IT-05-87-T
D 6853 - D 6848
11 July 2006

6853
YB.

UNITED
NATIONS

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

Case No.: IT-05-87-T

Date: 11 July 2006

Original: English

IN TRIAL CHAMBER III

Before: **Judge Iain Bonomy, Presiding**
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova

Registrar: **Mr. Hans Holthuis**

Order of: **11 July 2006**

PROSECUTOR

v.

MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ

ORDER ON PROCEDURE AND EVIDENCE

Office of the Prosecutor
Mr. Thomas Hannis
Mr. Chester Stamp
Ms. Christina Moeller
Ms. Patricia Fikirini
Mr. Mathias Marcussen

Counsel for the Accused
Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksander Alekšić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

THIS 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") commenced trial hearings in the above-captioned proceeding on 10 July 2006. Pursuant to Article 20(1) of the Statute of the Tribunal, it is the responsibility of the Chamber to ensure that the trial is conducted in a fair and expeditious manner, in accordance with the Rules of Procedure and Evidence of the Tribunal ("Rules), with full respect for the rights of the accused, and due regard to the protection of victims and witnesses.

1. With these considerations in mind, and bearing in mind the submissions made by the parties and comments made by the Chamber at the pre-trial conference held on 7 July 2006, it is appropriate for the Chamber to set out certain matters relating to the manner in which it expects the trial proceedings to be conducted. These guidelines remain subject to future variation by the Chamber as the trial progresses, and further guidelines will be issued relating to the presentation of evidence for the Defence following the completion of the Prosecution case-in-chief.

I. Recording of use of time

2. A system for monitoring the use of time shall be established by the Registry, which will be responsible for recording time used during the evidence of each witness: (a) by the Prosecution for its examination-in-chief, noting in each case whether part of the witness' evidence was given in the form of a statement under Rule 89(F) or 92 *bis*, and the length of that statement; (b) by each of the individual Defence teams for cross-examination; (c) by the Prosecution for re-examination; (d) by the Judges for putting questions to witnesses; and (e) for all other matters, including procedural and administrative matters. Regular reports on the use of time shall by compiled by the Registry in conjunction with the Chamber, which shall be provided periodically to the parties. The Chamber shall continually monitor the use of time, and may make further orders, as it considers necessary, concerning time used by the Prosecution or the Defence.

II. Disclosure of material for use in cross-examination

3. A list of documents or other material to be used by a party when cross-examining a witness must be disclosed to the opposing party or parties at least 24 hours prior to the anticipated start of the cross-examination of that witness. At the same time, the cross-examining party must release to the opposing party or parties, via the eCourt system, any documents or other material not already in the possession of the opposing party or parties that form part of the list of documents or material

for use during cross-examination. Should a party seek to use a document or material during cross-examination that has not been so listed and disclosed, that party may be permitted to do so on showing good cause for not so listing and disclosing it. The opposing party or parties may then request a short adjournment in order to examine the material.

III. Admission of evidence

4. Subject to the jurisprudence of the Tribunal, hearsay is in general admissible under Rule 89(C), which provides that "[a] Chamber may admit any relevant evidence which it deems to have probative value." Moreover, the Appeals Chamber has held that

> [i]t is well settled in the practice of the Tribunal that hearsay evidence is admissible. . . . Since such evidence is admitted to prove the truth of its contents, a Trial Chamber must be satisfied that it is reliable for that purpose, in the sense of being voluntary, truthful and trustworthy, as appropriate; and for this purpose may consider both the content of the hearsay statement and the circumstances under which the evidence arose; or, . . . the probative value of a hearsay statement will depend upon the context and character of the evidence in question. The absence of the opportunity to cross-examine the person who made the statements, and whether the hearsay is "first-hand" or more removed, are also relevant to the probative value of the evidence. The fact that the evidence is hearsay does not necessarily deprive it of probative value, but it is acknowledged that the weight or probative value to be afforded to that evidence will usually be less than that given to the testimony of a witness who has given it under a form of oath and who has been cross-examined, although even this will depend upon the infinitely variable circumstances which surround hearsay evidence.[1]

The Appeals Chamber has also held that "evidence is admissible only if it is relevant and it is relevant only if it has probative value, general propositions which are implicit in Rule 89(C)".[2] The Trial Chamber considers that reliability of a hearsay statement is a necessary prerequisite for probative value under Rule 89(C).[3] The parties are reminded of the above jurisprudence to which they should have regard in making applications for the admission of hearsay evidence.

5. The opposing party or parties may object to the admission of a proposed exhibit tendered by a party on grounds of relevance or probative value (including authenticity). If no challenge is made to the proposed exhibit, it shall be admitted into evidence. If a party challenges the authenticity of

---

[1] *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR73, Decision On Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 15 (citing *Prosecutor v. Tadić*, Case No. IT-94-1-T, Decision on the Defence Motion on Hearsay, 5 August 1996, paras. 15-19 & Separate Opinion of Judge Stephen on the Defence Motion on Hearsay, pp. 2–3; *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Decision on the Standing Objection of the Defence to the Admission of Hearsay with No Inquiry as to Its Reliability, 21 January 1998, paras. 10, 12) (footnotes omitted).

[2] *Prosecutor v. Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92*bis*(C), 7 June 2002, para. 35.

[3] *Prosecutor v. Tadić*, Case No. IT-94-1-T, Decision on the Defence Motion on Hearsay, 5 August 1996, para. 15 (holding that "if evidence offered is unreliable, it certainly would not have probative value"). This statement in *Tadić* thus indicates that evidence having probative value is necessarily reliable.

an item of proposed evidence, it must specify its reasons for doing so. After hearing such an objection and any further submissions from the parties that are necessary, the Chamber shall rule on admissibility. The weight to be ascribed to an admitted item of evidence shall be determined by the Chamber during its final deliberations, in the context of the trial record as a whole.

6. In general, books (and other similarly lengthy documents) will not be admitted into evidence in their entirety, but only those parts will be admitted that the Trial Chamber considers it appropriate to admit in light of the submissions of the parties. Those will generally be the portions referred to in testimony.

7. When an expert witness produces a report, that report, or part thereof, may be admitted into evidence, subject to the requirements of relevance and probative value. As a general rule, the Trial Chamber will only admit those parts of the report and further material that is put to the expert during his oral testimony. The sources used by an expert witness in compiling his or her report will not be admitted wholesale. Expert reports should, however, be fully referenced in order to facilitate the Chamber's determination of their probative value and, ultimately, the weight to be ascribed to them.

8. Untranslated documents used during the examination of a witness may either be marked for identification pending translation and further order of the Trial Chamber or denied admission into evidence. Documents, regardless of translation, that have not been dealt with during the testimony of the witness through whom they are sought to be admitted shall, in general, be denied admission into evidence, unless they are admissible without being spoken to by a witness.

IV. Rule 89(F) procedure

9. Rule 89(F) provides as follows: "A Chamber may receive the evidence of a witness orally or, where the interests of justice allow, in written form." Where the Prosecution intends to invite the Chamber to receive part of the evidence of a witness who will give *viva voce* testimony in written form pursuant to this Rule, a copy of the statement to be tendered shall be given to the opposing parties and the Chamber at least 48 hours before the evidence of that witness. This statement shall be provided in both English and B/C/S.

V. Filing of motions and responses

10. Motions may be made by the parties, either orally or in writing. When an oral motion is made, the opposing party or parties may be invited to respond orally at that time, or may be granted a time limit within which to file a written response or make oral submissions. When a motion is made in writing, the opposing party or parties will have fourteen days within which to file any response, unless the Trial Chamber orders otherwise.

11. Replies to responses will not be accepted by the Chamber unless on good cause shown. A party wishing to make such a reply must seek the leave of the Chamber to do so, specifying why the circumstances which amount to good cause. Should a party seek leave from the Chamber to file a reply, it should do so within three days from the expiration of the fourteen day deadline for the filing of responses. The request for leave to file a reply should not include the substance of the reply, which should await the decision of the Chamber upon whether to grant such leave.

12. Wherever they find it possible, the Accused should file joint motions and responses. The deadline for any Accused to join a motion filed by a co-Accused shall be seven days from the filing of that motion. The Prosecution should file a single response, within fourteen days of the initial motion.

13. The Trial Chamber retains the right to alter these periods where appropriate in terms of Rule 126 *bis* and its inherent power to ensure that the trial is advanced fairly.

VI. Private and closed sessions

14. When a party makes a request to enter private or closed session pursuant to Rule 79 of the Rules, that party must briefly state the reasons for that request and the Trial Chamber will then determine whether entering private or closed session is necessary.

* * *

15. Pursuant to Article 20(1) of the Statute, and Rules 54, 79, 89, 90, 94 *bis*, 126, 126 *bis*, and 127 of the Rules, the Trial Chamber therefore **ADOPTS** the preceding guidelines to govern the presentation of evidence and conduct of the proceedings and hereby **ORDERS** all parties to the

proceedings to comply with them throughout the duration of the case, subject to any further orders by the Trial Chamber.

16. The Trial Chamber may alter any of the above practices and guidelines, either via written or oral order as the trial progresses, in order to ensure that the proceedings are conducted in a fair and expeditious manner.

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

Judge Iain Bonomy
Presiding

Dated this eleventh day of July 2006
At The Hague
The Netherlands

[Seal of the Tribunal]