



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-98-29/1-T

Date: 18 January 2007

Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Frederik Harhoff

Registrar: Mr. Hans Holthuis

Decision of: 18 January 2007

PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

**DECISION ON TIME-LIMITS FOR DISCLOSURE OF
DOCUMENTS TO BE USED DURING A WITNESS'
TESTIMONY**

The Office of the Prosecutor:

Mr. Alex Whiting
Mr. Stefan Waespi
Ms. Carolyn Edgerton
Mr. John Docherty

Counsel for the Accused:

Mr. Branislav Tapušković
Ms. Branislava Isailović

TRIAL CHAMBER III (“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 request made by the Defence during the trial hearing on 16 January 2007 (“Defence Request”), in which the Defence asks that the time at which material to be used during cross-examination must be disclosed to the opposing party, be varied. In its submissions, the Defence argues that the current practice could gravely prejudice the Defence and the Accused and requests that the Trial Chamber adopt the procedure set in the case of the Prosecutor v. Milan Milutinović *et al.*, so that the aforementioned documents be disclosed to the other party at the start of the examination of that witness;¹

NOTING that the Prosecution does not object to a variation of the time in which material to be used during cross-examination must be disclosed to the opposing party;²

RECALLING the procedure on disclosure of documents as adopted by the Trial Chamber on 10 January 2007, that the parties are to provide a list of exhibits they intend to use in court during examination-in-chief and cross-examination, and these lists are to be available to the opposing party, the Registry, and the Trial Chamber no later than 48 hours in advance, or in case the total number of pages exceed 100, no later than 72 hours prior to the testimony of the witness;³

NOTING the Decision on Joint Defence Motion for Modification of Order on Procedure and Evidence on 16 August 2006 in the case of the Prosecutor v. Milan Milutinović *et al.*⁴ in which the Trial Chamber granted a request by the Defence that the material to be used for cross-examination with a witness must be disclosed at the time the witness has been sworn and starts examination-in-chief;

CONSIDERING that it is in the interests of a smooth running of the proceedings that the Parties, the Trial Chamber and the Registry be notified in a timely manner of the documents that will be used during examination of a witness;

¹ Trial hearing on 16 January 2007, T. 467-469.

² Trial hearing on 16 January 2006, T. 472-473.

³ Pre-Trial Conference, 10 January 2007, T. 252.

⁴ Prosecutor v. Milan Milutinović *et al.*, IT-05-87-T, Decision on Joint Defence Motion for Modification of Order on Procedure and Evidence, 16 August 2006.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54, 85 and 90 of the Rules of Procedure and Evidence (“Rules”),

HEREBY GRANTS the Defence Request, and

ORDERS the Prosecution to

- 1) provide the Defence, the Registry, and the Trial Chamber with a list of exhibits it intends to use in court during examination-in-chief no later than 72 hours prior to the testimony of the witness when the total number of pages exceed 100, and in other cases 48 hours in advance of the testimony of the witness,
- 2) submit their *final* list of documents to be used during examination-in-chief no later than 16:00 on the day prior to the testimony of the witness,
- 3) within the time-limits set above, to release to the Defence, the Registry and the Trial Chamber, via the eCourt system, any documents or material that form part of the list of documents or material for use during examination-in-chief insofar as they are not already in the possession of the Defence, the Registry and the Trial Chamber, respectively.

Should the Prosecution seek to use a document or material during the examination-in-chief of a witness that has not been so listed and disclosed, it may be permitted to do so on showing good cause for not so listing and disclosing it, and

ORDERS the Defence to

- 1) provide the Prosecution, the Registry, and the Trial Chamber with a list of exhibits it intends to use in court during cross-examination at the commencement of the examination-in-chief of that witness and after he or she has made the solemn declaration pursuant to Rule 90(A) of the Rules,
- 2) within the time-limit set above, to release to the Prosecution, the Registry and the Trial Chamber, via the eCourt system, any documents or material that form part of the list of documents or material for use during cross-examination insofar as they are not already in the possession of the Prosecution, the Registry and the Trial Chamber, respectively.

Should the Defence seek to use a document or material during the cross-examination of a witness that has not been so listed and disclosed, it may be permitted to do so on showing good cause for not so listing and disclosing it.

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



Judge Patrick Robinson
Presiding

Dated this eighteenth day of January 2007

At The Hague

The Netherlands

[Seal of the Tribunal]