby hindering the Trial Chamber in making its determination on the relevance and probative value of the evidence to be led, in accordance with the Rules of Procedure and Evidence ("Rules");

**CONSIDERING**, however, that it is in the interest of justice and a fair trial that the Defence be able to lead evidence in defence of the Accused;

**CONSIDERING** that the Trial Chamber, also in light of the Prosecution's position, must assume that the topics to be led are relevant and have probative value;

**REMINDING** the Defence that when the witness is testifying the Trial Chamber can at any time find that the evidence is not relevant or does not have probative value, and stop the line of questioning on that topic;

**NOTING** that the Trial Chamber, pursuant to Rule 90 of the Rules, exercises control over the mode and order of interrogating witnesses so as to avoid needless consumption of time;

**CONSIDERING** that the Trial Chamber repeatedly reminded the Defence to adhere to the time limits set for each witness;

**DECLARES** that the Trial Chamber will not entertain any submissions or motions from the Parties which are not made in a timely manner and in accordance with the Rules;

**PURSUANT TO** Rules 54 and 90 (F) of the Rules,

**HEREBY** allows the Defence to lead evidence-in-chief on the additional three topics,

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<sup>5</sup> Hearing, 12 Oct 2006, T. 9315.

**RESTRICTS** the time available to the Defence to lead its additional evidence-in-chief to 10 minutes per topic, and

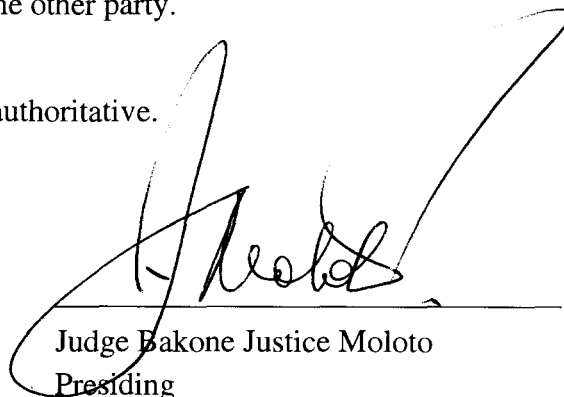
**ORDERS** that in future where new or additional topics not contained in the statement of the witness pursuant to Rule 92 *ter* of the Rules arise the Parties shall adhere to the following procedure:

where practicable and in the interests of justice, the parties shall provide the Trial Chamber with supplemental statements pursuant to Rule 92 *ter*;

where it is not possible to file such supplemental statement, the Parties will file supplemental 65 *ter* summaries of such new or additional topic;

the supplemental statement or summary shall be provided to the Trial Chamber contemporaneously with their provision to the other party.

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



Judge Bakone Justice Moloto  
Presiding

Dated this twenty-fifth day of October 2006

At The Hague

The Netherlands

**[Seal of the Tribunal]**