



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-04-83-T

Date: 14 January 2008

Original: English

**IN TRIAL CHAMBER I**

**Before:** Judge Bakone Justice Moloto, Presiding  
Judge Frederik Harhoff  
Judge Flavia Lattanzi

**Registrar:** Mr. Hans Holthuis

**Decision of:** 14 January 2008

**PROSECUTOR**

**v.**

**RASIM DELIĆ**

***PUBLIC***

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**DECISION ON THE MOTION TO VARY "DECISION ON  
SIXTH PROSECUTION MOTION FOR ADMISSION OF  
EVIDENCE PURSUANT TO RULE 92 *BIS*"**

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**The Office of the Prosecutor**

Mr. Daryl A. Mundis  
Ms. Laurie Sartorio  
Mr. Matthias Neuner  
Mr. Kyle Wood  
Mr. Aditya Menon

**Counsel for the Accused**

Ms. Vasvija Vidović  
Mr. Nicholas David Robson

**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;

**BEING SEISED** of the Prosecution “Motion to Vary ‘Decision on Sixth Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis*’” filed on 9 January 2008 (“Motion”), in which the Prosecution asks the Trial Chamber to vary its “Decision on Sixth Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis*” rendered by the Trial Chamber on 11 December 2007 (“Decision”) and admit the statement of witness Ivan Negovetić (“Statement”) in its full, unredacted form;<sup>1</sup>

**NOTING** that in support of the Motion the Prosecution submits that:

- On 4 December 2007, The Prosecution moved the Trial Chamber to admit into evidence the Statement in its redacted form so that it could be admitted under Rule 92 *bis* of the Rules of Procedure and Evidence (“Rules”) without the need for the witness to appear for cross-examination;<sup>2</sup>
- Once the witness Ivan Negovetić was ordered by the Decision to appear for cross-examination, Rule 92 *bis* and its prohibition against the admission of evidence that goes to the acts and conduct of the accused ceased to apply, as did any need to redact the statement;<sup>3</sup>
- “A full cross-examination on the full statement of this witness will lead [sic] a more complete record and only assist the Trial Chamber in its fact-finding duties.”<sup>4</sup>

**NOTING** the “Order for the Expedited Filing” rendered by the Trial Chamber on 10 January 2008;

**NOTING** that in its “Defence Response to Motion to Vary ‘Decision on Sixth Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis*’” filed on 14 January 2008 (“Response”), the Defence objects to the Motion on the following grounds:

- In its Motion, the Prosecution failed to put forward any argument to show that the Decision included any error of reasoning and that “in making its Decision, all the Trial Chamber did was merely follow the course of action requested by the Prosecutor; it did nothing wrong”;<sup>5</sup>

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<sup>1</sup> Motion, paras 1, 6.

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

<sup>3</sup> Motion, paras 3-4.

<sup>4</sup> Motion, para. 5.

<sup>5</sup> Response, paras 8-9.

- The Prosecution failed to show how injustice would result from the written statement remaining in its redacted form;<sup>6</sup>
- If the redacted parts of the Statement are now admitted into the trial record, it is likely to increase the length of the questioning considerably;<sup>7</sup>

**NOTING** that according to the jurisprudence a Chamber has inherent discretionary power to reconsider a previous decision when the interest of justice so requires;<sup>8</sup>

**CONSIDERING** that Rule 92 *bis*(C) is unequivocal in providing that not Rule 92 *bis* but Rule 92 *ter* “shall apply” to the situation where a witness whose written evidence has previously been admitted appears before the court in person;

**FINDING** that the provisions of Rule 92 *ter* apply to the present situation *eo ipso* and that therefore, it would be in the interest of justice to admit the Statement in its entirety;

**FOR THE FOREGOING REASONS and**

**PURSUANT** to Rule 54, 92 *bis* and 92 *ter* of the Rules;

**GRANTS** the Motion; and

**ADMITS** the Statement of witness Ivan Negovetić into evidence in its full, unredacted form, subject to him appearing for cross-examination.

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

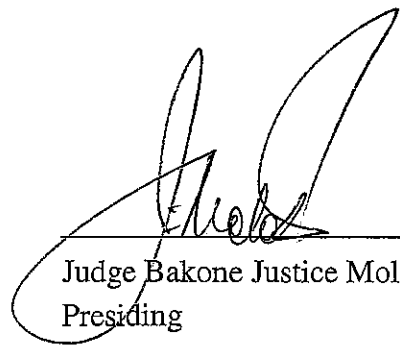
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<sup>6</sup> Response, para. 9.

<sup>7</sup> Response, para. 11.

<sup>8</sup> See *Prosecutor v. Slobodan Milošević*, Confidential Decision on Request of Serbia and Montenegro for Review of the Trial Chamber’s Decision of 6 December 2005, Case No. IT-02-54-AR108bis.3, 6 April 2006, para. 25, ft 40.

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Judge Bakone Justice Moloto  
Presiding

Dated this fourteenth day of January 2008  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**