



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: 6 December 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: 6 December 2010

THE PROSECUTOR

v.

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

PUBLIC

**SECOND AMENDED SCHEDULING ORDER (FINAL 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 Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Zoran Ivanišević 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 “Valentin Ćorić’s Request for Reconsideration of the 22 November 2010 Scheduling Order, or in the Alternative, Certification to Appeal”, filed as a public document by Counsel for the Accused Valentin Ćorić (“Ćorić Defence”) on 24 November 2010 (“Ćorić Defence Request”),

SEIZED of “Bruno Stojić’s Motion for Reconsideration or, in the Alternative, for Certification to Appeal the *Ordonnance portant modification du calendrier (mémoires en clôture, réquisitoire et plaidoiries finales)* issued on 22 November 2010”, filed as a public document by Counsel for the Accused Bruno Stojić (“Stojić Defence”) on 25 November 2010 (“Stojić Defence Motion”),

NOTING the “Scheduling Order (Final Briefs, Closing Arguments for the Prosecution and the Defence)”, issued as a public document by the Chamber on 1 November 2010 (“Order of 1 November 2010”), in which the Chamber notably decided (1) that the parties shall file their final trial briefs by 13 December 2010 at the latest, (2) that the final trial brief shall not exceed 300 pages for the Office of the Prosecutor (“Prosecution”) and those of each of the Defence teams shall not exceed 200 pages, (3) that if the parties wish to attach annexes, they should not exceed 100 pages for the Prosecution and 50 pages for the Defence teams, (4) that the Chamber shall hear the Prosecution’s closing arguments beginning on 17 January 2011 and the Defence closing arguments as soon as the Prosecution has finished, (5) that the Prosecution shall have 15 hours available to it to present its closing arguments while each of the Defence teams shall have 4 hours,¹

NOTING the “Amended Scheduling Order (Final Trial Briefs, Closing Arguments for the Prosecution and the Defence)”, issued as a public document by the Chamber on 22 November 2010 (“Order of 22 November 2010”), in which the Chamber amended the Order of 1 November 2010 and decided (1) that the parties shall file their final trial briefs no later than 4 January 2011, (2) that the Chamber shall hear the closing arguments for the Prosecution starting from 31 January 2011, and the closing

arguments for the Defence once the Prosecution has ended its closing arguments, (3) that the Prosecution's final trial brief shall not exceed 400 pages and that in case the Prosecution wishes to attach annexes, they may not exceed 200 pages and (4) that each Defence team will have 5 hours available to present its closing arguments,²

CONSIDERING that in the Ćorić Defence Request, the Ćorić Defence respectfully asks the Chamber firstly to reconsider the Order of 22 November 2010 insofar as it concerns (1) the Chamber's decision to grant 100 additional pages to the Prosecution for its final trial brief and 100 additional pages for any annexes and (2) the Chamber's decision to hear closing arguments of the Prosecution as of 31 January 2011, allowing approximately four weeks time between the filing of the final trial briefs and the start of the closing arguments, instead of the five weeks initially planned in the Order of 1 November 2010,³

CONSIDERING that in this respect, the Ćorić Defence argues that the Chamber did not provide any explanation as to its decision to amend the number of pages granted to the Prosecution for its final trial brief and annexes aside from the fact that it has the burden of proof, and that the Chamber did not explain how its initial decision to grant 300 pages to the Prosecution for its final trial brief and 100 pages for possible annexes, as stated in the Order of 1 November 2010, constitutes an error by the Chamber,⁴

CONSIDERING that the Ćorić Defence notes furthermore that, whereas the Order of 1 November 2010 provided for a time period of 40 days between the filing of the final trial briefs and the start of the closing arguments, the Order of 22 November 2010 provides for a time period of 25 days, even though it grants more pages to the Prosecution for its final trial brief and annexes,⁵

CONSIDERING that the Ćorić Defence requests that it be granted the appropriate time to prepare its closing arguments in light of the final trial briefs and asks, therefore, that the oral arguments not start before 15 February 2010,⁶

¹ Order of 1 November 2010, pp. 7 and 8.

² Order of 22 November 2010, p. 11.

³ Ćorić Defence Motion, para. 1.

⁴ Ćorić Defence Motion, paras 5 to 8.

⁵ Ćorić Defence Motion, para. 9.

⁶ Ćorić Defence Motion, para. 9.

CONSIDERING that the Ćorić Defence requests, in the alternative, that the Chamber certify an appeal to the Order of 22 November 2010 as the final trial briefs and closing arguments conclude four years of proceedings and that preparing the closing arguments well is essential to the outcome of the trial and its fairness, and that the immediate resolution of this issue by the Appeals Chamber may materially advance the proceedings,⁷

CONSIDERING that in its Motion, the Stojić Defence respectfully requests, firstly and following the example of the Ćorić Defence, that the Chamber reconsider the time period of just under four weeks between the filing of the final trial briefs and the start of the closing arguments imposed by the Chamber in the Order of 22 November 2010, otherwise the Chamber will have granted the Stojić Defence less time to review the Prosecution's final trial brief, which is considerably larger,⁸

CONSIDERING, in this respect, that the Stojić Defence recalls that in the Order of 1 November 2010, the Chamber granted a period of five weeks to the parties to review approximately 1300 pages of their final trial briefs and to prepare their closing arguments; that in the Order of 22 November 2010, the Chamber grants a period of less than four weeks to the parties to review 1400 pages of their final trial briefs and argues, therefore, that the Chamber committed an error in shortening the time period between the filing of the final trial briefs and the start of the closing arguments, while simultaneously granting the Prosecution additional pages for its final trial brief,⁹

CONSIDERING that the Stojić Defence notes moreover that in the Order of 22 November 2010, the Chamber took into account that the Prosecution was granted additional pages for its final trial brief when it increased the time allotted to the Defence teams for their closing arguments – the Chamber having granted each of the Defence teams five hours instead of four in the Order of 1 November 2010 – and notes that there is a contradiction between this decision and the imposition of a shorter time period between the filing of the final trial briefs and the start of the closing arguments,¹⁰

⁷ Ćorić Defence Motion, para. 4.

⁸ Stojić Defence Motion, para. 1.

⁹ Stojić Defence Motion, para. 8.

¹⁰ Stojić Defence Motion, para. 12.

CONSIDERING that the Stojić Defence concludes by stating that granting an appropriate time limit between the filing of the final trial briefs and the start of the closing arguments would allow the parties to prepare their closing arguments better and to present more focused and organised oral submissions¹¹ and that, therefore, it asks the Chamber to grant two additional weeks to the parties to prepare their closing arguments, with those of the Prosecution thus beginning on 14 February 2011,¹²

CONSIDERING, in the alternative, that the Stojić Defence respectfully asks the Chamber to certify an appeal to the Order of 22 November 2010 with regards to the time period granted by the Chamber between the filing of the final trial briefs and the start of the Prosecution's closing arguments,¹³

CONSIDERING that in support of this Motion, the Stojić Defence argues that the issue of the ability of the Stojić Defence to prepare appropriately its response to the arguments and evidence put forth by the Prosecution and the other Defence teams in their final trial briefs and annexes constitutes an issue that satisfies the conditions required to certify an appeal of the Order of 22 November 2010 as it affects the right of the Accused Stojić to prepare his defence and, consequently, compromises the fairness of the trial and that an immediate resolution of this issue could materially advance the proceedings,¹⁴

CONSIDERING that the other parties did not file a response,

CONSIDERING that, with respect to the Ćorić Defence Motion regarding the number of pages allotted to the Prosecution, the Chamber recalls that if it increased this number in its Order of 22 November 2010, it is not because it committed an error in the Order of 1 November 2010, but because it wished, in view of the arguments raised by the Prosecution and by virtue of its discretionary power, to show flexibility towards the Prosecution by granting it 100 additional pages for its final trial brief and 100 additional pages for the annex,¹⁵

CONSIDERING that it appears that the Ćorić Defence objects to the Chamber's discretionary power in the matter of its administration over the trial and merely

¹¹ Stojić Defence Motion, paras 9 to 11 and 14.

¹² Stojić Defence Motion, para. 15.

¹³ Stojić Defence Motion, para. 1.

¹⁴ Stojić Defence Motion, paras 16 and 17.

¹⁵ Order of 22 November 2010, pp. 8 and 9.

questions the Chamber's decision without putting forth exceptional circumstances or a discernible error on the part of the Chamber that would require a reconsideration of the Order of 22 November 2010 insofar as it relates to the number of pages allotted to the Prosecution for its final trial brief,

CONSIDERING that the Chamber decides, consequently, to deny the Ćorić Defence Motion insofar as it concerns the Chamber's decision to allocate additional pages to the Prosecution for its final trial brief and possible annexes,

CONSIDERING that, with respect to the Motions from the Stojić and Ćorić Defences regarding the starting date for the closing arguments, the Chamber notes, in the manner of these two Defence teams, that in the Order of 22 November 2010, it provided less time between the filing of the final trial briefs and the start of the closing arguments than in the Order of 1 November 2010, while at the same time allotting more pages to the Prosecution for its final trial brief and annexes,¹⁶

CONSIDERING that the Chamber inadvertently shortened the time period between the filing of the final trial briefs and the start of the closing arguments, and that, consequently, it erred with respect to this point,

CONSIDERING that, making use of its discretionary power in the matter of its administration over the trial and having taken into account the volume of the Prosecution's final trial brief as stated in the Order of 22 November 2010, the Chamber deems that the time period of five weeks initially provided in the Order of 1 November 2010 is sufficient to allow the Defence teams to analyse the Prosecution's final trial brief and adapt its closing arguments to the said brief,

CONSIDERING that the Chamber decides that it is appropriate therefore to reconsider the Order of 22 November 2010 and retain the time period of five weeks between the filing of the final trial brief and the start of the closing arguments as set out in the Order of 1 November 2010,

¹⁶ Order of 1 November 2010, p. 8; Order of 22 November 2010, p. 11. In the Order of 1 November 2010, the Chamber determined that it would hear the closing arguments as of 17 January 2011, that is five weeks after the filing of the final trial briefs. In the Order of 22 November 2010, the Chamber amended its schedule and ordered the final trial briefs to be filed on 4 January 2011 and set the start of the closing arguments for 31 January 2011, which is a time period of approximately four weeks.

CONSIDERING, consequently, that the Chamber will hear the Prosecution's closing arguments as of 7 February 2011,¹⁷

CONSIDERING that, with respect to the requests for certification to appeal from the Stojić and Ćorić Defence teams regarding the time period between the filing of the final trial briefs and the start of the Prosecution's closing arguments, the Chamber is convinced that by reinstating a five week time period between the filing of the final trial briefs and the start of the closing arguments, the Defence teams will have sufficient time in which to prepare their closing arguments,

CONSIDERING, consequently, that the Chamber deems that this issue is not likely to significantly affect the fairness and expeditiousness of the proceedings or the outcome of the trial,

CONSIDERING, furthermore, that the Chamber is convinced that seizing the Appeals Chamber at this stage would not materially advance the proceedings but would likely delay them,

CONSIDERING that, with respect to the request from the Ćorić Defence for certification to appeal the Chamber's decision to grant additional pages to the Prosecution for its final trial brief and its annexes, the Chamber endorses the arguments of the Ćorić Defence set out in the Ćorić Defence Response of 17 November 2010, according to which "the matter of word limits furthermore is a typical discretionary issue, the merits of which the Trial Chamber can better assess than can the Appeals Chamber"¹⁸ and that "rather than ensure the trial is fair and expeditious, certification for appeal will inevitably result in unacceptable delays and injustice [...] because the appeals procedure will necessarily take many weeks to complete",¹⁹

CONSIDERING, consequently, that the Chamber is convinced of the reasonable nature of the Order of 22 November 2010 insofar as it relates to the size of the

¹⁷ The Chamber deems it preferable, for practical reasons, to commence hearing the closing arguments on Monday, 7 February 2011 and not on Tuesday, 8 February 2011, even if this leaves the parties a time period of five weeks minus one day between the filing of the final trial brief and the start of the closing arguments.

¹⁸ "Valentin Ćorić's Response to the 'Prosecution Motion for Reconsideration of Scheduling Order, or in the Alternative, Certification to Appeal'", public, 17 November 2010 ("Ćorić Defence Response of 17 November 2010), para. 11.

¹⁹ Ćorić Defence Response of 17 November 2010, para. 12.

Prosecution's final trial brief and deems that the Ćorić Defence has failed to show how the issue relating to the size of the final trial brief may be an issue likely to significantly affect the fairness and expeditiousness of the proceedings or the outcome of the trial and that the immediate resolution of this issue by the Appeals Chamber may materially advance the proceedings,

CONSIDERING, consequently, that the Chamber decides to deny the requests for certification to appeal from the Stojić and Ćorić Defence teams,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54, 73 (B) and 86 of the Rules of Procedure and Evidence,

PARTIALLY GRANTS, by a majority, the Motions of the Stojić and Ćorić Defence teams,

ORDERS, by a majority, that:

- (1) the Chamber shall hear the closing arguments for the Prosecution starting on 7 February 2011 and the closing arguments for the Defence once the Prosecution has ended its closing arguments.

RECALLS that:

- (1) the parties shall be required to file their final trial briefs no later than 4 January 2011.
- (2) 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.
- (3) No written response to the final trial briefs shall be allowed.
- (4) The Chamber hereby grants 15 hours to the Prosecution to present its closing arguments.

- (5) 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 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 to another Defence team.
- (6) 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.
- (7) 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 Motions of the Stojić and Ćorić Defence teams in all other respects on the grounds set out in this Order.

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

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this sixth day of December 2010

At The Hague

The Netherlands

[Seal of the Tribunal]