



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-T  
Date: 22 November 2010  
Original: ENGLISH  
French

**IN TRIAL CHAMBER III**

**Before:** Judge Jean-Claude Antonetti, presiding  
Judge Árpád Prandler  
Judge Stefan Trechsel  
Reserve Judge Antoine Kesia-Mbe Mindua

**Registrar:** Mr John Hocking

**Order of:** 22 November 2010

**THE PROSECUTOR**

v.

Jadranko PRLIĆ  
Bruno STOJIC  
Slobodan PRALJAK  
Milivoj PETKOVIĆ  
Valentin ĆORIĆ  
Berislav PUŠIĆ

***PUBLIC***

**AMENDED SCHEDULING ORDER (FINAL TRIAL BRIEFS, CLOSING  
ARGUMENTS FOR THE PROSECUTION AND THE DEFENCE)**

**The Office of the Prosecutor:**

Mr Kenneth Scott  
Mr Douglas Stringer

**Counsel for the Accused:**

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić  
Ms Senka Nožica and Mr Karim A.A. Khan for Bruno Stojic  
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak  
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković  
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić  
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

**TRIAL CHAMBER III** (“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”);

**SEIZED** of “Slobodan Praljak’s Request for Modification of the Schedule Pursuant to the 1 November 2010 ‘*Ordonnance portant calendrier (mémoires en clôture, réquisitoire et plaidoiries finales)*’”, filed publicly with a confidential annex by Counsel for the Accused Slobodan Praljak (“Praljak Defence”) on 4 November 2010 (“Request by the Praljak Defence”),

**SEIZED** of “Jadranko Prlić’s Observations Concerning the Scheduling Order (Final Briefs, Closing Arguments for the Prosecution and the Defence) Issued on 1 November 2010”, filed publicly by Counsel for the Accused Jadranko Prlić (“Prlić Defence”) on 5 November 2010 (“Request by the Prlić Defence”),

**SEIZED** of “Bruno Stojić’s Request for Modification of the Trial Chamber’s Scheduling Order Issued on 1 November 2010”, filed publicly by Counsel for the Accused Bruno Stojić (“Stojić Defence”) on 5 November 2010 (“Request by the Stojić Defence”),

**SEIZED** of the “Petković Defence Application for Modification of the Trial Chamber’s ‘Scheduling Order (Final Briefs, Closing Arguments for the Prosecution and the Defence)’ of 1 November 2010”, filed publicly by Counsel for the Accused Milivoj Petković (“Petković Defence”) on 5 November 2010 (“Request by the Petković Defence”),

**SEIZED** of “Valentin Ćorić’s Request for a Modification of the ‘*Ordonnance portant calendrier (mémoire en clôture, réquisitoire et plaidoiries finales)*’”, filed publicly by Counsel for the Accused Valentin Ćorić (“Ćorić Defence”) on 5 November 2010 (“Request of the Ćorić Defence”),

**SEIZED** of “Berislav Pušić Response to the Trial Chamber’s *Ordonnance portant calendrier (mémoire en clôture, réquisitoire et plaidoiries finales)* dated 1 November 2010”, filed publicly by Counsel for the Accused Berislav Pušić (“Pušić Defence”) on 5 November 2010 (“Request by the Pušić Defence”),

**SEIZED** of the “Prosecution Motion for Reconsideration of Scheduling Order, or in the Alternative, Certification to Appeal”, filed publicly by the Office of the Prosecutor (“Prosecution”) on 8 November 2010, to which two public annexes and one confidential annex are attached (“Prosecution Motion”),

**NOTING** “Slobodan Praljak’s Response to the Prosecution Motion for Reconsideration of Scheduling Order, or in the Alternative, Certification to Appeal”, filed publicly by the Praljak Defence on 10 November 2010 (“Praljak Defence Response”),

**NOTING** the “Bruno Stojić Response to Prosecution Motion for Reconsideration of Scheduling Order, or in the Alternative, Certification to Appeal”, filed publicly by the Stojić Defence on 11 November 2010 (“Stojić Defence Response”),

**NOTING** “Valentin Ćorić’s Response to the ‘Prosecution Motion for Reconsideration of Scheduling Order, or in the Alternative, Certification to Appeal’”, filed publicly by the Ćorić Defence on 17 November 2010 (“Ćorić Defence Response”),

**NOTING** the “Scheduling Order (Final Briefs, Closing Arguments for the Prosecution and the Defence)” (“Order of 1 November 2010”), issued publicly by the Chamber on 1 November 2010, wherein the Chamber notably decided (1) that the parties should file their final trial briefs no later than 13 December 2010, (2) that the final trial brief of the Prosecution should not exceed 300 pages and that of each Defence team should not exceed 200 pages, (3) that in case the parties wished to attach annexes, that annexes should not exceed 100 pages for the Prosecution and 50 pages for the Defence teams, (4) that the Chamber would hear the closing arguments of the Prosecution starting on 17 January 2011 and the closing arguments of the Defence once the closing arguments of the Prosecution have ended, (5) that the Chamber would grant the Prosecution 15 hours to present its closing arguments and 4 hours to each Defence team and (6) that any Defence teams wishing to request an amendment to the Order of 1 November 2010 must do so within a time-limit of 4 days at the most, to run from the date that the said Order was filed,<sup>1</sup>

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<sup>1</sup> Order of 1 November 2010, pp. 7 and 8.

**CONSIDERING** that in their respective requests, the Prlić, Stojić, Praljak, Ćorić and Pušić Defence teams do not oppose the page limit set down by the Chamber for final trial briefs,<sup>2</sup>

**CONSIDERING** nevertheless that, in the event the Chamber were to grant additional pages to one party, the Stojić, Praljak and Ćorić Defence teams would like to see themselves granted additional pages, too,<sup>3</sup>

**CONSIDERING** that the Petković Defence is for its part asking to be allowed to file a 650 page final brief,<sup>4</sup> to which it hopes to annex 150 pages;<sup>5</sup> that in support of this request, the Petković Defence more specifically argues the complexity of the case, the number of accused, the number of crimes and the modes of responsibility alleged and the occasionally divergent interests of different Defence teams;<sup>6</sup> that it likewise makes known its intention to annex a certain number of references to its final brief with the objective of assisting the Chamber,<sup>7</sup> while emphasizing that the “Practice Direction on the Length of Briefs and Motions” of 16 September 2005 (“Direction of 16 September 2005”) does not provide a limit for annexes,<sup>8</sup>

**CONSIDERING** that the Prosecution submits that the Chamber committed an error in the Order of 1 November 2010 by limiting the number of pages for its final trial brief to 300 pages and for the annexes<sup>9</sup> to 100 pages and requests being allowed to file a final trial brief of 700 pages, to which it hopes to attach 400 pages in annex,<sup>10</sup>

**CONSIDERING** that, in support of its motion, the Prosecution (1) raises the complexity and the scope of the case;<sup>11</sup> (2) submits that the final trial brief constitutes the final written opportunity to plead its case<sup>12</sup> and is unable to develop all of the facts

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<sup>2</sup> Request by the Prlić Defence, para. 4; Request by the Stojić Defence, para. 2; Request by the Praljak Defence, paras 29 and 33; Request by the Ćorić Defence, para. 13. The Request by the Pušić Defence does not mention the page limit for final trial briefs. The Chamber therefore considers that the Pušić Defence is not contesting this limit.

<sup>3</sup> Request by the Stojić Defence, para. 2; Request by the Praljak Defence, para. 32; Request by the Ćorić Defence, para. 13. The Request by the Stojić Defence would specifically like to have the final trial briefs of the Defence teams be equivalent to 2/3 of the Prosecution's final trial brief.

<sup>4</sup> Request by the Petković Defence, para. 23.

<sup>5</sup> Request by the Petković Defence, para. 26.

<sup>6</sup> Request by the Petković Defence, paras 17 and 18.

<sup>7</sup> Request by the Petković Defence, para. 24.

<sup>8</sup> Request by the Petković Defence, para. 25.

<sup>9</sup> Order of 1 November 2010, p. 6.

<sup>10</sup> Prosecution Motion, para. 15.

<sup>11</sup> Prosecution Motion, paras 10, 12 and 13.

<sup>12</sup> Prosecution Motion, para. 9.

and modes of responsibility alleged in the Amended Indictment of 11 June 2008 (“Indictment”) in 300 pages only;<sup>13</sup> (3) puts forward that since the Order of 1 November 2010, it has attempted to the best of its ability to reduce the size of its final trial brief but will have to file a brief of no less than 700 pages, annexing 400 pages thereto,<sup>14</sup> and (4) is attaching by way of example a chart to depict for the Chamber the type of references it would like to attach in an annex,<sup>15</sup>

**CONSIDERING** that in the Praljak Defence Response, the latter underscores that the Chamber displayed its generosity towards the Prosecution, in respect of the Direction of 16 September 2005, by granting it 300 pages for its final trial brief but that the Prosecution insists on dickering with the Chamber<sup>16</sup> and has not suggested a valid basis for its request to file a brief of 700 pages,<sup>17</sup>

**CONSIDERING** that in the Stojić Defence Response, the latter also notes that the request for additional pages for the final trial brief of the Prosecution is disproportionate<sup>18</sup> and that Prosecution submits no valid argument in support of its request for reconsideration of the Order of 1 November 2010,<sup>19</sup>

**CONSIDERING** that in the Ćorić Defence Response, the latter submits that the Prosecution Motion does not meet the criteria for reconsideration insofar as it does not establish that there is a clear error by the Chamber in the Order of 1 November 2010 or new elements requiring re-examination by the Chamber<sup>20</sup> and finds that the current limits allow the parties to focus upon their most essential arguments and evidence,<sup>21</sup>

**CONSIDERING** that in their respective responses, the Praljak and Stojić Defence teams restate their wish to be granted additional pages for their final trial briefs in the event that the Chamber does amend the Order of 1 November 2010 in this regard,<sup>22</sup>

**CONSIDERING** that, proceeding to the schedule for filing the final trial briefs, and for the closing arguments for the Prosecution and the Defence, all of the Defence

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<sup>13</sup> Prosecution Motion, para. 13.

<sup>14</sup> Prosecution Motion, para. 16.

<sup>15</sup> Prosecution Motion, para. 17 and Confidential Annex 3.

<sup>16</sup> Response by the Praljak Defence, para. 11.

<sup>17</sup> Response by the Praljak Defence, paras 7 and 10.

<sup>18</sup> Stojić Defence Response, para. 13.

<sup>19</sup> Stojić Defence Response, paras 6 to 12.

<sup>20</sup> Ćorić Defence Response, paras 2 to 5.

<sup>21</sup> Ćorić Defence Response, paras 6 to 10.

<sup>22</sup> Praljak Defence Response, para. 16; Stojić Defence Response, p. 9.

teams are requesting a time-limit beyond that set by the Order of 1 November 2010 to file their final trial briefs and thereby to have rescheduled the date established in the Order of 1 November 2010 for the commencement of closing arguments,<sup>23</sup>

**CONSIDERING** that it is the case that the Stojić, Ćorić and Pušić Defence teams are requesting a period of three months after the Chamber renders its decision concerning the request most recently brought by one of the parties regarding the filing of its final trial brief;<sup>24</sup> that the Praljak Defence, which the Prlić Defence joins, is seeking an identical time-limit, or in the alternative, to reschedule the filing date for their final trial briefs until 24 January 2011 with a margin for amendment<sup>25</sup> and that the Petković Defence for its part proposes the date of 7 February 2011 for filing the final trial briefs,<sup>26</sup>

**CONSIDERING** that, in support of their requests regarding scheduling, the Defence teams raise the complexity and the scope of the case, which they are obliged to try to summarize in their final trial briefs,<sup>27</sup>

**CONSIDERING**, moreover, that the Praljak Defence proposes a span of two or three weeks between the filing of the final trial briefs and the Prosecution's closing arguments,<sup>28</sup> that the Petković Defence proposes a span of three weeks<sup>29</sup> and the Pušić Defence is requesting a span of six weeks,<sup>30</sup>

**CONSIDERING** that the Defence teams argue that, before issuing the Order of 1 November 2010, the Chamber did not alert the Defence teams that it intended to decide the issue of the schedule for filing the final trial briefs and that, for this reason, the Defence teams were taken by surprise by the limit on the number of pages of the said final trial briefs as well as by the time-limit for filing them that was laid down by the Chamber,

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<sup>23</sup> Order of 1 November 2010, p. 8. The Chamber had scheduled the filing date for final trial briefs for 13 December 2010.

<sup>24</sup> Request by the Stojić Defence, para. 12; Request by the Ćorić Defence, paras 12 and 14; Request by the Pušić Defence, p. 4.

<sup>25</sup> Request by the Praljak Defence, para. 34; Request by the Prlić Defence, para. 7.

<sup>26</sup> Request by the Petković Defence, para. 15.

<sup>27</sup> Request by the Prlić Defence, para. 1 and p. 4; Request by the Stojić Defence, paras 7 and 12; Request by the Praljak Defence, paras 15 to 19; Request by the Petković Defence, paras 4 and 5; Request by the Pušić Defence, para. 8.

<sup>28</sup> Request by the Praljak Defence, paras 26 and 27.

<sup>29</sup> Request by the Petković Defence, para. 15.

<sup>30</sup> Request by the Pušić Defence, para. 9.

**CONSIDERING** that the Defence teams believe the limits imposed by the Chamber to be reasonable with regard to the number of pages for the final trial briefs but are of the view that the time-limit set for filing them is not long enough,

**CONSIDERING** that they submit moreover that since 1 April 2010, the date of the most recent hearing in this case, they have been required to shoulder a significant amount of work,<sup>31</sup>

**CONSIDERING** that the Defence teams argue, in addition, that certain important requests are still pending with the Chamber, including motions for re-opening the case filed by various Defence teams,<sup>32</sup>

**CONSIDERING** lastly that the Praljak, Čorić and Pušić Defence teams mention the fact that the time-limit handed down by the Chamber for filing the final trial briefs is not long enough to permit the Accused to participate fully in the process of drafting the final trial briefs – which is an essential part of their defence – given the fact that the brief must be translated from the language in which it is required to be filed to a language understood by the various Accused,<sup>33</sup>

**CONSIDERING** that in the Prosecution Motion, it is seeking to have the time-limit for filing the final trial briefs extended to 24 January 2011, in order to allow it to prepare its brief and the annexes, so that it may commence its final arguments on 21 February 2011,<sup>34</sup>

**CONSIDERING**, in any event, that the Prosecution has made known its opposition to any modification to the schedule if the Chamber does not grant it leave to file a brief of 700 pages in lieu of 300 pages, along with 400 pages of annex in lieu of 100,<sup>35</sup>

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<sup>31</sup> Request by the Prlić Defence, para. 2; Request by the Stojić Defence, para. 9; Request by the Praljak Defence, para. 23; Request by the Petković Defence, paras 6 and 7; Request by the Čorić Defence, para. 2; Request by the Pušić Defence, paras 4 and 6. The Defence teams specifically cite to “Prosecution Motion to Admit Evidence in Reopening”, filed publicly with confidential annex by the Prosecution on 9 July 2010 and “Slobodan Praljak’s Second Motion for Admission of Written Evidence in lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis*”, filed publicly with four confidential annexes by the Praljak Defence on 22 July 2010.

<sup>32</sup> Request by the Prlić Defence, para. 2; Request by the Stojić Defence, para. 6; Request by the Čorić Defence, para. 4; Request by the Pušić Defence, para. 3.

<sup>33</sup> Request by the Praljak Defence, para. 24; Request by the Čorić Defence, para. 11; Request by the Pušić Defence, para. 8.

<sup>34</sup> Prosecution Motion, para. 17.

<sup>35</sup> Prosecution Motion, para. 21.

**CONSIDERING** that, in the Praljak Defence Response, the Praljak Defence supports the Prosecution Motion to the extent it suggests a timespan of four weeks between the filing of the final trial briefs and the beginning of the closing arguments for the Prosecution<sup>36</sup> yet rejects making the award of reasonable time for preparing the final trial briefs and the closing arguments contingent upon obtaining an award of additional pages for the Prosecution's final trial brief, as the Prosecution seems to plead in its Motion,<sup>37</sup>

**CONSIDERING** that, in the event the Chamber refuses to reconsider the Order of 1 November 2010, the Prosecution asks the Chamber to certify the appeal lodged against the said Order on grounds that it affects the fairness of the trial for the Prosecution,<sup>38</sup>

**CONSIDERING** that in the Responses of the Praljak, Stojić and Ćorić Defences, they contend that the Prosecution Motion does not meet the criteria for a request for certification to appeal;<sup>39</sup> that the Praljak Defence is however requesting that if there is certification to appeal, the Order of 1 November 2010 as a whole would be reviewed on appeal, including the extent to which it affects the concerns of the Praljak Defence,<sup>40</sup>

**CONSIDERING** that with respect firstly to the size limits on final trial briefs and their annexes, the Chamber recalls that it gave due consideration to the details of this case when it decided to grant 300 pages to the Prosecution and 200 pages to the Defence teams for their final trial briefs and 100 pages to the Prosecution and 50 pages to the Defence teams for their annexes; that the Chamber also recalls that it made this decision in full knowledge of what was previously authorised by other trial chambers of the Tribunal,<sup>41</sup>

**CONSIDERING** that the Chamber, by requiring a limit of this kind, wished to encourage the parties to be concise and argue in summary fashion in their final trial

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<sup>36</sup> Praljak Defence Response, para. 4.

<sup>37</sup> Praljak Defence Response, paras 4 to 6.

<sup>38</sup> Prosecution Motion, para. 20.

<sup>39</sup> Praljak Defence Response, para. 17; Request by the Stojić Defence, para. 13; Ćorić Defence Response, paras 11 to 14.

<sup>40</sup> Praljak Defence Response, para. 17.

<sup>41</sup> Order of 1 November 2010, pp. 5 and 6.



briefs and is convinced that it did not make an error in judgement in the Order of 1 November 2010,

**CONSIDERING** that the Chamber nonetheless accepts to some extent the argument of the Prosecution whereby the latter carries the burden of proof and, in order to present its case, must endeavour to address all of the Indictment in its final trial brief and that it does not seem to be able to achieve this in 300 pages; that the Chamber decides consequently to offer it some latitude,

**CONSIDERING** that the Chamber nevertheless underscores the need for the parties to be concise and argue in summary fashion in the final trial briefs, finds itself unable to agree to the Prosecution's thesis that it needs at least 700 pages for its final trial brief; that the Chamber decides thus to grant the Prosecution leave to file a final trial brief of at most 400 pages,

**CONSIDERING** that, as concerns the Prosecution Motion regarding Annexes, the Chamber finds that charts such as those supplied by the Prosecution as Confidential Annex 3 may be useful for the Chamber as well as for the Defence in preparing their final trial briefs,

**CONSIDERING** that the Chamber, concerned once again that the parties be concise and argue in summary fashion, decides to grant the Prosecution leave to annex a maximum of 200 pages to its final trial brief,

**CONSIDERING**, on the other hand, that the Chamber finds that the Petković Defence has not sufficiently demonstrated the reasons why its situation requires it to have 650 pages for its final trial brief and 150 pages for the annexes; that the Chamber thus decides to deny the Petković Defence Request insofar as it pertains to an increase in the number of pages for its final trial brief and for its annexes,

**CONSIDERING** that the requests of certain Defence teams to be given more pages if the Chamber decides to increase the number of pages for the final trial briefs of certain of the parties,<sup>42</sup> the Chamber cannot agree with this Request inasmuch as it clearly set forth in the Order of 1 November 2010 that the length of the final trial

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<sup>42</sup> Request by the Stojić Defence, para. 2; Request by the Praljak Defence, para. 32; Request by the Ćorić Defence, para. 13.

briefs of the Prosecution and of each Defence were not contingent upon the length of the other briefs,<sup>43</sup>

**CONSIDERING**, however, that in light of the modifications the Chamber is authorising for the final trial brief of the Prosecution and considering the fact that in the Order of 1 November 2010, the Chamber had specifically taken into consideration the length of the final trial briefs to calculate the time to be given to the Defence teams for their closing arguments,<sup>44</sup> the Chamber finds it appropriate to grant more time to the Defence teams for their closing arguments,

**CONSIDERING**, therefore, that the Chamber decides to allow five hours to each Defence team for its final trial brief in lieu of the four hours initially fixed by the Order of 1 November 2010,

**CONSIDERING** that to establish the schedule for filing final trial briefs and for hearing the closing arguments of the Prosecution and the Defence, the Chamber recalls that it has taken into consideration the specifics of this case as well as the fact that numerous requests before it remain pending,<sup>45</sup>

**CONSIDERING** that the Chamber is willing to entertain, to some extent, the argument that the parties were surprised by the limit on the number of pages for their final trial briefs and by the time-limit imposed by the Chamber for filing the said final trial briefs, and that they may need more time to adjust their final trial briefs and, in the case of the Defence teams, to consult the Accused in respect of the said adjustments,

**CONSIDERING**, moreover, the fact that certain requests are still pending before it is an aspect that the Chamber must take into consideration to appreciate the requests of the parties to have more time to file their final trial briefs,

**CONSIDERING** that, in light of these circumstances, the Chamber decides to move back the date on which the parties are required to file their final trial brief to 4 January 2011,

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<sup>43</sup> Order of 1 November 2010, p. 5.

<sup>44</sup> Order of 1 November 2010, p. 7.

<sup>45</sup> Order of 1 November 2010, p. 7.

**CONSIDERING** that, consequently, the Chamber finds it necessary to change the date on which it will begin to hear the closing arguments of the Prosecution to 31 January 2011,

**CONSIDERING** that, regarding the request in the alternative for certification to appeal by the Prosecution, the Chamber recalls, despite being persuaded of the reasonable basis in law for the Order of 1 November 2010, that it has agreed in this Order to provide some leeway; that it finds, moreover, that the Prosecution has not shown how the subject matter of the Prosecution Motion constitutes a question likely to significantly affect the fairness and the expeditiousness of the trial or its outcome or that the immediate resolution of this issue by the Appeals Chamber would materially advance the proceedings,

**FOR THE FOREGOING REASONS,**

**PURSUANT TO** Rules 54 and 86 of the Rules,

**PARTIALLY GRANTS** the Motion of the Prosecution and the Requests of the Defence teams,

**ORDERS** that:

- (1) the parties shall be required to file their final trial briefs no later than 4 January 2011.
- (2) the Chamber shall hear the closing arguments for the Prosecution starting on 31 January 2011 and the closing arguments for the Defence once the Prosecution has ended its closing arguments.
- (3) The Prosecution's final trial brief shall not exceed 400 pages and that of each Defence team shall not exceed 200 pages. The Chamber adds, in the event the parties would like to attach annexes, that they may not exceed 200 pages for the Prosecution and 50 pages for the Defence teams and may not in any case contain arguments of fact or of law.
- (4) The Chamber hereby grants 5 hours to each Defence team to present its closing arguments. The Chamber authorizes each Accused to speak, if they so wish, for up to 30 minutes, and that time shall be included in the 5 hours extended to each Defence team. If the various Accused do not wish to say anything, this time may be given back to their counsel. The Chamber adds, moreover, that the time afforded one Defence team may not be given back to another Defence team.

**RECALLS** that:

- (1) No written response to the final trial briefs shall be allowed.
- (2) The Chamber is granting 15 hours to the Prosecution to present its final arguments.

- (3) The Chamber recalls that the closing arguments for the Prosecution and the Defence may not constitute a reprise of the arguments set out in the final trial briefs. The Chamber is actually seeking to hear the reaction of the parties to the final trial briefs and for that reason directs the parties to focus upon the essential themes of the case file.
- (4) The Chamber retains the option of ruling upon any duly reasoned requests for replies and sur-replies to the oral arguments once it has heard all closing arguments,

**AND,**

**DENIES** the Motion of the Prosecution and the Requests of the Defence teams in all other respects, and the Prosecution Motion insofar as it concerns the request for certification to appeal the Order of 1 November 2010.

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

**Presiding Judge Jean-Claude Antonetti is attaching a separate opinion to this Order.**

*/signed/*

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Judge Jean-Claude Antonetti  
Presiding Judge

Done this twenty-second day of November 2010

At The Hague

The Netherlands

**[Seal of the Tribunal]**

**Separate Opinion of the Presiding Judge in the Chamber  
Judge Jean-Claude Antonetti**

The Prosecution seized the Trial Chamber with a request for reconsideration or in the alternative for certification to appeal following the Order of the Chamber dated 1 November 2010 scheduling and establishing page numbers for the final trial briefs;<sup>46</sup> likewise the Defence teams have brought various submissions concerning the Prosecution Motion as well as the Chamber's decision.

The request for reconsideration does **not follow any of the Rules** and emanates from **the Appeals Chamber's construction of case-law**. Admittedly, the obvious procedural solution to a contested decision is to appeal it. However, were each procedural decision to feature in an appeal, the Appeals Chamber would collapse under an avalanche of contested decisions rendered by the various Chambers responsible for trials.

If we adopt a rational mindset and seek to balance the workload between the Trial Chambers and the Appeals Chambers, the jurisprudence on reconsideration is in reality a disguised appeal of the Trial Chamber's decision that simultaneously exempts the Appeals Chamber from being seized thereof . . . .

This jurisprudence has opened the gate to this type of **interminable contention**. I must unfortunately note that **all** of the decisions rendered by our Chamber systematically give rise to a request for reconsideration.

Yet does this mean that the Trial Chamber committed an error of judgement?

A decision is taken after **quite serious, in-depth review** of documents coming from the parties and the arguments developed there appear in the decision, discussed word for word, line by line, paragraph by paragraph. Therefore, this is to say, that a decision taken by reasonable judges is a decision taken after thorough reflection and assessed in all of its ramifications.

As to the issue of the schedule and the number of pages, the judges of the Chamber did not wait for the Prosecution motion to reflect upon the matter. Their reflection occurred well in advance of the motion and, in my case, even occurred during the pre-trial phase, as I wished to have an overview of the trial and avoid any delay that would prejudice all concerned.

Given the length of the final trial brief and the topics addressed, I thought from the outset that the parties would wish to have time to prepare this decisive phase of the trial and have a sufficient number of pages at their disposal to express their reasoning. It was also evident that we could not draw helpful comparisons with the other trials in light of differing parameters.

The time required to present evidence for the Prosecution as well as for the Defence teams was extremely long and the judges, in the time taken, covered the main points in their questions.

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<sup>46</sup> *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, Order from the Chamber "Scheduling Order (Final Briefs, Closing Arguments for the Prosecution and the Defence)", 1 November 2010.

With this observation in hand, each party must now be able, out of the transcripts and thousands of documents admitted, to succinctly state their point of view, distinguishing the essential from the incidental.

For this reason, at least insofar as I am concerned within the Chamber I preside, I have always opposed every request for reconsideration, having instead been, in certain cases, in favour of appeal.

In this case, the contested decision involves three key elements:

- **the date for filing the submissions for the final trial briefs**
- **the date for the closing arguments of each side**
- **the number of pages for the submissions**

The Prosecution, in its submission of 8 November 2001, asks the Chamber for leave to submit its final brief of 700 pages with 400 pages of annex and for leave to file its submission on 24 January 2011, with closing arguments for the Prosecution commencing on 21 February 2011.

By adding the total of 700 pages of final trial brief and 400 pages of annex, I end up with 1,100 pages, whereas the Trial Chamber itself granted just 300 pages in its prior decision plus 100 pages of annex. When my colleagues and I set the number of pages, we took into account the complexity of the case, the number of charges, the number of crimes committed, and so on.

I may have been wrong to **overestimate** the abilities of the Prosecution, after several years of trial, to succinctly develop its principal points of argument, which may explain to a certain extent its counter-claim. However, I must observe in passing that an international prosecutor's office worthy of the name has at its disposal numerous deputy prosecutors and assistants capable of preparing the final briefs from the start of the trial . . . it seems for this reason timely to say that it is not at the end of the trial that one must ask oneself what arguments one will ultimately present. Also, the proceedings contain a key piece, the **Prosecution's Pre-Trial Brief**, which has the advantage of informing the judges on the Prosecution's line of argument.<sup>47</sup>

As the burden of proof falls entirely to the Prosecution, I am bound to offer the Prosecution and the Defence teams the best possible options for arguing their theories of the case, as may best suit their interests. If the Prosecution, to argue its theory of the case contends that it requires 1,100 pages, supported in Annex 1 by the number of pages allowed in other cases, I must nonetheless point out that the Prosecution's arguments, for years running, have been developed on the basis of questions put to its own witnesses and during cross-examination of the witnesses of the Defence, in the process illustrating what is contained in the pre-trial brief, especially insofar as I have not had the impression that the judges were napping during questioning . . . In this procedural structure, the Prosecution still has two special moments for fully informing the judges: the first is its final brief and the second which is its closing arguments, for which it will have **15 hours** to review all of its argumentation (a substantial amount).

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<sup>47</sup> *The Prosecutor v. Prlić et al.*, Case No. IT-04-74, "Prosecution Submission of Pre-Trial Brief with Exhibit Numbers", 19 January 2006 (partially confidential document – Annexes 1 through 12 are confidential), 230 pages.

For this reason then, must we absolutely concede to the Prosecution every point of its request?

After much thought, I line up with the opinion of my colleagues and the rationale set forth in this decision allowing the Prosecution to have an additional number of pages and setting a new date with respect to the initially scheduled date; this is certainly not, I believe, a reconsideration based upon an error committed at the outset, yet neither is it a reconsideration based on taking into account the Prosecution's burden: **the burden of proof**.

Concerning the span of time necessary between the filing deadline for the submissions and the date of the closing arguments, I consider that this span cannot be any less than 4 weeks.

It is evident, for anyone used to criminal trials, that the submissions of the opposing party must be closely analyzed and that, insofar as the closing arguments for the Prosecution and for the Defence are concerned, each party will orally review the other's theory of the case in order to tackle it orally. This is therefore a very important stage that warrants time for reflection. This timespan must thus be several weeks in length, given the scope of the Indictment.

**This timespan is not open to negotiation.** I am delighted to observe, moreover, that in the *Karadžić* trial, the Trial Chamber interrupted the trial to enable the Accused to acquaint himself with documents that were sent to him. For this reason, what is valid for a delay associated with the disclosure of documents is all the more valid for this crucial phase of the trial.

While this timespan could have been longer, I took into account several factors that allowed me to set a span of four weeks:

- the assumed competence of the staff of the Office of the Prosecutor and Counsel for the Defence teams;
- the substantial number of hours spent with different witnesses concerning the principal themes;
- the ongoing monitoring of the case by the Judges;
- the "participation" of certain Accused in the process by their various verbal statements and particularly their questions;
- the fact that the last witness was heard at the beginning of April and that we are in mid-November.

Likewise, in other submissions, the Defence teams have also made comments. Each case was analyzed in depth and I fully adhere to the changes found in this Decision, whilst considering myself bound to recall that I am taking into consideration the workload of the Defence teams, who unfortunately do not have the same means as the Prosecution, who face endless restrictions and who require time for meeting their clients, preparing their submissions, obtaining the approval of the Accused in question and for drafting submissions that can be understood and for informing the Judges thoroughly of their arguments.



In a word, I have taken into account the issues raised by these recent submissions following our decision. Aware of the difficulties of various orders, especially those of a **logistical order**, I accept the requests brought, in part, yet do not, for my part, believe myself to have committed any error of judgement.

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

*/signed/*

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Judge Jean-Claude Antonetti

Presiding Judge

This twenty-second day of November 2010

At The Hague

The Netherlands

**[Seal of the Tribunal]**