



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-04-74-PT
Date: 1 March 2006
Original: ENGLISH
French

BEFORE THE PRE-TRIAL JUDGE

Before: Judge Jean-Claude Antonetti
Registrar: Mr Hans Holthuis
Decision of: 1 March 2006

THE PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
BERISLAV PUŠIĆ**

**DRAFT GUIDELINES FOR THE ADMISSIBILITY OF EVIDENCE AND TO
ENSURE EFFICIENT CONDUCT OF THE PROCEEDINGS**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Daryl Mundis

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica for Bruno Stojić
Ms Vesna Alaburić for Milivoj Petković
Mr Tomislav Jonjić for Valentin Ćorić
Mr Fahrudin Ibrišimović for Berislav Pušić
Mr X for Slobodan Praljak

The Accused:

Slobodan Praljak

I, Jean-Claude Antonetti, Judge 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”);

CONSIDERING the Statute;

CONSIDERING Rule 65 *ter* (B) of the Rules of Procedure and Evidence;

CONSIDERING the discussions at the Status Conference of 16 February 2006;

WHEREAS, in order to ensure a fair trial and the proper administration of justice, the parties need to familiarize themselves with and make observations on the rules that will govern the admissibility and exclusion of evidence, so as to examine the ways to best deal with motions, responses, and replies, and ensure a smooth conduct of the proceedings, especially during the cross-examination of witnesses by Defence counsel, and to provide the Accused the possibility to make statements;

WHEREAS under Article 21 (3) of the Statute the Accused are presumed innocent. Accordingly, the Prosecution must establish the guilt of the Accused beyond doubt, and establish therefore all the basic and necessary facts and circumstances to constitute the crimes in question and the Accused’s criminal responsibility. That burden lies with the Prosecution throughout the trial and never changes. Under Rule 87 (A) of the Rules, the Prosecution must prove the guilt of the Accused beyond a reasonable doubt. At the end of the trial, the Trial Chamber shall determine whether the evidence as a whole has sufficient weight to establish the alleged facts beyond a reasonable doubt and, in the final analysis, the guilt of each Accused as described in the Indictment;

WHEREAS section 3 of the Rules governs issues of the admissibility of evidence before the Tribunal. Rule 89 (A) clearly provides that Trial Chambers shall not be bound by national rules of evidence, be they from common or civil law systems;

WHEREAS the parties must always bear in mind the basic distinction that exists between the legal admissibility of documentary evidence and the Trial Chamber’s judgement as to its weight;

WHEREAS it is suitable to further explain in annex the rules for the admissibility of evidence that will be used during the trial;

WHEREAS, finally, given the particularity of the trial which includes six Accused, it is advisable and in the interests of justice to ensure, prior to the commencement of the trial, that the proceedings are conducted efficiently and to clarify, namely in the attached annex, a few guidelines on how to deal with motions, the presentation of evidence, and possible statements from the Accused persons.

FOR THE FOREGOING REASONS

PROPOSE the draft guidelines as spelled out in the attached annex and;

INVITE the parties to make their observations on the draft guidelines by 15 March 2006.

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

/signed/

Judge Jean-Claude
Antonetti
Pre-Trial Judge

Done this first day of March 2006
At The Hague
The Netherlands

/seal of the Tribunal/

ANNEX

1. Documentary evidence filed for identification

Prior to commencement of the trial all documentary evidence from the Prosecution may be filed for identification.

2. Admissibility of evidence through witnesses

In order to facilitate the practice of the admissibility of documentary evidence, it shall be admitted through witnesses.

3. Admissibility of documentary evidence and the weight attached thereto in light of the case

- a. The parties should always bear in mind the basic distinction that exists between the legal admissibility of documentary evidence and the Trial Chamber's judgement as to its weight.
- b. The mere admission of a document into evidence does not, in itself, signify that the statements contained therein will necessarily be deemed to be an accurate portrayal of the facts.
- c. When objections are raised on grounds of the authenticity of evidence, and whenever documents, video recordings, and intercepted communications are admitted, the weight given to them will be in the context of the trial record as a whole;
- d. There will be no blanket prohibition on the admission of documents simply on the grounds that their purported author has not been called to testify,

4. Admissibility of indirect evidence

- a. The practice of the Tribunal is to accept indirect evidence, namely hearsay evidence. Nevertheless, the weight or probative value attached to such evidence shall be less than that given to the testimony of a witness.¹
- b. Similarly, circumstantial evidence shall be admissible. This is evidence of the circumstances surrounding an event or an offence from which a fact at issue may be reasonably inferred.²

¹ On this issue see in particular *The Prosecutor v. Zlatko Aleksovski*, Case no. IT-95-14/1-T, "Decision on Prosecutor's Appeal on Admissibility of Evidence," 16 February 1999, para. 15, *The Prosecutor v. Tihomir Blaškić*, "Decision on the standing objection of the Defence to the admission of hearsay with no inquiry as to its reliability," 21 January 1998, and *The Prosecutor v. Duško Tadić*, Case no. IT-94-1-T, "Decision on the Defence Motion on Hearsay," 5 August 1996.

² Richard May and Stephen Powell, *Criminal Evidence*, 5th Edition, (Sweet & Maxwell Ltd., London, 2004).

5. The so-called “best evidence” rule

When presenting their evidence the parties should bear in mind that the Chamber will rely on the best evidence available in the circumstances of the case to determine matters before it.

6. Exclusion of evidence obtained by improper means

Rule 95 of the Rules provides: “No evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings.” Accordingly, involuntary statements, obtained from witnesses by oppressive means, cannot pass the test under Rule 95.³ The party seeking to introduce the statement has the burden to prove that it was made voluntarily.

7. Statements by the Accused

Under Rule 84 *bis* of the Rules, the Accused represented by Counsel may, if the Trial Chamber so decides and under its control, make a solemn declaration after the Prosecution's opening statement, and possibly that of Defence Counsels. Furthermore, under Rule 85 (C), the Accused may appear as witnesses in their own defence if they so desire.

8. Guidelines on the conduct of parties when presenting evidence

When presenting their evidence and conducting examinations-in-chief, cross-examinations and, possibly, re-examinations of witnesses, the parties should do their best to organize their examinations in such a way so that all Counsels for the Defence use the same amount of time as the Prosecution, while making efforts to not be repetitive, especially during the cross-examination of witnesses.

9. Management of motions, responses, and replies

In order to deal with motions quickly and effectively, all of the parties should make attempts to consolidate their motions, responses, and replies, thereby avoiding an accumulation of *addendums*, *notices*, *corrigendums*, etc. Moreover, if the Prosecution is the party filing a written motion it must wait, in the absence of responses from all Defence Counsel, for the time-limit of 14 days provided under Rule 126 *bis* of the Rules to expire before requesting the leave of the Chamber to file a reply.

³ *Prosecutor v. Zejnil Delalić et. al.*, Case No. IT-96-21-T, Decision on Zdravko Mucić's Motion for the Exclusion of Evidence, 2 September 1997, para. 43: “It seems to us extremely difficult for a statement taken in violation of Rule 42 to fall within Rule 95 which protects the integrity of the proceedings by the non-admissibility of evidence obtained by methods which cast substantial doubts on its reliability”.