



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: 14 July 2006
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge O-Gon Kwon
Judge Kimberly Prost

Registrar: Mr. Hans Holthuis

Order of: 14 July 2006

THE PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVCANIN
ZDRAVKO TOLIMIR
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ**

**ORDER CONCERNING GUIDELINES ON THE PRESENTATION
OF EVIDENCE AND THE CONDUCT OF PARTIES DURING TRIAL
PROCEEDINGS**

The Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Peter McCloskey

Counsel for the Accused:

Mr. Zoran Živanović and Ms. Julie Condon for Vujadin Popović
Mr. John Ostojić and Mr. Chistopher 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 for Radivoje Miletić
Mr. Dragan Krgović for Milan Gvero
Mr. Peter Haynes and Mr. Đorđe Sarapa for Vinko Pandurević

TRIAL CHAMBER II 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 (“the Tribunal”) issues the following Order Concerning Guidelines on the Presentation Evidence and the Conduct of Parties During Trial Proceedings:

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.
2. With these considerations in mind, it is appropriate for the Trial Chamber to set out the manner in which it expects the trial proceedings to be conducted. These guidelines 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 **ADOPTS** the following guidelines to govern the presentation of evidence and conduct of the proceedings and hereby **ORDERS** all parties to the proceedings to comply with them throughout the duration of the case, subject to any further orders by the Trial Chamber.

I. Scheduling of witnesses

- a. By the fifteenth day of each month during trial, to the greatest extent possible, the Prosecution shall provide the Trial Chamber and the Defence teams with a list of all witnesses it expects to call in the following calendar month. This list shall include the exhibits the Prosecution intends to use with each proposed witness, and an estimated total time to be taken for examination-in-chief of each witness. The Defence teams will coordinate amongst themselves and, within seven days of the Prosecution providing its monthly list, provide the Trial Chamber and the Prosecution with an estimate of the total time expected to be taken by each Defence team cross-examining each witness.
- b. By 5:00 p.m. on Thursday of each week during trial, to the greatest extent possible, the Prosecution shall provide the Trial Chamber and the Defence teams with a list of all witnesses it expects to call the following week. This list shall include the exhibits the Prosecution intends to use with each proposed witness, and an estimated total time to be taken for examination-in-chief of each witness. The Defence teams will coordinate amongst themselves and, by 5:00 p.m. on Friday of each week during trial, provide the Trial

Chamber and the Prosecution with an estimate of the total time expected to be taken by each Defence team cross-examining each witness.

II. Questioning of 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 cross-examination of Prosecution witnesses. Accordingly, the Trial Chamber will not, at the present time, set a specific time limit on the Defence for the cross-examination of Prosecution witnesses. Should this approach prove not to be conducive to effective trial management, the Trial Chamber will revisit this issue.
- d. When presenting a witness with something that the witness has previously stated during testimony, or in a written statement, the parties should avoid paraphrasing what the witness said and should rather quote directly from the transcript or prior statement, giving relevant page numbers. A prior witness statement may be used to refresh the memory of a witness, whether or not such a statement has been admitted into evidence.
- e. Re-examination of a witness shall be limited to matters raised in cross-examination.
- f. Once a witness has begun testifying before the Trial Chamber, the parties should have no *ex parte* communication with the witness before the completion of the witness's testimony, except upon leave of the Trial Chamber. When such leave to communicate with the witness is granted by the Trial Chamber, the communication should not involve the substance of the witness's testimony.

III. Admission of evidence

- g. Proposed documentary and other evidence may be submitted in advance of or during the trial and marked for identification.¹ Such proposed evidence is not admitted until the Trial Chamber makes a ruling on admissibility, either orally or in writing, at which point it will be given an official exhibit number.

¹ This does not limit the obligations of the parties to provide all documents and other material intended to be offered as evidence at trial to the Registry for entering into the e-court system, as outlined in the Provisional Practice Direction on the Application of an Electronic Court Management System, IT/239 Rev. 1, 6 October 2005.

- h. The opposing party or parties may object to the admission of a particular item of proposed evidence tendered by a party on grounds of relevance or probative value (including authenticity). If a party challenges the authenticity of a piece of proposed evidence, it must specify its reasons for doing so. Upon hearing the objections of the party challenging a piece of proposed evidence, the Trial Chamber shall rule on its admissibility.
- i. A witness whose statement is offered under Rule 89(F) must always be available for cross-examination.

IV. Conduct of the Trial

- j. The trial will be conducted using the electronic court management system, and the Provisional Practice Direction on the Application of an Electronic Court Management System shall govern the use of the system and the various responsibilities of the parties.
- k. A system for monitoring the use of time shall be established by the Registry, which will be responsible for recording time used: (a) by the Prosecution for its examination-in-chief; (b) by each of the Defence for cross-examination; (c) by the Prosecution for re-examination; (d) by the Judges for putting questions to witnesses; and (e) for all other matters, including procedural matters.

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

Dated this fourteenth day of July 2006

At The Hague

The Netherlands



Judge Carmel Agius

Presiding

[Seal of the Tribunal]