



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-04-74-T
Date: 1 November 2010
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, presiding
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr John Hocking

Order of: 1 November 2010

THE PROSECUTOR

v.

**Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ**

PUBLIC

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

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Karim A.A. Khan for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

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”);

NOTING the “Prosecution Motion for Variation of Word Limit and Request for Status Conference on Modalities and Filing of Final Trial Briefs”, filed confidentially by the Office of the Prosecutor (“Prosecution”) on 29 October 2010 (“Motion”), in which the Prosecution requests that the Chamber 1) grant leave to file a final brief of at least 1,900 pages, excluding annexes; 2) give guidance concerning any potential annexes and response to final briefs; and 3) suggest 24 January 2011 as the deadline for filing final briefs and 21 February 2011 to begin closing arguments,¹

NOTING the “Scheduling Order”, rendered publicly by the Chamber on 14 February 2008 (“Order of 14 February 2008”), in which the Chamber recalled that the Prosecution had closed its case on 24 January 2008,²

NOTING the “Order Regarding the Closure of the Presentation of the Defence Cases”, rendered publicly by the Chamber on 17 May 2010 (“Order of 17 May 2010”), in which the Chamber considered that the phase of the presentation of the Defence case had ended, notwithstanding the fact that some motions and decisions for the admission of evidence are still pending before the Chamber or the Appeals Chamber,³

NOTING the “Order on Prosecution Motion to Suspend Deadline to File Its Request to Reply”, rendered publicly by the Chamber on 3 June 2010, in which the Chamber notably found that the Prosecution had not filed rebuttal material within the deadline imposed by the Chamber,

NOTING the “Decision on the Prosecution’s Motion to Re-Open Its Case”, rendered publicly by the Chamber on 6 October 2010 (“Decision on Re-Opening of Case”), in which, on the one hand, the Chamber granted leave to the Prosecution to resume its case and admitted new evidence and, on the other hand, charges the Defence teams

¹ See Motion, para. 19.

² Order of 14 February 2008, p. 2.

³ Order of 17 May 2010, p. 3.

that so wish to file potential motions for the reopening of their respective cases to refute the excerpts from the Diary of Ratko Mladić admitted into evidence by that decision within 15 days of the date it is filed,⁴

NOTING the “Decision on Slobodan Praljak’s Motion for Admission of Evidence Pursuant to Rule 92 *bis* of the Rules”, rendered confidentially by the Chamber with Confidential Annexes on 6 October 2010 (“92 *bis* Decision”), in which the Chamber authorised the cross-examination by the parties of the three witnesses whose written statements were tendered into evidence by Counsel for the Accused Slobodan Praljak (“Praljak Defence”) pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence (“Rules”) and invited the Praljak Defence to file a schedule of appearance for these witnesses by 20 October 2010 at the latest,⁵

NOTING “Slobodan Praljak’s Notice Regarding Scheduling of Rule 92 *bis* Witnesses”, filed confidentially by the Praljak Defence on 15 October 2010, in which the Praljak Defence announced that it did not wish to call the three witnesses whose cross-examination was authorised by the Chamber in the 92 *bis* Decision,⁶

NOTING the “Decision on Praljak Defence Request for Certification to Appeal Order on Admission of Evidence Pursuant to Rule 92 *bis* of the Rules”, rendered confidentially by the Chamber on 26 October 2010, in which the Chamber denied the request for certification to appeal the 92 *bis* Decision,

CONSIDERING that, although, the Chamber finds that to this day some requests are still pending before the Chamber, including the motions for the reopening of the case filed by several Defence teams,⁷ it is still necessary to organise as quickly as possible the final stages of the proceeding through the present Order,

⁴ Decision for Re-Opening of Case, p. 29. In the “Decision on Bruno Stojić Motion for Certification to Appeal the Decision on the Re-Opening of the Prosecution Case and Clarifying the Decision of 6 October 2010”, rendered publicly on 27 October 2010, p. 10, the Chamber invited the Defence teams to supplement their motion, if need be, by refuting the evidence tendered by the Prosecution in their request for re-opening within seven days of the day the said decision is issued.

⁵ 92 *bis* Decision, p. 23.

⁶ The Chamber recalls that since the Praljak Defence did not call Mijo Jozić, Željko Rogošić and Mira Ivanišević to testify, their written statement was not admitted. *See* 92 *bis* Decision, paras 23 and 24.

⁷ *See* in this sense, “Prosecution Motion for an Extension of Time to File a Combined Reply to the Defense (*sic*) Requests to Reopen Their Cases and Admit Evidence to Rebut the Evidence Tendered Through the Trial Chamber Decision of 6 October 2010”, public, 29 October 2010; “Bruno Stojić’s Motion to Admit Evidence in Reopening” in accordance with the Decision of 6 October 2010, public, 21 October 2010; “Jadranko Prlić’s Motion to Rebut the Evidence Admitted by the Trial Chamber in the Decision on the Prosecution’s Motion to Reopen Its Case”, public with Confidential Annex, 20

CONSIDERING that, in its Motion, the Prosecution notes that the “Practice Direction on the Length of Briefs and Motions” of 16 September 2005 (“Direction of 16 September 2005”) sets out that “final trial briefs are not to exceed 60,000 words”,⁸ and argues that the Defence teams each have at their disposal approximately 200 pages adding up to 1,200 pages for all the Defence teams, and that in these circumstances the Prosecution should be allowed a minimum of 1,200 pages,⁹

CONSIDERING that the Prosecution adds that, in view of the complexity and size of this case, in reality it would like to file a final brief of at least 1,900 pages, exclusive of annexes, on condition that the Defence teams are not entitled to more than 200 pages each,¹⁰

CONSIDERING, moreover, that the Prosecution would like the Chamber to provide guidance on the annexes to the final briefs and, notably, to know if, strictly speaking, they are counted as part of the final brief,¹¹

CONSIDERING that the Prosecution, moreover, would like to know if the Chamber intends to authorise the written responses to the final briefs,¹²

CONSIDERING that the Prosecution proposes the deadline of 24 January 2011 for the filing of final briefs, and the start of the closing arguments for the Prosecution and the Defence on 21 February 2011,¹³

CONSIDERING, finally, that the Prosecution proposes a status conference to discuss various issues that it raises in its Motion,¹⁴

CONSIDERING that, with regard to the limitation to the length of the final briefs, the Chamber recalls that the Direction of 16 September 2005 envisages that the final

October 2010; “Milivoj Petković’s Motion to Admit Evidence in Reopening” in accordance with the Decision of 6 October 2010, public with Annex and Confidential Annex, 21 October 2010; “Slobodan Praljak’s Motion Pursuant to the 6 October 2010 *Decision on the Prosecution’s Motion to Re-Open its Case*”, confidential with Confidential Annexes, 20 October 2010; “Prosecution Notice Concerning Publication of Confidential Sealed Documents on Slobodan Praljak Website and Motion for Remedial Measures”, confidential, 18 October 2010.

⁸ Direction of 16 September 2005, Section (C) 4.

⁹ Motion, para. 7.

¹⁰ Motion, para. 10.

¹¹ Motion, paras 11 and 12.

¹² Motion, para. 16.

¹³ Motion, para. 17.

¹⁴ Motion, para. 18.

briefs should not exceed 60,000 words and specifies that “an average page should contain fewer than 300 words”,¹⁵

CONSIDERING that the Chamber notes that the Prosecution requests 1,900 pages for its final brief because the six Defence teams each benefit from 200 pages, the Chamber wishes to remind the Prosecution here that it has never undertaken a mathematical analysis of the parties’ motions in order to ensure a fair trial and to ensure the principle of equality of arms,

CONSIDERING that in this sense the Chamber recalls notably the Decision of 24 April 2008 and, more specifically, the examination of the lists of Defence witnesses¹⁶ which it conducted in order to establish the time allocated to each Defence team for its presentation of evidence; that it is through this examination, and not by a mathematical analysis of the time allocated to the Prosecution to present its case and the time allocated to the Defence teams for the presentation of their evidence, that it decided to allocate a particular amount of court time for the Defence,¹⁷

CONSIDERING, moreover, that a comparison of the length of the final brief of the Prosecution and the overall length of the Defence final briefs seems meaningless since all final briefs will be filed at the same time and the Prosecution’s final brief may not be a response to those of the Defence teams,

CONSIDERING, moreover, that in order to request 1,900 pages, the Prosecution is comparing the present case with the *Popović* case, in which the Prosecution was able to file a final brief of 872 pages, excluding annexes,¹⁸ but did not mention that in the

¹⁵ Direction of 16 September 2005, Section (B).

¹⁶ Lists filed pursuant to Rule 65 *ter* (G) of the Rules.

¹⁷ See on this matter “Decision Adopting Guidelines for the Presentation of Defence Evidence”, rendered publicly on 24 April 2008 (“Decision of 24 April 2008”), paras 10 to 12, in which the Chamber refers to the Appeals Chamber case law on the principle of equality of arms for allocating court time to the Defence. The Chamber notes that the Prosecution used the same case-law reference as the Chamber in its Decision of 24 April 2008 to respond to the appeal against the said Decision (*see* paras 20 to 24 of the “Prosecution Consolidated Opposition to the Defence Appeals Concerning the Trial Chamber’s Ruling Dated 25 April 2008 Reducing Time for the Accused Case”, public, 16 May 2008). In this response the Prosecution agrees with the Chamber that it cannot allocate court time to each Defence team purely on the basis of mathematical calculations. The Decision of 24 April 2008 was, moreover, confirmed by the Appeals Chamber (“Decision on Defendants’ Appeal against *Décision portant attribution du temps à la défense pour la présentation des moyens à décharge*”, public, 1 July 2008).

¹⁸ *The Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, “Final Trial Brief”, confidential, 30 July 2009.

Milutinović case, with a similar number of Accused and of similar complexity, the final brief of the Prosecution numbered 277 pages, excluding annexes,¹⁹

CONSIDERING that the Chamber duly took into consideration the complexity and size of the case, the number of Accused, the number of witnesses heard by the Chamber and the number of exhibits admitted into evidence, and decides to grant leave to the Prosecution to file a final brief not exceeding 300 pages and to each Defence team a final brief not exceeding 200 pages,

CONSIDERING that, with regard to the annexes to the final briefs, the Chamber emphasises that it intends to apply strictly the Direction of 16 September 2005, which specifies that an appendix and book of authorities will not contain legal or factual arguments, but rather references, source materials, items from the record, exhibits, and other, non-argumentative material,²⁰

CONSIDERING that the Chamber welcomes the efforts of the Prosecution to provide tools for the Chamber in the annex that could assist it in the assessment of the exhibits admitted into evidence,

CONSIDERING, nevertheless, that the Chamber deems it necessary to limit the number of pages of the annexes to the final briefs and decides that considering the size of the briefs, the annexes to the said briefs may not exceed 100 pages for the Prosecution and 50 pages for the Defence teams,

CONSIDERING that with regard to any possible responses to the final briefs, the Chamber deems that the parties will have the opportunity to respond to them during their closing arguments and therefore decides not to allow written responses to the final briefs,

CONSIDERING that the Chamber does not deem it necessary to organise a status conference on these issues, since the Prosecution has expressed its position clearly in the Motion and this position was duly taken into consideration by the Chamber in the present Order,

¹⁹ *The Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, "Final Trial Brief (Prosecution)", confidential, 15 July 2008.

²⁰ Direction of 16 September 2005, Section (C) 6.

CONSIDERING that the Chamber also does not deem it appropriate to hear at this stage the Defence teams at a status conference or through a response to the Motion; in effect, the Prosecution Motion is out of all proportion with Tribunal practice regarding the number of pages requested for its final brief, that it would be more constructive to receive from the Defence teams their potential submissions and requests to amend the present Order,

CONSIDERING, therefore, that since the Chamber is issuing the present Order without having heard from the Defence teams, it authorises them to file their potential requests to amend the present Order within four days of it being filed,

CONSIDERING that, in order to establish a schedule for the filing of final briefs and the closing arguments for the Defence and Prosecution, the Chamber was careful to respect the principles of fairness and expediency of the proceedings, while duly taking into account the fact that several motions are still pending before it,²¹

CONSIDERING, finally, that the Chamber duly took into consideration the complexity and size of the case, the number of Accused, the number of witnesses heard by the Chamber, the number of exhibits admitted into evidence, and that the length of the final briefs of the parties that the Chamber has just granted, to establish the amount of time to be allocated to the Prosecution for its closing argument and to the Defence teams for their closing arguments,

²¹ See in this sense, footnote no. 7.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 86 of the Rules,

ORDERS the following:

- 1) The parties shall file their final briefs by 13 December 2010 at the latest.
- 2) The Prosecution's final brief shall not exceed 300 pages and those of each of the Defence teams shall not exceed 200 pages. The Chamber specifies that if the parties wish to attach annexes, they should not exceed 100 pages for the Prosecution and 50 pages for the Defence teams and may not in any case contain factual or legal arguments.
- 3) Written responses to the final briefs shall not be allowed.
- 4) The Chamber shall hear the Prosecution's closing argument beginning on 17 January 2011 and the Defence closing arguments as soon as the Prosecution has finished.
- 5) The Chamber grants 15 hours to the Prosecution for the presentation of its closing arguments.
- 6) The Chamber grants 4 hours to each Defence team. The Chamber specifies that it allows the Accused to take the floor, if they so wish, for a maximum of 30 minutes and that this time is included in the four hours placed at the disposal of each Defence team. If the Accused do not wish to speak, this time may be ceded back to their Counsels. The Chamber moreover specifies that the time allocated to a Defence team cannot be ceded to another Defence team.
- 7) The Chamber recalls that the Defence and Prosecution closing arguments should not be a repeat of the arguments set out in their closing briefs. In effect, the Chamber wishes to hear the parties' reactions to the final briefs and therefore invites the parties to focus on the essential points of the case.

8) The Chamber reserves the possibility of ruling on any potential motions duly motivated for rebuttals and rejoinders to the oral arguments once it has heard all the closing arguments.

9) The Defence teams that wish to seek amendments to the present Order must do so within a maximum of four days from the date the present Order is filed.

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

/signed/

Judge Jean-Claude Antonetti

Presiding Judge

Done this first day of November 2010

At The Hague

The Netherlands

[Seal of the Tribunal]