



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-98-32/1-T

Date: 4 May 2009

Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Christine Van den Wyngaert
Judge Pedro David

Acting Registrar: Mr. John Hocking

Decision of: 4 May 2009

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

PUBLIC

**DECISION ON PROSECUTION MOTION TO EXCEED
WORD LIMIT FOR FINAL BRIEF**

The Office of the Prosecutor

Mr. Dermot Groome
Mr. Frédéric Ossogo
Ms. Laurie Sartorio
Mr. Stevan Cole
Ms. Francesca Mazzocco

Counsel for the Accused

Mr. Jason Alarid and Mr. Dragan Ivetić for Milan Lukić
Mr. Đuro Čepić and Mr. Jens Dieckmann for Sredoje Lukić

TRIAL CHAMBER III (“Trial 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”);

BEING SEISED OF the “Prosecution’s request for leave to exceed word limit for final trial brief”, filed on 24 April 2009 (“Motion”), whereby the Prosecution requests to exceed the word limit for briefs of 60,000 words as permitted the “Practice direction on the length of briefs and motions” (“Practice Direction”), and to file a final trial brief of a maximum of 90,000 words;

NOTING that the Prosecution argues that the following factors warrant it filing a final trial brief in excess of 60,000 words: (1) the importance of addressing the identification evidence led in this case, (2) the gravity of the alleged crimes, (3) the defence of alibi presented by the Accused, (4) the contempt investigations carried out by the Prosecution during the trial, (5) the lack of a possibility to file a reply brief, and (6) the interests of justice, including the need to “give justice to [...] witnesses and victims who have testified, as well as to those who perished as a result of the crimes”;¹

RECALLING the Trial Chamber’s decision of 22 April 2009 denying an oral request from the Defence of Sredoje Lukić to exceed the word limit for its final trial brief, and ordering the parties to file final trial briefs not exceeding 60,000 words and in full compliance with the Practice Direction by 4 p.m. on Tuesday 12 May 2009;²

NOTING paragraph (C)4 of the Practice Direction, which provides that final trial briefs must not exceed 60,000 words, and paragraph (C)7 thereof, which requires that a party seek authorisation from the Trial Chamber in advance if it wishes to exceed the word limit and provide an explanation of the exceptional circumstances that necessitate the oversized filing;

CONSIDERING that the word limit of 60,000 words for final trial briefs exists for the purpose of judicial economy and was included in the original version of the Practice Direction, dated 19 January 2001, and that the limit has been retained unchanged through two revisions of the Practice Direction, on 5 March 2002 and on 16 September 2005, despite the increasing complexity

¹ Motion, para. 16.

² Decision on Defence of Milan Lukić request for additional time for final brief and closing argument and notice of non-availability, and on the Defence of Sredoje Lukić request for variation of word limits, with incorporated scheduling order, filed 22 April 2009, p. 5.

of cases before the Tribunal, thus demonstrating that it relates to all cases, irrespective of complexity;³

CONSIDERING that the Trial Chamber is best served by precision and conciseness in the parties' final trial briefs;

CONSIDERING that the need to address identification evidence in a case where direct perpetration is alleged does not amount to an exceptional circumstance;

CONSIDERING that the Prosecution's argument that the crimes charged are exceptionally grave, specifically with reference to the Appeals Chamber finding in the present case, reversing the decision of the Referral Bench pursuant to Rule 11 *bis* of Rules of Procedure and Evidence ("Rules"),⁴ does not amount to exceptional circumstances;

CONSIDERING that the Prosecution's argument in relation to the "Defences"⁵ does not amount to exceptional circumstances, and further that a defence of alibi does not constitute exceptional circumstances in a case where direct perpetration is alleged;

CONSIDERING that the Trial Chamber is not persuaded by the Prosecution's argument that its contempt investigations amount to exceptional circumstances;⁶

CONSIDERING that neither the Practice Direction nor the Rules provide for the filing of a reply brief, and that the absence of the Trial Chamber granting such an opportunity pursuant to its discretion under Rule 54 does not constitute an exceptional circumstance;⁷

CONSIDERING that, while recognising that oversized final trial briefs may be warranted in certain cases, for example, where there are multiple accused, in the present case the filing of an oversized brief on these grounds is not warranted;

CONSIDERING that the Prosecution argument that, "in order to give justice to [the] witnesses and victims who have testified", there is a need to present their testimony "in a thorough fashion"⁸ does not amount to an exceptional circumstance;

³ See, for example, Reasons for decision denying prosecution's request for leave to exceed word limit for final trial brief, Prosecutor v. Momčilo Krajišnik, 16 August 2006, p. 1.

⁴ Motion, para. 8.

⁵ Motion, para. 9.

⁶ Motion, para. 12.

⁷ Motion, para. 13. The Chamber further notes that the Prosecution itself requested that final briefs be filed simultaneously, Prosecution Response to "Defence request for additional time for final brief and closing argument" corrigendum filed 3 April 2009, para. 3.

⁸ Motion, para. 16.

CONSIDERING that the Prosecution has had ample opportunity to present its case, both in the pre-trial brief and during the course of trial;

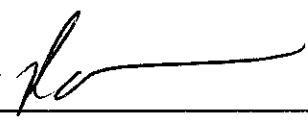
CONSIDERING that the reasons identified by the Prosecution, either when considered separately or together, do not constitute exceptional circumstances as envisaged by paragraph (C)7 of the Practice Direction;

PURSUANT TO Rule 54 and paragraphs (C)4 and (C)7 of the Practice Direction;

DENIES the Motion; and

REITERATES that final trial briefs, not exceeding 60,000 words and in full compliance with the Practice Direction, shall be filed by 4 p.m. on Tuesday 12 May 2009.

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



Judge Patrick Robinson
Presiding

Dated this fourth day of May 2009
At The Hague
The Netherlands

[Seal of the Tribunal]