

17-03-67-PT 15743  
D15743-D15739  
22 NOVEMBER 2006

UNITED  
NATIONS



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-03-67-PT

Date: 22 November 2006

Original: English

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**IN TRIAL CHAMBER I**

**Before:** Judge Alphons Orie, Presiding  
Judge Patrick Robinson  
Judge Frank Höpfel

**Registrar:** Mr Hans Holthuis

**Decision of:** 22 November 2006

**PROSECUTOR**

**v.**

**VOJISLAV ŠEŠELJ**

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**REASONS FOR DECISION ON THE ACCUSED'S REQUEST TO FILE A  
PRE-TRIAL BRIEF**

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**Office of the Prosecutor**

Ms Hildegard Uertz-Retzlaff  
Mr Dan Saxon  
Mr Ulrich Müssemer  
Ms Melissa Pack  
Ms Joanne Motoike

**The Accused (representing himself):**

Mr Vojislav Šešelj

**Standby counsel:**

Mr David Hooper  
Mr Andreas O'Shea

## I. BACKGROUND

1. At a status conference held on 3 November 2006, the Accused raised the issue of a time-limit to be set for him to file a pre-trial brief pursuant to Rule 65 *ter* (F) of the Rules of Procedure and Evidence (“Rules”).<sup>1</sup> At a status conference on 8 November 2006, the Accused stated that he would need up to a month to finalize his pre-trial brief. He added that he had already prepared the main elements of his brief and that he now only had to adjust it in line with the new Indictment.<sup>2</sup> According to the Accused, a Defence pre-trial brief should be filed at least three weeks before the Pre-Trial Conference.<sup>3</sup> The Accused asked that he be permitted the same word-limit as the combined word-count of the pre-trial brief and the supplement to the pre-trial brief submitted by the Prosecution.<sup>4</sup> The Accused further submitted that he wished to file a single pre-trial brief, rather than to submit it in two parts.<sup>5</sup>

2. The Prosecution responded that the purpose of Rule 65 *ter* (F) of the Rules is to enable the Chamber and the Prosecution to be informed of the Defence case. The time-limit imposed should therefore ensure that the Defence pre-trial brief is available before the first witness is heard. According to the Prosecution, the Chamber is in a position to change the time-limit set forth in Rule 65 *ter* (F).<sup>6</sup> The Prosecution also submitted that a further delay of the trial could be avoided if the Accused were ordered, within a ten-day deadline, to file a pre-trial brief dealing only with the Hrtkovci crime base. A supplement to the pre-trial brief, covering the remaining parts of the Indictment, could be filed in January 2007.<sup>7</sup>

3. At the status conference held on 8 November 2006, the Chamber announced that the Pre-Trial Conference will be held on 27 November 2006, to be followed immediately by the start of the trial and the opening statement of the Prosecution. The Chamber further announced that the Accused will be allowed to give his unsworn statement under Rule 84 *bis* on 28 November 2006 and that the hearing of Prosecution witnesses will commence on 6 December 2006 and continue for six consecutive sitting days until the winter recess.<sup>8</sup>

<sup>1</sup> T. 680, 695.

<sup>2</sup> T. 734.

<sup>3</sup> T. 738.

<sup>4</sup> T. 734, T. 757.

<sup>5</sup> T. 739.

<sup>6</sup> T. 735.

<sup>7</sup> T. 736-737.

<sup>8</sup> T. 764.

4. Also on 8 November 2006, the Chamber orally decided to allow the Accused to file a Defence pre-trial brief by 23 November 2006. The word-limit for the pre-trial brief was set at 38,500 typed words, a slightly higher word-count than that used by the Prosecution.<sup>9</sup> The Chamber further ordered that the pre-trial brief should cover the Accused's response to the Hrtkovci allegations in the Indictment<sup>10</sup> and should include the main aspects of the Defence case, and as many other specific matters as the Accused is able to deal with within the time frame.<sup>11</sup> The Chamber allowed the Accused to file a supplement to his pre-trial brief by 8 January 2007, on the condition that the supplement does not repeat any material in the pre-trial brief and does not have the effect of exceeding the total word limit. The Chamber further announced that a written decision giving the full reasons would follow.<sup>12</sup> The reasons for the decision are set out below.

5. On 10 November 2006, the Prosecution filed a new version of the Modified Amended Indictment in English and Serbo-Croatian<sup>13</sup> reflecting the changes ordered in the Chamber's "Decision on the Application of Rule 73 *bis*" of 8 November 2006. This new version of the Indictment, which is now the operative Indictment, was served on the Accused on 13 November 2006, but was only accepted by him on 14 November 2006.<sup>14</sup>

## II. DISCUSSION

6. Rule 65 *ter* (F) of the Rules of Procedure and Evidence reads:

After the submission by the Prosecutor of the items mentioned in paragraph (E), the pre-trial Judge shall order the defence, within a time-limit set by the pre-trial Judge, and not later than three weeks before the Pre-Trial Conference, to file a pre-trial brief addressing the factual and

<sup>9</sup> T. 763.

<sup>10</sup> For reference, see the "Prosecution's Submission of Redacted Version of Modified Amended Indictment and Annexes, pursuant to Rule 73 *bis* (D) and Trial Chamber's Decision dated 8 November 2006", 10 November 2006, paras 5, 17 (k), 31 and 33.

<sup>11</sup> T. 763.

<sup>12</sup> T. 764.

<sup>13</sup> "Prosecution's Submission of Redacted Version of Modified Amended Indictment and Annexes, pursuant to Rule 73 *bis* (D) and Trial Chamber's Decision dated 8 November 2006", 10 November 2006.

<sup>14</sup> Procès-Verbal, filed 14 November 2006, stating that Mr. Šešelj was offered the "Prosecution's Submission of Redacted Version of Modified Amended Indictment and Annexes, pursuant to Rule 73 *bis* (D) and Trial Chamber's Decision dated 8 November 2006", 10 November 2006 (D15289-D15183), on Monday 13 November 2006. According to the Procès-Verbal the Accused checked the document and refused to accept it saying that the document was not properly referred to in Serbo-Croatian on the Procès-Verbal. The next day, on 14 November 2006, the Serbo-Croatian translation of the filing "Prosecution's Submission of Redacted Version of Modified Amended Indictment and Annexes, pursuant to Rule 73 *bis* (D) and Trial Chamber's Decision dated 8 November 2006", 10 November 2006 (D54-1/15289) was served on the Accused. This time the document was accepted by the Accused (Procès-Verbal, filed 14 November 2006).

legal issues, and including a written statement setting out: (i) in general terms, the nature of the accused's defence; (ii) the matters with which the accused takes issue in the Prosecutor's pre-trial brief; and (iii) in the case of each such matter, the reason why the accused takes issue with it.

7. The obligation, according to Rule 65 *ter* (F), to set a certain time-limit for the Defence to file a pre-trial brief lies within the discretion of the Chamber. When setting the time-limit for the Defence pre-trial brief for 23 November 2006, the Chamber considered the information provided by the Accused that he had already prepared the main parts of the pre-trial brief. The Chamber also considered that the Accused has been given an opportunity to supplement the brief at a later stage. The Chamber finds that the time-limits set allow sufficient time for the Accused to file a pre-trial brief.

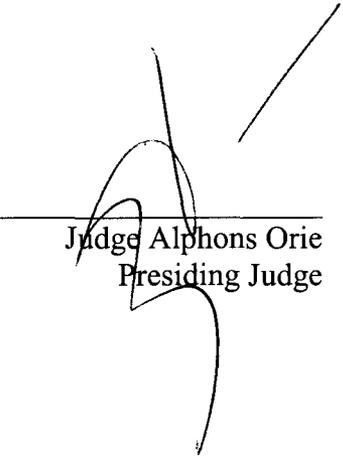
8. While Rule 65 *ter* (F) obliges the Pre-Trial Judge to order the production of a Defence pre-trial brief, the time-limit for submission of such a brief may be varied by the Chamber in the interests of justice. The purpose of a Defence pre-trial brief is to enable the Chamber and the Prosecution to have sufficient notice of the content of the Defence case before the presentation of evidence at trial begins. In this regard, the Chamber notes that although the Pre-Trial Conference is scheduled for the 27 November 2006, the presentation of evidence will not commence until 6 December 2006. In practice, this means that the time-limits set will allow for the translation and perusal of the Defence pre-trial brief by the Chamber and the Prosecution before the evidence commences. Also, the Chamber notes that the Prosecution has not opposed a variation of the time-limit. Furthermore, the pre-trial brief will deal specifically with the Hrtkovci allegations in the Indictment, which will be the first crime site to be dealt with by the Prosecution.

9. In addition to the factors previously discussed, the time-limits set for the filing of the Defence pre-trial brief will prevent further delay to the start of trial. The Chamber considers this to be in the interests of both parties.

10. For the reasons given above, and according to Rule 54 and Rule 65 *ter* (F) of the Rules, the Chamber ordered the Accused to file a pre-trial brief within the time-limits established in the oral decision.

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

Dated this twenty second day of November 2006  
The Hague  
The Netherlands



Judge Alphons Orié  
Presiding Judge

**[Seal of the Tribunal]**