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-03-67-T

Date: 15 November 2007

English
Original: FRANÇAIS

TRIAL CHAMBER III

Before: **Judge Jean-Claude Antonetti, Presiding**
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: **Mr Hans Holthuis**

Decision of: **15 November 2007**

LE PROSECUTOR

vs.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

ORDER SETTING OUT THE GUIDELINES FOR THE PRESENTATION OF EVIDENCE AND THE CONDUCT OF THE PARTIES DURING THE TRIAL

The Office of the Prosecutor

Ms Christine Dahl

The Accused

Mr Vojislav Šešelj

TRIAL CHAMBER III ("the 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 ("the Tribunal"), issues the following order setting out the guidelines for the presentation of evidence and the conduct of the parties during the trial,

CONSIDERING that the Chamber must ensure that the trial is fair and expeditious, in accordance with the Statute of the Tribunal ("the Statute") and the Rules of Procedure and Evidence ("the Rules"), and that the rights of the Accused are fully respected and the protection of the victims and witnesses is duly safeguarded,

CONSIDERING that it is appropriate for the Chamber to set the manner in which it intends to have the trial conducted and that the guidelines set out in this order may be amended subsequently by the Chamber as the trial progresses,

FOR THESE REASONS

IN ACCORDANCE WITH Articles 20(1) and 21 of the Statute and Rules 54, 89 and 90 of the Rules,

ADOPTS the guidelines as set out in the annex which will govern the presentation of evidence and the conduct of the trial, and

ORDERS the parties to comply with these throughout the case, subject to any subsequent order of the Chamber.

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

Jean-Claude Antonetti
Presiding Judge

Done this 15th day of November 2007
At The Hague, The Netherlands

[Seal of the Tribunal]

ANNEX

A. Admission of evidence

1. Admissibility by way of witnesses

1. Unless so required by exceptional circumstances, documents shall be presented by way of witnesses. When so doing, the Trial Chamber ("the Chamber") will invite the parties[1] to demonstrate the nexus between the witness and the document.

2. Admissibility and weight of the evidence

2. The parties must always be mindful of the fundamental distinction between the legal admissibility of documentary evidence and the weight which the Chamber gives to it in the light of the entire record.

3. Merely admitting a document as evidence does not in itself mean that the Chamber considers the statements which constitute that evidence to be an exact representation of the facts. Factors such as the authenticity and proof of the identity of the source will, of course, be the most significant element when the Chamber judges the weight to give to each piece of evidence. Still, the Chamber recognises that the criterion for the admission of the evidence most not however be overly stringent, because documents whose admission has been requested frequently do not seek to prove the guilt or innocence of the accused but to establish a context or to supplement the image formed by the evidence already collected.[2]

4. The fact that at a given stage of the proceedings the Chamber can rule on the admissibility of a particular document or other evidence does not preclude a subsequent review of its decision.

5. When objections are raised in respect of the authenticity or reliability of documents, video recordings and intercepts, the Chamber, adhering to the practice previously adopted by the Tribunal, will admit the documents produced, unless it appears manifestly unreasonable to do so, and will take a decision at a later time as to the weight to give them in the light of the entire record. At the request of a party or *proprio motu*, the Chamber can order that the original or the most legible, audible or viewable copy be produced.

6. There is no general rule which prohibits the admission of documents merely because their alleged source was not called to appear during the trial. Likewise, the fact that a document has neither a signature nor a stamp is not in itself a reason to find that it is not authentic.

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[1] The term "parties" is defined in Rule 2 of the Rules as including "the Prosecutor and the Defence". That same rule defines the Defence as the "accused and/or the accused's counsel".

[2] *The Prosecutor vs. Zejnil Delalić et al*, Case no IT-96-21-T, Decision on the admissibility of evidence, filed in English on 21 January 1998 and in French on 29 April 1998, para. 20.

7. Pursuant to Rule 89(C) of the Rules, the Chamber cannot admit evidence which it considers to be without relevance and probative value. The party requesting its admission must demonstrate its relevance and probative value.

3. Filing of evidence

8. Documentary and other evidence may be filed for the purpose of identification and be assigned a reference number. The evidence presented will be admitted only when the Chamber has ruled orally or in writing on its admissibility, after which it will be assigned a definitive reference number as an exhibit.

4. Admission of very long documents

9. Except under exceptional circumstances, the parties may not request the admission of very long documents such as books when only several passages of those documents are relevant to the testimony of a witness through whom the document is presented. On the contrary, the parties are requested to specify the passages whose admission is sought.

5. Admissibility of circumstantial evidence

10. The practice of the Tribunal is to accept circumstantial evidence, in particular hearsay evidence whose importance or probative value will in general be less than that given to a witness.[3]

11. In the same vein, circumstantial evidence which can be analysed as proof of the circumstances surrounding an event or offence from which it is reasonable to deduce the existence of a fact in dispute will be admissible. The Chamber considers that circumstantial evidence can prove necessary to establish the facts charged, in particular, in criminal trials before the Tribunal, for which there is often no immediate eye witness or compelling document. The Chamber does not consider that circumstantial evidence has less probative value than direct evidence.[4] These indicia may not in themselves be sufficient to establish a fact but when taken together may be very revealing and sometimes decisive.

6. The rule of best evidence

12. To rule on the issues of which it is seized, the Chamber will rely on the best evidence available to each party in the circumstances of the case, and the parties will be asked to produce their evidence by following this rule as far as practicable. The Chamber will determine what is the best evidence available to each party with a mind to the burden of proof incumbent on that party and the particular circumstances of each piece of evidence, to the complexity of the case and to the investigations which preceded its production.

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[3] On this particular point see *The Prosecutor vs. Zlatko Aleksovski*, Case no. IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, registered in English on 16 February 1999 and in French on 14 May 1999, para. 15.

[4] See in this respect *The Prosecutor vs. Zoran Kupreškić et al*, Case no. IT-95-16-A, Judgement, 23 October, para. 203.

7. Exclusion of evidence improperly obtained

13. The Chamber draws the attention of the parties to Rule 95 of the Rules which provides that "no evidence shall be admitted if obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings". Accordingly, statements extorted from witnesses cannot satisfy the criterion set out in Rule 95.[5]

8. Power of the Chamber to order the production of additional evidence

14. The Chamber reminds the parties that under Rule 98 of the Rules, if necessary, it may *proprio motu* order either party to produce additional evidence. It may also summon witnesses and ex officio order their attendance.

B. Presentation of evidence

1. Statement of the Accused

15. Pursuant to Rule 84 of the Rules and before presentation of evidence by the Prosecutor, each party may make an opening statement. The Defence may however elect to make its statement after the conclusion of the Prosecutor's presentation of evidence and before the presentation of evidence for the Defence.[6] Under Rule 85(C) moreover the Accused may appear as a witness in his or her own defence.

2. Schedule of testimony

16. During the trial, at the end of each week, each party will be invited to provide to the Chamber and to the other party a list of all the witnesses it intends to call over the next two months. In addition, the parties must inform the Chamber and the opposing party five days in advance of any change in the schedule of witness testimony. Moreover, the parties must provide to the Chamber and to the other party a definitive list of the exhibits and a complete binder containing the exhibits which it intends to use during its examination-in-chief of each witness at least two days before the start of the witness' testimony.

3. Examination of the witnesses

17. When the parties present their evidence and begin their examination-in-chief, cross-examination or any re-examination of the witnesses, they shall do their best to organise these in a way that ensures avoidance of repetition, in particular, during cross-examination of the witnesses.

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[5] See in this respect, *The Prosecutor vs. Zejnil Delalić et al*, Case no. IT-96-21-T, Decision on Zdravko Mucić's Motion on the exclusion of evidence, 2 September 1997, para. 43.

[6] With the agreement of the Chamber, the Accused made a statement under Rule 84 *bis* of the Rules on 8 November 2007 (see CRF. 1853-1947).

18. When presenting evidence to a witness which he has already mentioned in his testimony or written statement, the parties must avoid paraphrasing what that witness said but must instead directly quote the hearing transcript or the previous deposition and also indicate the page numbers and the relevant lines.

19. The previous deposition of a witness may be used to refresh his memory during the examination-in-chief or cross-examination regardless of whether it has been admitted as evidence.

20. A system for monitoring the use of hearing time shall be set in place by the Registry which shall be responsible for keeping track of the time taken: a) by the Prosecution for its examination-in-chief; b) by the Accused for the cross-examination; c) by the Prosecution for re-examination; d) by the Judges to put questions to the witnesses; and e) for any other questions, including procedural ones.

21. The length of the examination-in-chief of a witness must be limited to the time indicated by each party under the supervision of the Chamber. In this respect, before the commencement of each hearing, the Chamber shall set the time allocated to each party with regard to the progress of the trial and the list of the witnesses and the information on the content of their testimony as presented in the brief filed under Rule 65 *ter* of the Rules.

22. In order to ensure a fair and expeditious trial, the Chamber considers that the length of the cross-examination of a witness shall not exceed that of the examination-in-chief, except under particular circumstances – such as an especially brief examination-in-chief, an expert witness or when fairness so requires – which makes an extension of the length of the cross-examination necessary.

23. The Chamber recalls that under Rule 90(H)(i) of the Rules, the cross-examination shall be limited to the subject-matter of the evidence-in-chief and matters affecting the credibility of the witness and, where the witness is able to give evidence relevant to the case for the cross-examining party, to the subject-matter of that case.

24. When the cross-examination deals with questions relevant to the military, political or historical background of the case, the cross-examining party shall explain the subject and relevance of his questions in respect of the allegations in the indictment. For this reason, the Chamber shall retain the power to refuse certain questions which it considers irrelevant either to the time-frame in the indictment or to the specific allegations in the indictment.

25. The Chamber may prohibit any inappropriate, repetitive or irrelevant questions, including those constituting an unjustified attack on the witnesses.

26. The party cross-examining a witness may show the witness the information obtained from a previous witness, on the condition that the source of the information is not identified.

27. The re-examination of a witness must be strictly limited to the questions raised during the cross-examination. The re-examining party may not solicit the admission of new documents which could not reasonably have been presented during the examination-in-chief.

28. The parties must remain mindful that lengthy, complicated or combined questions may confuse the witnesses and make the hearing transcripts unintelligible and pointlessly long. Accordingly, the parties are invited to make sure that the questions they put to the witnesses are clear and concise.

4. Application of Rules 92 *ter* and 92 *quater* of the Rules

29. A witness called to testify under Rule 92 *ter* of the Rules must attest at the hearing that his written statement or transcript of his testimony in another case accurately reflects that witness' declaration and what the witness would say if examined. Moreover, under the supervision of the Chamber and in application of the guidelines already set out in respect of the admission of evidence, the party calling a witness to testify under Rule 92 *ter* of the Rules shall be authorised to show documents to that witness for the purpose of their admission by the Chamber. Following this phase of limited examination-in-chief, the Accused shall cross-examine the witness with a mind to the time initially proposed by the Prosecution in the 65 *ter* list.

30. The Chamber moreover under Rule 92 *quater* reserves the power to admit without cross-examination the evidence presented in the form of a written statement or transcript of a deposition of unavailable persons.

C. Conduct of the trial

1. Management of motions, responses and replies

31. To ensure that applications are dealt with effectively and expeditiously, the parties shall group together or consolidate their motions and replies and so avoid a repetition of written submissions entitled *addendum, notification, corrigendum* or otherwise.

32. As concerns the filing of written submissions, the practice set in place during the pre-trial phase of this case shall be maintained. Accordingly, for the Accused, the time limits set out in Rule 126 *bis* of the Rules, or by any decision or order of the Chamber, shall begin to run only after he has received the relevant documents in a language he understands, with the date indicated on the transcript being authoritative. For the Prosecution, the time limits indicated in Rule 126 *bis*, or in any decision or order of the Chamber, shall begin to run as of the date of filing at the Registry of the said submission in one of the Tribunal's two working languages.

2. Conduct of the parties during the trial

33. The parties are encouraged to contact the Chamber's legal officer or the Registry in order to resolve those problems which can be resolved informally.

34. As far as practicable, the parties must respect the principle of open sessions as provided for in Rule 78 of the Rules. Accordingly, closed sessions shall be ordered only on an exceptional basis in those cases provided for in Rule 79(A) of the Rules, namely: i) public order or morality; ii) safety, security or non-disclosure of the identity of a victim or a witness; iii) the protection of the interests of justice.