



International Tribunal for the
Prosecution of Persons Responsible
for Serious Violations of
International Humanitarian Law
Committed in the Former Yugoslavia
since 1991

Case No. IT-98-29/1-PT
Date: 16 December 2005
Original: English
FRENCH

THE PRE-TRIAL JUDGE

Registrar: Mr Hans Holthuis

Decision of: 16 December 2005

THE PROSECUTOR

v.

DRAGOMIR MILOŠEVIĆ

**ORDER ON GUIDELINES FOR DRAWING UP THE LIST OF WITNESSES AND
EXHIBITS AND ORDER TO TRANSLATE THE WITNESS STATEMENTS**

The Office of the Prosecutor

Mr Chester Stamp

Defence Counsel

Mr Branislav Tapušković

I, Jean-Claude Antonetti, Judge at 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 (“the Tribunal”);

NOTING the scheduling order of 13 December 2005 in which, pursuant to Rule 65 *ter* (E)(ii) and (iii) of the Rules, the Prosecution is ordered to provide the list of witnesses and exhibits at the same time as its pre-trial brief by 31 January 2006;

NOTING Article 21 of the Statute;

NOTING Rule 66(A)(ii) of the Rules;

NOTING Rule 65 *ter* (B) of the Rules which permits the pre-trial Judge to take any measure necessary to prepare the case for a fair and expeditious trial;

CONSIDERING therefore that during the last Pre-Trial Conference held on 13 December 2005 the questions relating to the disclosure of the exhibits in a language which the Accused understands and, specifically, the lists of witnesses and exhibits which the Prosecution must file were raised;

CONSIDERING moreover that, in order to ensure that all the lists of witnesses and exhibits can be read in full, the Rules, which are based on a combination of rules of procedure and evidence drawn from both common law and civil law, address the question of the admissibility of evidence in Section 3;

CONSIDERING that Rule 89(A) of that same section states that the Trial Chamber shall not be bound by national rules of evidence;

CONSIDERING that, in the *Aleksovski* case¹, the Appeals Chamber clearly determined the scope of that rule by indicating that the purpose of the Rules is to ensure a fair and expeditious trial and that the Trial Chambers must have sufficient flexibility to reach that objective;

CONSIDERING moreover that Rule 89(C) permits any evidence deemed to have probative value and that the practice at this Tribunal is to admit the evidence first and to evaluate its content subsequently during deliberations;

¹ *The Prosecutor v. Zlatko Aleksovski*, IT-95-14/1-T, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 February 1999, para. 19.

CONSIDERING that the very fact that the evidence is evaluated by professional judges and not by a jury made up of non-professionals, as is the case in the common law systems, gives support to particular treatment guaranteeing equitable evaluation of that evidence, as affirmed by the Trial Chamber in the “Čelebići” case²;

CONSIDERING therefore that the list of witnesses and exhibits which the Prosecution is required to provide must allow the pre-trial Judge, and at a later date the Judges of the Chamber and the Defence, to have both an overview and specific details about all the evidence to be presented during the trial;

CONSIDERING that it is thus necessary for the Judges of the Chamber and Defence to have a witness and exhibit summary table divided into three parts so that a complete horizontal reading is possible, the first part indicating the counts and the two others the accused’s criminal responsibility under Articles 7(1) and/or 7(3) of the Statute of the Tribunal and a witness sheet for each testimony;

CONSIDERING that at the time the Prosecution files its pre-trial brief it must also file the list of the witnesses and the exhibits using a **summary table in electronic format** in Microsoft EXCEL as provided in the model appearing in the annex and having regard to the guidelines set out below, a **witness sheet** containing a detailed summary of each testimony and **the list of evidence gathered in accordance with Rule 92 bis of the Rules**;

CONSIDERING also that, under the Statute and the Rules, and in accordance with the judicial practice in respect of translation of documents into a language which the Accused understands³, the Accused must have the time and facilities needed to prepare his defence during the pre-trial phase and to obtain copies of all the witness statements provided for in Rule 66(A)(ii) in a language which he understands;

CONSIDERING that at the pre-trial conference on 13 December 2005, the Prosecution reiterated its intention to cooperate with the Defence and that it is therefore appropriate to make clear to the Prosecution that, in addition to discharging its obligation to disclose in

² *The Prosecutor v. Zejnil Delalić et al*, Case No. IT-96-21-T, Decision on the Motion of the Prosecution for the Admissibility of Evidence, 19 January 1998.

³ See for example *The Prosecutor v. Delalić et al*, Decision on Defence Application for Forwarding the Documents in the Language of the Accused, 25 September 1996, Case No. IT-96-21-T (“Čelebići Decision”); *The Prosecutor v. Milošević*, Decision on Prosecution Motion for Permission to Disclose Witness Statements in English, 19 September 2001, Case No. IT-99-37-PT; *The Prosecutor v. Pasko Ljubčić*, Case No. IT-00-41 PT, Decision on Defence Motion for Translation of all the Documents, 20 November 2002.

B/C/S the exhibits covered by Rule 66(A)(ii), it should follow guidelines when preparing the summary table of the list of witnesses and exhibits;

CONSIDERING that the summary table will have three parts;

CONSIDERING that the first part of the summary table will relate to the counts and will be divided into 9 columns:

- **column 1** will precisely indicate the count,
- **column 2** will indicate the place where the crime was committed,
- **column 3** will indicate the date the crime was committed,
- **column 4** will indicate the name of the victim or victims,
- **column 5** will indicate the alleged perpetrator of the crime,
- **column 6** will indicate the numbers of the relevant paragraphs of the indictment,
- **column 7** will quote the sentence of the indictment which is most relevant,
- **column 8** will relate to the witnesses and will be subdivided into 5 sub-columns each of which will have the following heading:
 - 1st sub-column “no.” will number the order in which the witnesses are expected to appear,
 - 2nd sub-column will indicate the “family name, first name or pseudonym” of each witness,
 - 3rd sub-column will indicate the “estimated length” of each testimony during the examination-in-chief,
 - 4th sub-column will use an “X” to indicate whether the witness has already testified at the Tribunal,
 - 5th sub-column “reference to the pre-trial brief” must indicate the relevant paragraphs of the pre-trial brief,

- **column 9** will relate to the **exhibits** and will be subdivided into **6 sub-columns**:
- 1st sub-column “exhibit number”: each document must be assigned a reference number and listed chronologically,
 - 2nd sub-column “document title”: the most precise title possible in respect of the document’s content must be provided. Example: the document will be referred to as: “military order, report, war journal extract, press release or article, extract of a newspaper or book, video, recording of a telephone tap, judgment, investigation, correspondence, photo, etc.”
 - 3rd sub-column “name of author”: the name of the author of the document must be given and if that person may not be identified, the letter “X” will be used;
 - 4th sub-column “document date”: the date of the document must be given and, if the date has not been determined, a question mark (?) will be used;
 - 5th sub-column “document origin”: the document origin must be known, i.e., archive document, witness’ personal document, etc.
 - 6th sub-column “reference to the pre-trial brief”: the document quoted will refer to the relevant paragraphs of the pre-trial brief;

CONSIDERING that the second part of the table will relate to the criminal responsibility of the accused pursuant to Article 7(1) of the Statute and will be divided into 9 columns to clearly indicate the role of the accused by checking with an “X” the column corresponding to the following verb:

- **column 1**: plan
- **column 2**: instigate,
- **column 3**: order,
- **column 4**: aid and/or abet,
- **column 5**: commit,
- **column 6** will indicate the relevant paragraph numbers of the indictment,

- **column 7** will accurately quote the relevant sentence of the indictment,
- **column 8** will relate to the witnesses and will be subdivided into **5 sub-columns**:
 - 1st sub-column “no.” will indicate in numbers the order in which the witnesses are expected to appear,
 - 2nd sub-column will indicate the “family name, first name or pseudonym” of each witness,
 - 3rd sub-column will indicate the “estimated length” of each testimony during the examination-in-chief,
 - 4th sub-column will indicate with an “X” whether the witness has already testified,
 - 5th sub-column “reference to the pre-trial brief” must indicate the relevant paragraphs of the pre-trial brief,
- **column 9** will relate to the **exhibits** and will be subdivided into **6 sub-columns**:
 - 1st sub-column “exhibit number”: each document must be assigned a reference number and listed chronologically,
 - 2nd sub-column “document title”: the most precise title possible in respect of the document’s content must be provided. Example: the document will be referred to as: “military order, report, war journal extract, press release or article, extract of a newspaper or book, video, recording of a telephone tap, judgment, investigation, correspondence, photo, etc.”,
 - 3rd sub-column “name of author”: the name of the author of the document must be given and if that person may not be identified, the letter “X” will be used,
 - 4th sub-column “document date”: the date of the document must be given and, if the date has not been determined, a question mark (?) will be used;
 - 5th sub-column “document origin”: the document origin must be known, i.e., archive document, witness’ personal document, etc.;

- 6th sub-column “reference to the pre-trial brief”: the document quoted will refer to the relevant paragraphs of the pre-trial brief;

CONSIDERING that the third part will relate to the criminal responsibility of the accused pursuant to Article 7(3) of the Statute and will be divided into 4 columns:

- **column 1** will indicate the relevant paragraph numbers of the indictment,
- **column 2** will quote precisely the relevant sentence of the indictment,
- **column 3** will relate to the witnesses and will be subdivided into 5 **sub-columns**,
 - 1st sub-column “no.” will indicate the order in which the witnesses are expected to appear,
 - 2nd sub-column will indicate the “family name, first name or pseudonym” of each witness,
 - 3rd sub-column will indicate the “estimated length” of each testimony during the examination-in-chief,
 - 4th sub-column will use an “X” to indicate whether the witness has already testified at the Tribunal,
 - 4th sub-column “reference to the pre-trial brief” must indicate the relevant paragraphs of the pre-trial brief,
- **column 4** will relate to the **exhibits** and will be subdivided into 6 **sub-columns**:
 - 1st sub-column “exhibit number”: each document must be assigned a reference number and listed chronologically,
 - 2nd sub-column “document title”: the most precise title possible in respect of the document’s content must be provided. Example: the document will be referred to as: “military order, report, war journal extract, press release or article, extract of a newspaper or book, video, recording of a telephone tap, judgment, investigation, correspondence, photo, etc.”

- 3rd sub-column “name of author”: the name of the author of the document must be given and if that person may not be identified, the letter “X” will be used,
- 4th sub-column “document date”: the date of the document must be given and, if the date has not been determined, a question mark (?) will be used,
- 5th sub-column “document origin”: the document origin must be known, i.e., archive document, witness’ personal document, etc.
- 6th sub-column “reference to the pre-trial brief”: the document quoted will refer to the relevant paragraphs of the pre-trial brief,

FOR THE FOREGOING REASONS,

ORDER the following:

The Prosecution must file at the same time as its pre-trial brief::

- 1) the **copies of all the witness statements translated into B/C/S** in accordance with Rule 66(A)(ii) of the Rules,
- 2) the list of witnesses and exhibits indicated in the **electronic table** provided in the annex and having regard for the guidelines set out in this Order,
- 3) a **witness sheet** containing a detailed summary of each testimony,
- 4) a **list of the evidence taken under Article 92 bis of the Rules**, clearly indicating the fact to which the evidence relates and including a detailed summary of each declaration,

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

Jean-Claude Antonetti
Pre-Trial Judge

Done this sixteenth day of December 2005

At The Hague, The Netherlands

[Seal of the Tribunal]

**ANNEXE TO THE ORDER ON GUIDELINES FOR DRAWING UP THE
LIST OF WITNESSES AND EXHIBITS**

