



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: 1 February 2012

Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: Mr John Hocking

Decision of: 1 February 2012

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON PROSECUTION'S MOTION FOR EXTENSION OF TIME
AND CLARIFICATION**

The Office of the Prosecutor

Mathias Marcussen

The Accused

Vojislav Šešelj

TRIAL CHAMBER III 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 (“Chamber” and “Tribunal”, respectively)

SEIZED of the “Prosecution’s Urgent Motion for an Extension of Time and for Clarification” filed by the Office of the Prosecutor (“Prosecution”) as a confidential document¹ on 31 January 2012 (“Motion”), in which the Prosecution asks the Chamber for (i) an extension of time until 14 February 2012 to file its final brief as has been granted to the Accused Vojislav Šešelj (“Accused”) and (ii) clarification of the word limit set for the final briefs,²

CONSIDERING that the Chamber does not deem it necessary, when dealing with the present Motion, to wait for the expiry of the deadline for the Accused to respond, and points out in this respect that ruling on the said Motion before this deadline expires does not prejudice the Accused in any way,

NOTING the “Scheduling Order (Final Briefs, Prosecution and Defence Closing Arguments)”, rendered by the Chamber as a public document on 31 October 2011 (“Order of 31 October 2011”), in which the Chamber ordered the parties, amongst others, (i) to file their final briefs no later than 5 February 2012 and provide one another, as well as the Chamber, with a courtesy copy of their respective final briefs by 5 February 2012; (ii) that the final briefs may not exceed 200 pages and that the annexes may not exceed 50 pages or contain factual and legal arguments and (iii) that the party or parties who wish to seek an amendment to the Order of 31 October 2011 should do so within a *maximum* of four days from the date the said 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 “Order Amending the ‘Scheduling Order (Final Briefs, Prosecution and Defence Closing Arguments)’ of 31 October 2011”, rendered by the Chamber as a public document on 24 November 2011 (“Order of 24 November 2011”), in which

¹ The Chamber considers that the aim of the Motion does not require that the present Decision be rendered as a confidential document.

² Motion, paras 1 to 3.

³ Order of 31 October 2011, pp. 4 to 5.

the Chamber, amongst others, (i) allowed the Prosecution, pursuant to the latter's Motion,⁴ to exceed the length authorised for the final briefs in the Order of 31 October 2011 and ordered that its final brief "not exceed 300 pages and 100 pages for the annexes, which may not contain factual or legal arguments"; (ii) reminded the parties that they must "file their final briefs no later than 5 February 2012 and provide one another, as well as the Chamber, with a courtesy copy of their respective final briefs by 5 February 2012" and (iii) upheld that the Accused's final brief may not exceed 200 pages and the annexes may not exceed 50 pages,⁵

NOTING the final brief filed by the Accused in BCS on 30 January 2011 and filed by the Registry of the Tribunal ("Registry") as a confidential document on the same date,⁶

CONSIDERING that the Accused's Final Brief contains 500 pages and 188,379 words and has, therefore, exceeded the limit set by the Order of 31 October 2011 and upheld by the Order of 24 November 2011,

CONSIDERING that, even though the Accused did not challenge the word limit set by the Order of 31 October 2011 within the deadline specified, the fact that his Final Brief exceeds the said limit amounts to a challenge,

CONSIDERING that the Accused did not explain the exceptional circumstances that would justify the filing of a longer final brief,⁷ but the principle of equality demands that, under the circumstances in this case, the Accused may benefit from the same number of pages as were granted to the Prosecution,

⁴ "Prosecution Motion to Vary the Length of Closing Briefs", 4 November 2011 (public).

⁵ Order of 24 November 2011, p. 5. In this respect, the Chamber considered that "the Accused [did] not challeng[e] the number of pages imposed by the Chamber; that, admittedly, the Prosecution [sought] leave to exceed the number of pages of final briefs for both itself and the Accused; that nevertheless, [...] it [was] 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" (*ibid.*, p. 4).

⁶ "Завршни претресни поднесак одбране проф. др Војислава Шелеља", 30 January 2012 (confidential) ("Accused's Final Brief"). See also "Certificate", 31 January 2012 (confidential).

⁷ "Practice Direction on the Length of Briefs and Motions", 16 September 2005, IT/187 Rev.2 ("Practice Direction"), para. 7.

CONSIDERING that, in an internal memo addressed to the Registry and dated 30 January 2012,⁸ the Chamber ordered the Accused to file a new version of his Final Brief within 15 days of receiving the Chamber's instructions in BCS and that it should not exceed 300 pages and 100 pages of annexes, which may not contain factual or legal arguments,

CONSIDERING that, contrary to what the Prosecution claims in its Motion,⁹ the said instructions do not constitute an extension of time for the Accused to file a final brief,

CONSIDERING that the Chamber recalls that one party's final brief cannot be done in reaction to the final brief of the other party, and in no case may the final brief of one party contain a response to the final brief of another party,

CONSIDERING that, consequently, the principle of equality between the parties invoked by the Prosecution¹⁰ is not applicable in this case, and the Prosecution has not, therefore, demonstrated the existence of exceptional circumstances in support of its motion for an extension of time,

CONSIDERING, in respect to the motion for clarification, that on the one hand the Practice Direction clearly states that "an average page should contain fewer than 300 words"¹¹ and, on the other, that the Order of 24 November 2011 sets the limit to 300 pages, plus 100 pages for the annexes,¹²

CONSIDERING, consequently, that there is no reason to further clarify the issue of the authorised length for the Prosecution's final brief which it must file no later than 5 February 2012,

⁸ Received by the Accused in BCS on 31 January 2012.

⁹ Motion, para. 1.

¹⁰ Motion, para. 1.

¹¹ Practice Direction, para. I (B).

¹² Order of 24 November 2011, p. 5.

FOR THE FOREGOING REASONS

DENIES the Motion in all respects.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this first day of February 2012
At The Hague
The Netherlands

[Seal of the Tribunal]