



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: 26 May 2008

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: 26 May 2008

PROSECUTOR

v.

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

PUBLIC

**ORDER CONCERNING THE PRESENTATION OF EVIDENCE AND THE
CONDUCT OF PARTIES DURING THE DEFENCE CASES**

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. Christopher Gosnell 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”), issues the following Order Concerning the Presentation of Evidence and the Conduct of Parties During the Defence Cases:

1. It is the responsibility of the Trial Chamber to ensure that this trial is conducted in a fair and expeditious manner, in accordance with the Statute and the Rules of Procedure and Evidence of the Tribunal (“Rules”), with full respect for the rights of each Accused and due regard to the protection of victims and witnesses. On 14 July 2006, prior to the commencement of the Prosecution’s case-in-chief, the Trial Chamber issued an Order Concerning Guidelines on the Presentation of Evidence and the Conduct of Parties During Trial Proceedings (“Guidelines”).
2. The Trial Chamber considers that the Guidelines, where applicable, remain in full force and effect. However, it is appropriate for the Trial Chamber to issue additional directives concerning the manner in which it expects the Defence cases to be conducted. These directives remain subject to future variation by the Trial Chamber as the trial progresses.
3. Pursuant to Article 20(1) of the Statute, and Rules 54, 89, and 90 of the Rules, the Trial Chamber therefore **ISSUES** the following directives to govern the presentation of evidence and conduct of the parties during the Defence cases and hereby **ORDERS** all parties to the proceedings to comply with them throughout the duration of the Defence cases, subject to any further orders by the Trial Chamber.

I. Notice of the Scheduling of Witnesses

- a. By the fifteenth day of each month during the Defence cases, to the greatest extent possible, the Defence team expecting to present any portion of its case in the following calendar month shall provide the Trial Chamber, the Prosecution, and the remaining Defence teams with a list of all witnesses that it expects to call in the following calendar month. This list shall include the exhibits the Defence intends to use with each proposed witness, and an estimated total time to be taken for examination-in-chief of each witness. Within seven days of provision of such monthly list(s), the Prosecution and the remaining Defence teams shall provide the Trial Chamber and the other parties with an estimate of the total time expected to be taken cross-examining each witness.

- b. By 5:00 p.m. on Thursday of each week during the Defence cases, to the greatest extent possible, the Defence team then presenting its case shall provide the Trial Chamber, the Prosecution, and the remaining Defence teams with a list of all witnesses it expects to call the following week. This list shall include the exhibits intended for use with each proposed witness, and an estimated total time to be taken for examination-in-chief of each witness. By 5:00 p.m. on Friday of each week during the Defence cases, the Prosecution and the remaining Defence teams shall provide the Trial Chamber and the other parties with an estimate of the total time expected to be taken cross-examining each witness.

II. Scheduling, Calling and Questioning Witnesses

- c. The Defence teams have assured the Trial Chamber that they will use their best efforts to coordinate amongst themselves so as to avoid unnecessary or repetitive presentation of witnesses and evidence. Accordingly, the Trial Chamber will not, at the present time, set a specific time limit on the Defence teams for the presentation of their cases. Should this approach prove not to be conducive to effective trial management, the Trial Chamber will revisit this issue.
- d. The Defence teams presenting a joint witness shall endeavour, where possible, to work together to present a single examination-in-chief. A Defence team which jointly calls a witness shall not ordinarily have the right to cross-examine the witness.
- e. Except as regards joint witnesses, each Defence team has the right to cross-examine witnesses called by the other Defence teams. Cross-examination of witnesses by all Defence teams shall take place prior to the Prosecution's cross-examination.
- f. Each Defence team shall be meticulous in planning its case and scheduling its witnesses so as to avoid any gaps in the trial schedule during which the Trial Chamber is unable to sit due to the unavailability of a witness. This will necessarily include conscientious advanced planning with regard to the logistics of travel and visa requirements for any witnesses that must travel to The Hague to testify.

III. Notice and Release of Documents to be Used During Cross-examination

- g. Lists of documents or other material to be used by the Prosecution and the other Defence teams when cross-examining a Defence witness must be disclosed to the Defence team

calling the witness at the commencement of the examination in chief of that witness, after the witness has made the solemn declaration pursuant to Rule 90(A) of the Rules.

- h. Concurrently, the Prosecution and the other Defence teams must release to the Defence team calling the witness, via the eCourt system, any documents or other material not already in the possession of the Defence team calling the witness that form part of the lists of documents or material to be used during cross-examination.
- i. Should the Prosecution or the other Defence teams seek to use a document or material during cross-examination that has not been listed and disclosed, they may be permitted to do so on showing good cause for not listing and disclosing it.
- j. In such a case and if the need arises, the Defence team calling the witness may then request a short adjournment of the proceedings to examine the said document or material.

IV. Monitoring the Use of Time in Trial

- k. A system for monitoring the use of trial time shall be established by the Registry, which will be responsible for recording time used: (a) by the Defence team that presents the witness for examination-in-chief; (b) by each remaining Defence team for cross-examination; (c) by the Prosecution for cross-examination; (d) by the Defence team presenting the witness for re-examination; (e) by the Judges for putting questions to the witness; and (f) for all other matters, including procedural matters. The Registry shall provide this tally each month to the Trial Chamber and to the parties. This tally shall reflect the trial time used during the month in question as well as the amount of trial time used since the beginning of the Defence cases.

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



Judge O-Gon Kwon

Dated this twenty-sixth day of May 2008
At The Hague
The Netherlands

[Seal of the Tribunal]