



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: 8 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: 8 February 2012

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**ORDER ON FINAL TRIAL BRIEF FILED BY ACCUSED VOJISLAV
ŠEŠELJ**

The Office of the Prosecutor

Mr Mathias Marcussen

The Accused

Mr 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),

NOTING the final trial brief filed by the Accused Vojislav Šešelj (“Accused”) in BCS on 30 January 2012 and filed with the Registry of the Tribunal (“Registry”) as a confidential document on the same date,¹

CONSIDERING that the Accused’s Final Trial Brief contains 501 pages and 188,379 words (which comes to 640 pages according to the format used by the United Nations) and, therefore, significantly exceeds the word limit set in the Chamber’s orders,² namely 200 pages and 50 pages of annexes, which may not contain factual or legal arguments,

NOTING the “Decision on Prosecution’s Motion for Extension of Time and Clarification” rendered as a public document on 1 February 2012 (“Decision of 1 February 2012”), in which the Chamber deemed, amongst others, 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”,³

CONSIDERING that, taking into account the circumstances in the case, “in an internal memo addressed to the Registry and dated 30 January 2012,⁴ the Chamber ordered the Accused to file a new version of his Final Trial 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”,⁵

CONSIDERING that during the administrative hearing on 7 February 2012, the Accused stated that he did not intend to file a new version of the Final Trial Brief in accordance with the Chamber’s instructions,⁶ and explained that the current version of the Final Trial Brief was prepared in cooperation with his legal counsel in September 2011 as an initial draft and that the Accused intended to work on it more, including reducing it in size, but that in light of the measures taken by

¹ “Завршни претресни поднесак одбране проф. др Војислава Шелеља”, 30 January 2012 (confidential) (“Final Trial Brief”). See also “Certificate”, 31 January 2012 (confidential).

² “Scheduling Order (Final Briefs, Prosecution and Defence Closing Arguments)”, 31 October 2011 (public) (“Order of 31 October 2011”); “Order Amending the ‘Scheduling Order (Final Briefs, Prosecution and Defence Closing Arguments)’ of 31 October 2011”, 24 November 2011 (public) (“Order of 24 November 2011”).

³ Decision of 1 February 2012, p. 2.

⁴ Received by the Accused in BCS on 31 January 2012.

⁵ Decision of 1 February 2012, p. 2. In this respect, the Chamber considered, amongst others, that “the Accused did not explain the exceptional circumstances that would justify the filing of a longer final brief, but the principle of equality demand[ed] that, under the circumstances in this case, the Accused may benefit [at least] from the same number of pages as were granted to the Prosecution” (*ibid.*).

⁶ Administrative Hearing, Transcript of 7 February 2012, pp. 17081 to 17085.

the Registrar of the Tribunal (“Registrar”) in October 2011 regarding the Accused’s privileged communication with his counsel, which includes recording the conversations, the Accused decided to stop working on the Final Trial Brief and to file it as is,⁷

CONSIDERING that the Office of the Prosecutor (“Prosecution”) objected to the validity of the Final Trial Brief, notably because of its length and the apparent lack of clear references listed in footnotes,⁸

CONSIDERING that, pending the translation of the Final Trial Brief, the Chamber is not able to assess with certainty whether the text of the Final Trial Brief contains sufficiently clear references to the sources that were used and whether, on the contrary, there appear to be several verbatim quotations from the transcripts of the hearings,

RECALLING, with respect to the Prosecution’s argument regarding equality between the parties and the possibility for the Prosecution to respond to the Final Trial Brief,⁹ 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”,¹⁰

CONSIDERING, furthermore, that the principle of equality and fairness does not consist of an arithmetical equality between the parties but rather takes into account the principle of proportionality, the particular circumstances of the case and the interest of justice,¹¹

CONSIDERING that the Accused’s right to privileged communication without recording was only restored by the Registrar on 27 January 2012,

CONSIDERING, moreover, that the health of the Accused has deteriorated since early January 2012, that he was hospitalized several times and continues to receive medical treatment,

CONSIDERING that, under these circumstances, the preparation of a shorter Final Trial Brief in accordance with the Chamber’s orders and instructions quoted above, and the translation of the new version into one of the working languages of the Tribunal is likely to lead to a considerable delay in

⁷ Administrative hearing, Transcript of 7 February 2012, p. 17081.

⁸ Administrative hearing, Transcript of 7 February 2012, pp. 17100 to 17101, 17103.

⁹ Administrative hearing, Transcript of 7 February 2012, p. 17101.

¹⁰ Decision of 1 February 2012, p. 3.

¹¹ See, by analogy, *The Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.7, “Decision on Defendants Appeal against ‘*Décision portant attribution du temps à la Défense pour la présentation des moyens à décharge*’”, 1 July 2008 (public), para. 19: “The Appeals Chamber considers that a ‘purely arithmetical calculation’ for the allocation of time to the Defence may constitute an abuse of the Trial Chamber’s discretion. As noted in the Orić Decision, ‘a principle of basic proportionality, rather than a strict principle of mathematical equality, generally governs the relationship between the time and witnesses allocated to the two sides’” (referring to *The Prosecutor v. Naser Orić*, Case No. IT-03-68-AR73.2, “Interlocutory Decision on Length of Defence Case” (public), para. 7.

the court schedule that has set 5 March 2012 as the starting date for the Prosecution and Defence closing arguments,¹²

CONSIDERING that the right of the Accused to file a final trial brief is all the more important in light of the fact that he is— by choice — not presenting a defence case,

FOR THE FOREGOING REASONS

ACCEPTS, as an exception and in light of the particular circumstances of the case, the Final Trial Brief as having been validly filed.

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

Jean-Claude Antonetti
Presiding Judge

Done this eighth day of February 2012
The Hague (The Netherlands)

[Seal of the Tribunal]

¹² Order of 31 October 2011, p. 5; Order of 24 November 2011, p. 5.