



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-05-88-T

Date: 29 November 2007

Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge O-Gon Kwon
Judge Kimberly Prost
Judge Ole Bjørn Støle – Reserve Judge

Registrar: Mr. Hans Holthuis

Order of: 29 November 2007

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVIČANIN
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ**

PUBLIC

**ORDER ON CLOSE OF PROSECUTION CASE-IN-CHIEF,
RULE 98 *BIS* PROCEEDINGS, DEFENCE RULE 65 *TER* FILINGS, PRE-
DEFENCE CONFERENCE AND COMMENCEMENT OF THE DEFENCE
CASE**

Office of the Prosecutor

Mr. Peter McCloskey

Counsel for the Accused

Mr. Zoran Živanović and Ms. Mira Tapušковиć for Vujadin Popović
Mr. John Ostojić and Mr. Christopher Meek for Ljubiša Beara
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Drago Nikolić
Mr. Aleksandar Lazarević and Mr. Miodrag Stojanović for Ljubomir Borovčanin
Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić for Radivoje Miletić
Mr. Dragan Krgović and Mr. David Josse for Milan Gvero
Mr. Peter Haynes and Mr. Đorđe Sarapa for Vinko Pandurević

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”), *proprio motu*, issues this Order to regulate the next phase of the proceedings in the above-captioned matter between the close of the Prosecution case-in-chief and the commencement of the Defence case (“Order”).

A. Introduction

1. On 6 November 2007, the Prosecution informed the Trial Chamber that the testimony of the last witness it intends to call in this case will conclude on 29 January 2008.¹ At the Trial Chamber’s request,² the parties orally informed the Trial Chamber on 9 November 2007 of the agreement they had reached regarding the upcoming proceedings pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence (“Rules”).³

2. In their oral submissions of 9 November 2007, the parties informed the Trial Chamber that the Rule 98 *bis* submissions could take place one week after the case-in-chief had closed; that each Defence Team could have one and a half hours to make their Rule 98 *bis* submissions; that the Prosecution could have up to two days to respond to the Defence submissions and; that “both sides could supplement their oral submissions with written submissions of a reasonable length and identification, simple identifications of areas of fact and law”.⁴ The parties had not agreed on which party should first address the Trial Chamber.⁵ Finally, the Defence collectively considered that, subsequent to the Trial Chamber’s ruling on the Rule 98 *bis* submissions, a break of three months for the preparation of the Defence case would be “appropriate and necessary”.⁶

3. At the end of the hearing on 9 November 2007, the Trial Chamber informed the parties that (1) the Defence shall start by giving its oral Rule 98 *bis* submissions, after which the Prosecution will have an opportunity to respond; (2) it was sympathetic to the parties’ proposal to allow each Defence team to orally address the Trial Chamber for one and a half hours, and that any left-over time could be distributed according to an agreement reached between the different Defence

¹ Revised Submission Regarding the Presentation of the Remaining Evidence in the Prosecution Case, confidential, 6 November 2007.

² T. 17293–17294 (1 November 2007).

³ T. 17833–17837 (9 November 2007).

⁴ T. 17834 (9 November 2007).

⁵ T. 17834–17835 (9 November 2007).

⁶ T. 17835–17836 (9 November 2007).

counsel; and (3) it would address the parties' request to allow written submissions supplementing the parties' oral submissions at a later stage.⁷

4. The Trial Chamber considers it to be appropriate at this stage to set guidelines on the close of the Prosecution case-in-chief, the anticipated Rule 98 *bis* proceedings, the Defence's Rule 65 *ter* filings, the Pre-Defence Conference and the commencement of the Defence case. For the purposes of this Order, and for planning purposes, the Trial Chamber will assume that there will be Rule 98 *bis* proceedings and also that there will be a Defence case following these proceedings.

B. Close of the Prosecution case-in-chief

5. The Prosecution has indicated that its case-in-chief will end on 29 January 2008.⁸ On 9 November 2007, the Trial Chamber clarified that it would accede to the Parties' request and consequently, following the court recess in December, it would recommence proceedings on 10 January 2008, rather than 7 January 2008.⁹ In light of the foregoing, the Trial Chamber considers that the Prosecution can and should close its case-in-chief no later than 1 February 2008.

C. Proceedings pursuant to Rule 98 *bis*

6. The Defence shall present their oral Rule 98 *bis* submissions from 14 February 2008, after which the Prosecution will have an opportunity to respond. There shall be no Defence reply. The Trial Chamber shall render its oral decision on the submissions soon thereafter.

7. Turning to the parties' joint request to supplement their oral submissions with written submissions, the Trial Chamber will grant this request only to the extent that the parties may file a list of exhibits and transcript references in support of their oral submissions. There will be no further written submissions supplementing the parties' oral Rule 98 *bis* submissions.

D. Defence submissions pursuant to Rule 65 *ter*

8. Pursuant to Rule 65 *ter* each Accused shall file lists of witnesses and expert witnesses that he intends to call during the Defence case, as well as lists of exhibits he intends to offer in his case. The Defence should bear in mind the need to avoid the presentation of repetitive evidence in the preparation of their submissions pursuant to Rule 65 *ter*(G). The Chamber encourages the Defence

⁷ T. 17837 (9 November 2007).

⁸ Revised Submission Regarding the Presentation of the Remaining Evidence in the Prosecution Case, confidential, 6 November 2007.

⁹ T. 17837, 17838 (9 November 2007).

to identify witnesses and expert witnesses whom they can call in common, to avoid unnecessarily having several witnesses testifying on the same subject matter.

9. The Trial Chamber considers that the Defence can reasonably file their lists of witnesses and expert witnesses that they intend to call, as well as lists of exhibits they intend to offer, on or before 31 March 2008.

E. Pre-Defence Conference and Commencement of the Defence case

10. Noting the dates set for the end of the Prosecution case-in-chief and the 98 *bis* submissions, the Trial Chamber considers that preparation for the presentation of the Defence case can be completed within 2 months of the filing of the Defence submissions pursuant to Rule 65 *ter*(G). Accordingly, the Pre-Defence Conference will be held on 22 May 2008 and the Defence case will commence on 2 June 2008.

F. Disposition

Accordingly, the Trial Chamber, pursuant to Articles 20 and 21 of the Statute and Rules 54, 65 *ter*(G), 85(C), 94 *bis*, and 98 *bis* of the Rules, hereby **ORDERS** as follows:

- a. The Prosecution shall close its case-in-chief no later than 1 February 2008.
- b. From 14 February 2008, the Trial Chamber shall hear oral submissions pursuant to Rule 98 *bis*. Except for a list of exhibits and transcript references in support of their oral submissions, the parties are instructed not to submit anything in writing to the Chamber.
 - i. Each Accused shall have one and a half hours to address the Chamber in relation to his motion for a judgement of acquittal; any time not used by one Defence counsel may be distributed to one or more other Defence counsel upon reaching an agreement thereon;
 - ii. The Prosecution shall address the Chamber in response, not exceeding seven hours;
 - iii. There shall be no reply.
- c. Each Accused shall, no later than 31 March 2008, file a list of witnesses he intends to call during his Defence case with:
 - i. the name or pseudonym of each witness, including the name of the Accused himself, in the event that he decides to testify, pursuant to Rule 85(C);

- ii. a summary of the facts on which each witness will testify;
 - iii. with respect to each witness and as detailed as possible, the points in the Indictment as to which he or she will testify;
 - iv. the total number of witnesses and the number of witnesses who will testify for each Accused and on each count;
 - v. an indication of whether the witness will testify in person (either *viva voce* or via Rule 92 *ter*) or pursuant to Rule 92 *bis* or Rule 92 *quater* by way of written statement or transcript of testimony from other proceedings before the Tribunal; and
 - vi. the estimated length of time required for each witness and the total time estimated for presentation of the Defence case;
- d. Each Accused shall, no later than 31 March 2008, file a list of exhibits he intends to offer in his case, stating where possible whether the Prosecutor has any objection as to authenticity. In this respect each Accused shall also indicate with respect to each exhibit the ERN number, a title in respect of the document's content, the name of the author of the document, the date of issuance of the document and the origin of the document, as far as these elements can be provided;
- e. The Accused shall serve upon the Prosecution copies of the exhibits so listed on the same date (translated into English, where necessary). Such exhibits may be uploaded to the eCourt system.
- f. Each Accused shall, no later than 31 March 2008,
- i. file a list of the expert witnesses he intends to call during his Defence case; and
 - ii. serve upon the Prosecution and the Chamber copies of the *curricula vitae* and reports (translated into English, where necessary) of the expert witnesses he intends to call during his Defence case. Such exhibits may be uploaded to the eCourt system.
- g. Each Accused should, to the greatest extent possible, identify in his Rule 65 *ter* list the witnesses and exhibits he has in common with each of the other Accused. The parties shall endeavour to avoid the presentation of repetitive evidence.
- h. The Pre-Defence Conference shall be held on 22 May 2008.

i. The Defence case shall commence on 2 June 2008.

The Trial Chamber may issue further orders in relation to the above in due course, as appropriate and necessary in order to ensure the fair and expeditious conduct of the proceedings.

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



Carmel Agius
Presiding

Dated this twenty-ninth day of November 2007
At The Hague
The Netherlands

[Seal of the Tribunal]