



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-T
Date: 24 November 2011
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, Presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: Mr John Hocking

Order of: 24 November 2011

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**ORDER AMENDING THE “SCHEDULING ORDER (FINAL BRIEFS,
PROSECUTION AND DEFENCE CLOSING ARGUMENTS)” OF 31
OCTOBER 2011**

The Office of the Prosecutor

Mr Mathias Marcussen

The Accused

Mr Vojislav Šešelj

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 the motion filed as a public document on 4 November 2011 by the Office of the Prosecutor (“Prosecution”), in which the Prosecution requests that the Chamber vary the number of pages of the final briefs of the parties and their appendices – initially set at 200 pages for final briefs and 50 pages for appendices in the Order issued by the Chamber as a public document on 31 October 2011 (“Order of 31 October 2011”)¹ – and grant leave to the parties to file final briefs of 325 pages and 600 pages of appendices (“Motion”),²

NOTING the Order of 31 October 2011, whereby the Chamber ordered in particular that the parties (1) file their final briefs by 5 February 2012 at the latest and provide one another as well as the Chamber with a courtesy copy of their respective final briefs by 5 February 2012, (2) that the final briefs may not exceed 200 pages and that appendices may not exceed 50 pages and may not contain factual or legal arguments, and (3) that the party or parties wanting to request an amendment to the Order of 31 October 2011 should do so within a *maximum* of four days from the date the Order is filed for the Prosecution, and from the date of receipt of the BCS translation of this Order for the Accused,³

NOTING the “Practice Direction on the Length of Brief and Motions” of 16 September 2005 (“Direction of 16 September 2005”),

¹ “Scheduling Order (Final Briefs, Prosecution and Defence Closing Arguments)”, public, 31 October 2011.

² “Prosecution Motion to Vary the Length of Closing Briefs”, public, 4 November 2011 : *see* paras 1, 7, 8 and 12. The Chamber notes that in its Motion the Prosecution indicates that it will only make submissions regarding closing arguments after the filing of final briefs if new circumstances arise: *see* Motion, para 11.

³ Order of 31 October 2011, pp. 4-5.

CONSIDERING that Vojislav Šešelj (“Accused”) did not file any requests for amendment to the Order of 31 October 2011 within the four-day time-limit running from the date of receipt of the BCS translation of the Order,⁴

CONSIDERING furthermore that the Accused did not respond to the Motion within the 14-day time-limit provided for in Rule 126 *bis* of the Rules of Procedure and Evidence (“Rules”), running from the day of receipt of the BCS translation of the Motion,⁵

CONSIDERING that in order to justify its request to increase the number of pages of final briefs, the Prosecution cites the complexity of this case⁶ and in particular (1) that this case concerns the emergence and execution of the joint criminal enterprise at the highest Serbian leadership level in the former Yugoslavia, of which the Accused was an integral part,⁷ (2) that the judgement to be rendered in this case will be the only judgement to rule on crimes committed in three republics of the former Yugoslavia – Serbia, Croatia, and Bosnia and Herzegovina,⁸ (3) that the facts pertain to crimes involving more than one thousand named victims and committed in different locations,⁹ and (4) that aside from its factual complexity, this case has raised novel legal issues, such as the Accused’s commission of hate speech,¹⁰

CONSIDERING that, according to the Prosecution, this case is therefore comparable to other leadership cases dealt with by the Tribunal involving a single Accused, in which the parties have been granted leave to file final briefs comprising between 300 and 400 pages,¹¹

⁴ Procès-verbal of reception of the BCS translation of the Order of 31 October 2011 signed by the Accused on 3 November 2011 and filed on 3 November 2011.

⁵ Procès-verbal of reception of the BCS translation of the Motion signed by the Accused on 9 November 2011 and filed on 16 November 2011. The Accused had until 23 November 2011 to respond.

⁶ Motion, paras 3-4.

⁷ Motion, para 4 (a).

⁸ Motion, para 4 (b).

⁹ Motion, para 4 (c).

¹⁰ Motion, para 4 (d).

¹¹ Motion, para 5. The Prosecution cites the following cases and decisions: *The Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1, “Scheduling Order”, public, 6 May 2010. The Chamber notes that the Trial Chamber in the *Đorđević* case ordered that final trial briefs of the parties not exceed 120,000 words, that is, approximately 400 pages (the Chamber notes, however, that the number of pages of appendices to the final briefs has not been specified); *The Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, “Decision on Urgent Defence Motion to Exceed Word Limit for Final Trial Brief”, public,

CONSIDERING that the Prosecution also underlines that it bears the burden of proof beyond a reasonable doubt and should consequently have an opportunity to fulfil this obligation with regard to its right to a fair trial,¹²

CONSIDERING that in order to justify the increase of the number of pages of the appendices to the final briefs, the Prosecution indicates that, in accordance with the Direction of 16 September 2005, the reasonable length for an appendix is normally three times the length of a filing and that, in this particular case, the parties should be therefore granted leave to attach 600 pages of appendices to a 200-page brief,¹³

CONSIDERING that the Prosecution explains furthermore that on the 48 pages of annexes to the Indictment in this case (“Indictment”),¹⁴ it has already listed more than 1,000 representative victims spread across 13 geographical sites and that it intends to use the appendices to its final brief as efficiently as possible, for example, by

8 May 2008. The Chamber notes that the Trial Chamber in the *Delić* case ordered that final trial briefs of the parties not exceed 110,000 words, that is, approximately 367 pages (the Chamber notes, however, that the number of pages of appendices to the final briefs has not been specified); *The Prosecutor v. Naser Orić*, Case No. IT-03-68-T, “Order on Defence Motion for Variation of the Word Limit for Final Trial Brief”, public, 9 March 2006. The Chamber notes that the Trial Chamber in the *Orić* case ordered that final trial briefs of the parties not exceed 118,000 words, that is, approximately 393 pages (the Chamber notes, however, that the number of pages of appendices to the final briefs has not been specified); *The Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, 8 February 2011, T.14615. The Chamber notes that the Trial Chamber in the *Perišić* case ordered that final trial briefs of the parties not exceed 100,000 words, that is, approximately 333 pages (the Chamber notes, however, that the number of pages of appendices to the final briefs has not been specified); *The Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-T, “Decision on Prosecution’s Request for Variation of Page Limit on Final Brief”, public, 30 March 2004, and “Further Decision on Variation of Page Limit on Final Brief”, public, 31 March 2004. The Chamber notes that the Trial Chamber in the *Brdanin* case ordered that final trial briefs of the parties not exceed 300 pages, without appendices; *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, “Scheduling Order for Final Trial Briefs and Closing Arguments”, public, 28 March 2003. The Chamber notes that the Trial Chamber in the *Galić* case ordered that final trial briefs of the parties not exceed 300 pages in total; *The Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, “Prosecution Closing Brief” (the Chamber notes that the Prosecution has not provided references or details regarding the filing date of the final trial brief). The Chamber notes that the Trial Chamber in the *Krajišnik* case denied the Prosecution request to increase the length of final trial briefs from 60,000 to 120,000 words: *see The Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, *Judgement*, public, 27 September 2006, p. 438 and footnote 2438 citing “Decision on 11 August via email to the Parties and Reasons for Denying Prosecution’s Request for Leave to Exceed Word Limit”, 16 August 2006. The Chamber also notes that the Prosecution filed in this case a final trial brief of 200 pages, accompanied by four appendices of 101 pages in total (Appendix A: 20 pages; Appendix B: 18 pages; Appendix C: 48 pages; Appendix D: 15 pages): *see* “Prosecution Final Trial Brief”, confidential, 18 August 2006.

¹² Motion, para 6.

¹³ Motion, para 8.

¹⁴ *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67, Third Amended Indictment, filed on 7 December 2007.

summarising the evidence admitted with regard to the crimes that were brought up during the trial but are not listed in the annex to the Indictment,¹⁵

CONSIDERING that, lastly, the Prosecution submits that joining appendices to its final brief will allow it to present its evidence concisely,¹⁶

CONSIDERING that the Chamber recalls that it duly took into account, in the Order of 31 October 2011, the complexity and size of this case, the number of witnesses heard and the number of exhibits admitted into evidence, and thereby granted leave to the parties to file a final brief not exceeding 200 pages and 50 pages of appendices,¹⁷

CONSIDERING that the Chamber also recalls that in imposing such a limitation it wanted to encourage the parties to make both their final briefs and appendices concise and comprehensive,

CONSIDERING that regarding the final briefs, the Chamber notes that the Accused has not challenged the number of pages imposed by the Chamber; that, admittedly, the Prosecution seeks leave to exceed the number of pages of final briefs for both itself and the Accused; that nevertheless the Chamber deems that it is not the Prosecution's business to formulate requests for the Accused, who had every opportunity to seize the Chamber within the four-day time-limit running from the date of receipt of the BCS translation of the Order of 31 October 2011 if he had wished to seek an amendment to the Order,

CONSIDERING that regarding the request to exceed the number of pages of the Prosecution final brief, the Chamber accepts, to a certain extent, the argument of the Prosecution that it bears the burden of proof and that the Prosecution should make sure, in order to present its case, that it covers the entire Indictment in its final brief and that it does not seem to be able to do so on 200 pages,

CONSIDERING that, consequently, the Chamber decides to show some flexibility with regard to the Prosecution and grant it leave to file a final brief not exceeding 300

¹⁵ Motion, para 9.

¹⁶ Motion, para 10 citing *Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Borislav Pušić*, Case No. IT-04-74, "Amended Scheduling Order (Final Trial Briefs, Closing Arguments for the Prosecution and the Defence)", public, 30 November 2010.

¹⁷ Order of 31 October 2011, p. 2.

pages, whereby the Chamber stresses the need for the Prosecution to make its final brief concise and comprehensive,

CONSIDERING that with regard to increasing the number of pages of appendices to the final briefs, the Chamber also notes that the Accused has not challenged the length of 50 pages initially ordered by the Chamber; that, on the other hand, the Chamber takes note of the Prosecution request regarding its appendices and grants leave, in the same spirit of flexibility, to increase the *maximum* allowed number of pages of appendices to the Prosecution final brief initially set in the Order of 31 October 2011; that it therefore grants leave to the Prosecution to attach to its final brief appendices not exceeding 100 pages; however, the Chamber still deems it necessary to limit the number of pages of appendices to the final briefs taking into account the length of the briefs,

CONSIDERING that the Chamber recalls that appendices to the final briefs may in no case contain factual or legal arguments¹⁸ but primarily tables listing the relevant evidence for each count of the indictment,

FOR THE FOREGOING REASONS

PURSUANT TO Rules 54 and 86 of the Rules,

PARTIALLY GRANTS THE MOTION,

ORDERS the following:

- 1) The Prosecution final brief shall not exceed 300 pages;
- 2) Should the Prosecution wish to attach appendices to its final brief, the Chamber stipulates that they may not exceed 100 pages and may not contain factual or legal arguments;

¹⁸ Order of 31 October 2011, p. 2, citing the Direction of 16 September 2005, item (C) 6.

Jean-Claude Antonetti
Presiding Judge

Done this 24th day of November 2011
At The Hague
The Netherlands

[Seal of the Tribunal]