



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: 16 August 2006  
Original: English

**IN TRIAL CHAMBER III**

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

**Registrar:** Mr. Hans Holthuis

**Decision of:** 16 August 2006

**PROSECUTOR**

v.

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

**DECISION ON JOINT DEFENCE MOTION FOR MODIFICATION OF  
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 and Mr. Đuro Čepić 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”) is seised of a “Joint Defence Motion for Modification of ‘Order on Procedure and Evidence’”, filed 1 August 2006, and hereby renders its decision thereon.

1. During the pretrial conference held on 7 July 2006 in the above-captioned matter, the Chamber heard oral argumentation from the parties regarding the time in which material to be used during cross-examination must be disclosed to the opposing parties.<sup>1</sup> On 11 July 2006, the Chamber rendered its “Order on Procedure and Evidence”, wherein it set forth general guidelines for the conduct of the trial and in paragraph three held as follows:

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.

2. In the Motion, the Defence argues that the Order on Procedure and Evidence impinges upon the rights of the accused under Article 21(4)(e)<sup>2</sup> by (a) lessening if not wholly destroying the credibility-testing effect of cross-examination; (b) allowing the Prosecution effectively to coach witnesses prior to their cross-examination; and (c) affording a witnesses intent on dissembling the opportunity to fabricate answers to questions.<sup>3</sup> The Defence requests that the time within which disclosure of cross-examination material must be accomplished be directly after a witness is sworn and commences direct-examination and argues that such a disclosure regime would augment the smooth running of the proceedings.<sup>4</sup>

3. The Prosecution has indicated to the Chamber that it does not intend to oppose the Motion, and it is on the basis of this stipulation that the Chamber decides to grant the Defence’s request for relief, as ordered below.

---

<sup>1</sup> T. 403–412 (7 July 2006). The Prosecution did not oppose the proposed disclosure time. T. 404 (7 July 2006).

<sup>2</sup> Article 21(4)(e) of the Statute provides as follows: “In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality: ... (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ....”

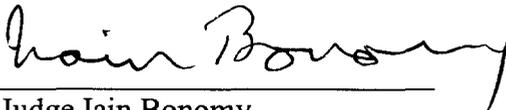
<sup>3</sup> Motion, paras 3–6.

<sup>4</sup> Motion, para. 8.

4. Pursuant to Rules 54, 85, and 90 of the Rules of Procedure and Evidence of the Tribunal and there being no objection to the Motion by the Prosecution, the Chamber hereby GRANTS the Motion and ORDERS that the following paragraph shall replace paragraph three of the Order on Procedure and Evidence:

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 the commencement of the direct examination of that witness and after he or she has made the solemn declaration pursuant to Rule 90(A). 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.

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

  
\_\_\_\_\_  
Judge Iain Bony  
Presiding

Dated this sixteenth day of August 2006  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**