

**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-04-75-PT
Date: 4 October 2012
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Order: 4 October 2012

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

ORDER ON GUIDELINES FOR PROCEDURE FOR CONDUCT OF TRIAL

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for Goran Hadžić:

Mr. Zoran Živanović

Mr. Christopher Gosnell

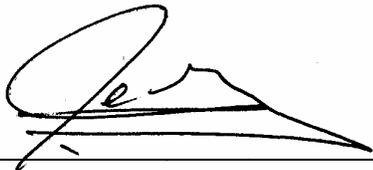
1. **THIS TRIAL CHAMBER** of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) hereby issues this order adopting guidelines for the procedure for the conduct of the trial.
2. During the pre-trial proceedings in this case, the Trial Chamber has provided the parties with draft guidelines on the admission and presentation of evidence, which have been the subject of discussion between the Chamber and the parties.¹
3. On 14 and 21 September 2012, the parties, with leave of the Trial Chamber, made submissions on the proposed guidelines.²
4. Pursuant to Article 20(1) of the Statute of the Tribunal (“Statute”), trial chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses. Pursuant to Rule 54 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), the Trial Chamber may issue such orders as may be necessary for the conduct of the trial. Pursuant to Rule 90(F) of the Rules, trial chambers shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of the truth and avoid needless consumption of time.
5. The Trial Chamber therefore considers that it is appropriate to set out the manner in which it intends to conduct the trial. The guidelines set forth in the Annex to this order will ensure transparency and promote efficient, fair, and expeditious trial proceedings, while ensuring full respect for the rights of the Accused.

¹ Rule 65 *ter* Conference, 14 December 2011 (confidential), T. 17-34; Prosecution Proposal on Rule 92 *ter* Procedure, 15 December 2011; Defence Response to the Prosecution Proposal on Rule 92 *ter* Procedure, 19 December 2011; Rule 65 *ter* Conference, 15 February 2012 (confidential), T. 44-47; Status Conference, 17 February 2012, T. 28-29; Rule 65 *ter* Conference, 12 June 2012 (confidential), T. 61-62, 70-71; Status Conference, 14 June 2012, T. 41-44; Status Conference, 13 September 2012, T. 53.

² Prosecution Proposed Guidelines for the Admission and Presentation of Evidence, 14 September 2012; [Defence] Submissions Concerning Guidelines on the Admission and Presentation of Evidence, 14 September 2012; Response to Prosecution Proposed Guidelines for the Admission and Presentation of Evidence, 21 September 2012; Prosecution Response to Defence Submissions Concerning Guidelines and Presentation of Evidence, 28 September 2012; Prosecution Request for Leave to Reply and Reply to Response to Prosecution Proposed Guidelines for the Admission and Presentation of Evidence, 28 September 2012.

6. Accordingly, the Trial Chamber, pursuant to Articles 20 and 21 of the Statute and Rules 54, 65 *ter*, 75, 81 *bis*, 89, 90, and 92 *ter* of the Rules, hereby **ADOPTS** *ex proprio motu* the guidelines for the procedure for the conduct of the trial, which are annexed to this order and which are to be followed during the trial, unless ordered otherwise by the Trial Chamber.

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

A handwritten signature in black ink, appearing to be 'G. Delvoic', written over a horizontal line.

Judge Guy Delvoic
Presiding

Dated this fourth day of October 2012,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

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**ANNEX TO
ORDER ON GUIDELINES FOR PROCEDURE FOR CONDUCT OF TRIAL**

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GUIDELINES FOR PROCEDURE FOR CONDUCT OF TRIAL

1. In the admission of evidence, the Trial Chamber will be guided by the best evidence rule. Each party shall produce their evidence by following this rule as far as practicable.
2. Pursuant to Rule 89(C) of the Rules, the Trial Chamber will not admit evidence that it considers to be without relevance and probative value. It is for the tendering party to demonstrate the relevance and probative value of the evidence.
3. It is for a party to demonstrate the connection of an exhibit with the substance of the testimony of the witness through whom the party seeks to tender the exhibit. Parties should only seek to tender exhibits through a witness that are clearly relevant to that witness's evidence.
4. Hearsay evidence is admissible under Rule 89(C) of the Rules.
5. There is no rule prohibiting the admission into evidence of documents merely because their alleged source was not called to testify. Likewise, the fact that a document has neither a signature nor a stamp is not in itself a reason to find that the document is not authentic.
6. It is the duty of each party to present its evidence in a specific and concentrated manner. Unless exceptional circumstances exist, parties may not request the admission into evidence of voluminous documents, such as books, diaries, or reports, when only certain passages thereof are relevant to the testimony of the witness through whom the document is presented.
7. Parties may—on agreement—have laws, regulations, and similar material admitted into evidence and added to the “Law Library” by jointly notifying the Registry (on notice to the Trial Chamber), after which the Registry shall assign an “L” number to the document in eCourt.
8. The parties may seek the admission of exhibits from the bar table towards the end of their respective cases-in-chief via a single bar table motion each. When submitting any such bar table motion, the Microsoft Excel Spreadsheet format should be used with the following information included and contained in separate columns: description of documents, authenticity of documents, relevance and probative value of documents, and reference to the paragraphs in the Indictment *and the Pre-Trial Brief* to which the documents are said to be relevant.
9. This trial will use eCourt, and the parties are reminded that documents generally shall be handled through the eCourt system. Hardcopies of a document may be used by a party only where the party has been unable, due to exceptional circumstances, to upload a document to eCourt. When the use of hardcopies of a document is permitted by the Trial Chamber, the tendering party is responsible for providing copies to the witness, the opposing party, the Trial Chamber, the Registry,

and the interpreters. Parties are reminded that the “bar table motion” has been evolved as a tool of judicial economy and is not a “Trojan horse” by which evidence not otherwise admissible may be placed on the record.

10. By 4:00 p.m. on each Thursday, the party whose case is being presented shall provide the Trial Chamber, the Registry, and the opposing party with a list (in Microsoft Excel spreadsheet format) of the witnesses it intends to call during the coming two weeks, indicating (a) the order of their testimony, (b) the documents or material it intends to use during the examination-in-chief of each witness, (c) the time estimated for the examination-in-chief, and (d) any protective measures applicable to the witnesses. It is the duty of the calling party to notify the Trial Chamber, the Registry, and the opposing party as soon as possible of any changes to the order of witnesses. Notwithstanding the foregoing, the Prosecution—by 4:00 p.m. on 9 October 2012—shall file its first list of witnesses for the remainder of October 2012.

11. If any of the documents or material that the calling party wishes to use during the examination-in-chief are not included on its Rule 65 *ter* exhibit list, it must apply for leave from the Trial Chamber to add those documents or material to its Rule 65 *ter* exhibit list.

12. Parties shall upload to and release in eCourt the English translation of any Bosnian/Croatian/Serbian document at least one month prior to using it in court or tendering it as evidence.¹

13. Proofing notes shall be distributed to the Trial Chamber, the Registry, and the opposing party as soon as possible after the conclusion of the proofing session.²

14. Upon the witness making the solemn declaration pursuant to Rule 90 of the Rules, the cross-examining party shall provide electronically (in Microsoft Excel spreadsheet format) to the Trial Chamber, the Registry, and the opposing party an estimated time for cross-examination and a list of the documents and other material that it intends to use in cross-examination. In addition to the initial list, the cross-examining party shall be permitted, with leave of the Trial Chamber, to supplement that list during the course of the examination. From the time of the solemn declaration pursuant to Rule 90 of the Rules, the witness becoming the “witness of Justice”, there shall be no more contact between that witness and the parties, especially the calling party, until the end of that testimony.

¹ See Order on Translations, 18 September 2012.

² See Decision on Prosecution’s Urgent Motion for Partial Reconsideration of Decision on Motion to Expunge Portions of Prosecution’s Rule 65 *ter* Filing and for More Detailed Summaries, 4 September 2012, para. 8.

15. If any party wishes to use material that has not been disclosed in a manner consistent with these guidelines, it may only do so with the leave of the Trial Chamber.

16. The parties are to organise their presentation of evidence in a way that avoids repetition of evidence that is already on the record. The Trial Chamber may, pursuant to Rules 75(D) and 90(F) of the Rules, prohibit inappropriate, repetitive, or irrelevant questions, including those constituting an unjustified attack on a witness. The Trial Chamber requires that each witness be treated with courtesy and that counsel conform their behaviour to the dignity expected in any court of law, more particularly, an international tribunal. The Trial Chamber will be particularly attentive to unjustified hardship put on witnesses.

17. The parties are to avoid lengthy, complicated, or combined questions that may confuse the witnesses. The parties are to avoid paraphrasing previous testimony or statements of witnesses, but shall quote the directly relevant passage and indicate the exact page numbers, paragraph numbers, or relevant lines. The parties are requested to restrict such quotations to situations when it is strictly necessary for the understanding of the question.

18. After a witness demonstrates an inability to independently recall a particular fact, a prior statement of a witness may be used to refresh the witness's recollection regardless of whether the statement has been admitted into evidence.³ The Trial Chamber may consider the means and circumstances by which the memory was refreshed when assessing the reliability and credibility of the witness's testimony.

19. The Trial Chamber will supervise and regulate the length of the examination-in-chief of a witness, taking into consideration the time indicated by the relevant party. The cross-examining party shall have the same amount of time for cross-examination of a *viva voce* witness as that allotted for examination-in-chief. A party may be allotted more time upon the showing of good cause.

20. Motions for the admission of a Rule 92 *ter* statement should be submitted to the Chamber at least six weeks prior to the witness taking the stand. Revisions to the Rule 92 *ter* statement, if any, may be submitted to the Chamber and the opposing party after the witness's arrival in The Hague. Finalised statements shall be filed no later than 24 hours (one working day) prior to the witness taking the stand and should clearly mark the changes to the draft statement in a clear and

³ *Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47-AR73.2, Decision on Interlocutory Appeal Relating to the Refreshment of the Memory of a Witness, 2 April 2004, p. 2; *Prosecutor v. B. Simić et al.*, Case No. IT-95-9-AR73.6 & IT-95-9-AR73.7, Decision on Prosecution Interlocutory Appeals on the Use of Statements Not Admitted into Evidence Pursuant to Rule 92*bis* as a Basis to Challenge Credibility and to Refresh Memory, 23 May 2003, paras 18, 20.

comprehensive manner, for example, by use of the “track changes” function in Microsoft Word. The parties are encouraged to use telephone, e-mail, and field presence, if possible, to finalise Rule 92 *ter* statements prior to a witness’s arrival in The Hague. A witness called to testify under Rule 92 *ter* of the Rules must attest at the hearing that his or her written statement or the transcript of his or her prior testimony accurately reflects the witness’s declaration and what the witness would say if examined. There is no need to read a summary of the witness’s Rule 92 *ter* statement into the record of the proceedings. Examination-in-chief of a witness whose evidence is being given via Rule 92 *ter* will be limited to 30 minutes. The time for cross-examination of a Rule 92 *ter* witness shall not exceed one hour (200%). A party may be allotted more time upon the showing of good cause.

21. The Trial Chamber will supervise and regulate the length of the examination-in-chief of a hybrid Rule 92 *ter* witness,⁴ taking into consideration the time indicated by the relevant party. The time for cross-examination of a hybrid Rule 92 *ter* witness shall not exceed double (200%) the amount of time that was allotted for examination-in-chief. A party may be allotted more time upon the showing of good cause.

22. The Trial Chamber will supervise and regulate the length of the examination-in-chief of expert witnesses, taking into consideration the time indicated by the relevant party. The time for cross-examination of an expert witness shall not exceed double (200%) the amount of time that was allotted for examination-in-chief. A party may be allotted more time upon the showing of good cause.

23. Pursuant to Rule 90(H)(ii) of the Rules, the cross-examining party is required to put to a witness, who is able to give evidence relevant to the case for that party, the nature of its case that is in contradiction to the witness’s evidence. The Trial Chamber interprets this rule to mean that the cross-examining party is required to put the general substance of its case conflicting with the evidence of the witness and not every detail that the party does not accept.⁵

24. A cross-examining party may put to a witness the evidence obtained from a previous witness, provided that the identity of that witness is not given. Parties are not to ask witnesses to comment on the credibility of other witnesses.

⁴ Those being witnesses who will provide substantial *viva voce* testimony in addition to their respective Rule 92 *ter* witness statements.

⁵ *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Judgement, 17 March 2009, paras 367-368; *Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgement, 2 February 2009, paras 24-26; *Prosecutor v. Brdanin and Talić*, Case No. IT-99-36-T, Decision on “Motion to Declare Rule 90(H)(ii) Void to the Extent it is in Violation of Article 21 of the Statute of the International Tribunal” by the Accused Radoslav Brdanin and on “Rule 90(H)(ii) Submissions” by the Accused Momir Talić, 22 March 2002, paras 13-14.

25. Any re-examination of a witness is to be strictly limited to the questions raised during the cross-examination. On an exceptional basis, after re-examination, the Trial Chamber may authorise the cross-examining party to put a few specific questions after showing good cause. Such an advantage shall be recognised to the calling party under the same circumstances.

26. A party seeking to have proceedings conducted by way of video-conference link pursuant to Rule 81 *bis* of the Rules shall, five weeks prior to the scheduled date of the proceedings, apply to the Trial Chamber by way of a written motion for such proceedings.

27. The Tribunal does not recognise *tu quoque* as a valid defence.⁶ However, evidence may be allowed to explain the background of certain events.

⁶ *Prosecutor v. Martić*, Case No. IT-95-11-A, Judgement, 8 October 2008, paras 109, 111; *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-T, Judgement, 14 January 2000, paras 515-520; *see also Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-A, Judgement, 23 October 2001, para. 25.