



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
31 October 2011
Date:
ENGLISH
French
Original:

IN TRIAL CHAMBER III

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

Registrar: Mr John Hocking

Order of: 31 October 2011

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**SCHEDULING ORDER (FINAL BRIEFS, PROSECUTION AND DEFENCE
CLOSING ARGUMENTS)**

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”);

PROPRIO MOTU,

NOTING the “Scheduling Order” rendered by the Chamber as a public document on 24 March 2011 (“Order of 24 March 2011”) in which the Chamber considered the Prosecution case to be closed, it will render a decision pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence (“Rules”),¹

NOTING the oral decision issued by the Chamber at the hearing of 5 May 2011 in which it set 17 June 2011 as the date for the filing of the lists pursuant to Rule 65 *ter* G of the Rules (“65 *ter* Lists”) by the Accused Vojislav Šešelj (“Accused”),²

NOTING the “Consolidated Decision Regarding Oral Motions by the Accused Concerning the Presentation of His Defence” (“Decision of 9 June 2011”) rendered as a public document on 9 June 2011, in which the Chamber, having examined the six oral motions presented by the Accused at the hearing of 5 May 2011 which are, according to him, preconditions for him to present his defence case,³ extended the deadline for the filing of the 65 *ter* Lists by the Accused and stated that, should the Lists not be filed by the date set by the Chamber, that is, six weeks from the time the Accused receives the BCS translation of the decision, it would render a scheduling order for the final briefs, and the Prosecution and Defence closing arguments,⁴

CONSIDERING that by the time the deadline of 5 August 2011, set by the Chamber in its Decision of 9 June 2011, expired,⁵ the Accused had not filed his 65 *ter* Lists,

¹ Order of 24 March 2011, p. 1.

² Hearing of 5 May 2011, French transcript (“T(F)”), 16990-16991.

³ Oral motions presented at the hearing of 5 May 2011, T(F), 16991-17000.

⁴ Decision of 9 June 2011, para. 3 and p. 14.

⁵ The Chamber notes that the Accused received a public BCS version of the Decision of 9 June 2011 on 28 June 2011, *see* Procès-verbal of Reception filed as a public document on 30 June 2011.

CONSIDERING that during the administrative hearing of 23 August 2011, the Accused stated that he would not present a defence case,⁶ that he did not have the resources needed to file a final brief⁷ and asked for 10 days for his closing argument,⁸

CONSIDERING that at this hearing, the Office of the Prosecutor (“Prosecution”) expressed its objection to the Accused’s wish to be granted 10 days for his closing argument and, more particularly, argued that the final brief of the Accused is a precondition for the closing argument,⁹

CONSIDERING, firstly, that according to the Chamber there is nothing in the Rules that requires a final brief to be filed as a precondition for a closing argument,

CONSIDERING, also, that since the Accused will not be presenting his defence case, the Chamber deems that, in line with common Tribunal case-law, the Prosecution may not file a request for rebuttal as set out in Rule 85 (A) (iii) of the Rules,¹⁰

CONSIDERING, moreover, that with respect to the final briefs, the Chamber recalls that the “Practice Direction on the Length of Brief and Motions” of 16 September 2005 (“Direction of 16 September 2005”) stipulates that the final brief should not exceed 60,000 words and specifies that “an average page should contain fewer than 300 words”,¹¹

CONSIDERING that the Chamber, having duly taken into account the complexity and size of this case, the number of witnesses heard by the Chamber and the number of exhibits admitted into evidence, decides to allow the parties to file a final brief not exceeding 200 pages,

⁶ Hearing of 23 August 2011, T(F), 17025, 17026, 17039 and 17040.

⁷ Hearing of 23 August 2011, T(F), 17029 and 17031.

⁸ Hearing of 23 August 2011, T(F), 17025, 17026 and 17033.

⁹ Hearing of 23 August 2011, T(F), 17034 and 17035.

¹⁰ See in particular, *The Prosecutor v. Zejnir Delalić, Zdravko Mucić, alias Pavo, Hazim Delić and Esad Landžo, alias Zenga*, Case No. IT-96-21-A, Judgement, 20 February 2011, paras 273, 275 and 276; *The Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Sreten Lukić*, Case No. IT-05-87-T, “Order on Filing Rebuttal Applications Pursuant to Rule 85”, 18 April 2008.

¹¹ “Practice Direction on the Length of Briefs and Motions”, IT/184, Rev. 2, 16 September 2005, items (B) and (C) 4. The Chamber notes that the page limit for a final brief as set by the Direction of 16 September 2005 is therefore 200.

CONSIDERING that, with respect to appendices to the final briefs, the Chamber stresses that it intends to apply strictly the Direction of 16 September 2005, which specifies that appendices and books of authority may not contain legal or factual arguments but rather references, source materials, items from the record, exhibits and other relevant material,¹²

CONSIDERING that the Chamber deems it necessary to limit the number of pages of the appendices to the final briefs and decides that, in view of the size of the briefs, the appendices to the briefs cannot exceed 50 pages,

CONSIDERING that, with respect to any potential responses to final briefs, the Chamber deems that the parties will have the opportunity to respond to them during the Prosecution's and Defence's closing arguments and thus decides not to allow any written responses to the final briefs,

CONSIDERING also that in order to set a date for the filing of final briefs and the hearing of the Prosecution and Defence closing arguments, the Chamber must respect the principles of a fair and expeditious trial while duly taking into account the fact that several motions are still pending,

CONSIDERING that since the two confidential motions from the Accused,¹³ one of which was recently filed, which are likely to have an effect on the amount of evidence admitted, are still pending,

CONSIDERING that, with respect to the first motion filed by the Accused as a confidential document on 23 March 2007 ("Motion of 23 March 2007"), the Chamber recalls that in its Decision of 29 June 2010 it ordered the Registry to appoint an *amicus curiae* to investigate the allegations by the Accused that witnesses were

¹² Direction of 16 September 2005, item (C) 6.

¹³ "Motion by Professor Vojislav Šešelj for Trial Chamber III to Instigate Proceedings for Contempt of the Tribunal against Carla Del Ponte, Hildegrad Uertz-Retzlaff and Daniel Saxon", confidential 23 March 2007; French translation filed on 3 April 2007. "Professor Vojislav Šešelj's Motion to Instigate Criminal Proceedings against Prosecution Witnesses for Giving False Testimony in Case No. IT-03-67", confidential, 25 October 2011; the deadline for the Prosecution's response to the second motion is due to expire on 8 November 2011.

intimidated by the Prosecution;¹⁴ that in its Decision of 26 October 2011,¹⁵ the Chamber ordered that the redacted public version of the *amicus curiae* report (“Report”) be filed, because the allegations by the Accused were public;¹⁶ moreover, that it ordered the parties in the said decision to file their submissions on the Report within 15 days of the filing of the Report for the Prosecution, and of the receipt of the BCS translation of the Report for the Accused;¹⁷ that, consequently, it will not rule on the Motion of 23 March 2007 until it has heard the parties’ submissions,

CONSIDERING that, with respect to the second pending motion, filed by the Accused as a confidential document on 25 October 2011 and whose French translation is expected on 15 November 2011, the Chamber notes that it will rule on the motion after the deadline for the Prosecution response expired, that is, after 8 November 2011,

CONSIDERING that the Chamber must therefore set dates for the filing of the final briefs and the hearing of the Prosecution and Defence closing arguments after rendering its decisions on the two pending motions; that in order to set the dates, it must also take into consideration the complexity and size of the case, the number of witnesses heard by the Chamber, the number of exhibits admitted into evidence, the length of the final briefs of the parties allowed by the Chamber in this Order, as well as the time needed for the translation of the Prosecution’s final brief from English into BCS and of the Accused’s final brief from BCS into English,¹⁸ and the need for the self-representing Accused to have a reasonable amount of time to prepare for his closing argument, in order to determine the amount of time to assign to the Prosecution and the Accused, respectively, for their closing arguments,

¹⁴ “Redacted version of the ‘Decision in Reconsideration of the Decision of 15 May 2007 on Vojislav Šešelj’s Motion for Contempt against Carla Del Ponte, Hildegard Uertz-Retzlaff and Daniel Saxon’”, public 29 June 2010, paras 30 to 32.

¹⁵ “Decision on Filing of Redacted Public Version of Report from the *Amicus Curiae* Investigating Allegations by the Accused of Witness Intimidation by the Prosecution”, public, 26 October 2011 (“Decision of 26 October 2011”).

¹⁶ Decision of 26 October 2011, p. 1.

¹⁷ *Ibid.*

¹⁸ The Chamber also takes into account the time that is likely to be needed for the translation of the final briefs into French.

CONSIDERING, finally, that since the Chamber is rendering this Order without having heard the parties,¹⁹ it will allow them to file any possible motions to amend the present Order, for the Prosecution within four days of the Order having been filed, and for the Accused, within four days of receipt of the BCS translation of the Order,

FOR THE FOREGOING REASONS

PURSUANT TO Rules 54, 85 and 86 of the Rules,

RECALLS, for the reasons presented in this Order, that the Prosecution may not file a request for rebuttal as set out in Rule 85 (A) (iii) of the Rules,

ORDERS the following:

- (1) The parties shall 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) The final briefs of the parties shall not exceed 200 pages. Should the parties wish to attach appendices to their respective briefs, the Chamber stipulates that they may not exceed 50 pages and may not contain factual or legal arguments;
- (3) Written responses to the final briefs will not be allowed;
- (4) The Chamber will hear the Prosecution's closing argument from 5 March 2012 and the closing argument of the Accused as soon as the Prosecution's closing argument finishes;
- (5) The Chamber grants 10 hours to the Prosecution and 10 hours to the Accused for the presentation of their respective closing arguments;
- (6) The Chamber recalls that the Prosecution's and the Accused's closing arguments should not repeat the arguments presented in the final brief. More specifically, the Chamber wishes to hear the reaction of the parties to the final

¹⁹ The Chamber notes that at the hearing of 23 August 2010, the Accused requested that the Chamber

briefs and, moreover, invites the parties to focus on the main points of the case;

- (7) The Chamber reserves the right to rule on any potential motions resulting from the replies and rejoinders to oral arguments once it has heard the entire closing argument of the Defence;
- (8) The party or parties wanting to request an amendment to the present Order 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.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this thirty-first day of October 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

grant him 10 days for his closing argument, *see* in this sense *infra*, p. 1.