



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-05-88/2-T

Date: 12 January 2012

Original: English

IN TRIAL CHAMBER II

Before: Judge Christoph Flügge, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Prisca Matimba Nyambe

Registrar: Mr. John Hocking

Decision of: 12 January 2012

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON PROSECUTION'S MOTION FOR VARIATION OF THE
WORD LIMIT FOR ITS FINAL TRIAL BRIEF**

Office of the Prosecutor

Mr. Peter McCloskey

The Accused

Zdravko Tolimir

THIS 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 Motion for Variation of the Word Limit for Its Final Trial Brief” filed on 30 November 2011 (“Motion”), requesting that the Chamber grant the Prosecution leave to file an extended final trial brief (“Final Brief”) of up to 150,000 words, or 500 pages;¹

NOTING the Defence “Response to the Prosecution’s Motion for Variation of the Word Limit for its Final Trial Brief” filed on 4 January 2012 (“Response”),² submitting, *inter alia*, that 1) the principle of equality of arms requires the parties to be given equal word limits for their respective Final Briefs; and 2) when deciding on the maximum number of words, the Chamber should consider the time available to the parties to prepare the Final Briefs;³

NOTING further the Defence submission that should the Chamber grant the parties leave to file an extended Final Brief of up to 150,000 words, on the premise that the Defence case will be completed by the end of February 2012, the Defence will be in a position to submit its Final Brief only in September 2012;⁴

NOTING the parties’ submissions that the factual and legal complexity of the case and the extensive trial record are exceptional circumstances justifying the requested extension of the word limit of the Final Briefs;⁵

NOTING that paragraph (C)4 of the Practice Direction on the Lengths of Briefs and Motions (“Practice Direction”)⁶ states that final briefs shall not exceed 60,000 words⁷ and (C)7 of the Practice Direction provides that parties must seek permission from the Chamber to exceed the word limit and must provide an explanation of the exceptional circumstances for the word extension;⁸

NOTING, additionally, that paragraph (C)6 of the Practice Direction states that an appendix or book of authorities, if any, will not count towards the word limit, and that any such appendix may

¹ Motion, paras. 1, 17.

² Response to the Prosecution’s Motion for Variation of the Word Limit for Its Final Trial Brief, submitted in B/C/S on 19 December 2011, filed in English on 4 January 2012.

³ Response, paras. 5–9.

⁴ Response, paras. 10, 11.

⁵ Motion, paras. 2, 6–10; Response, para. 10.

⁶ IT/184 Rev. 2, 16 September 2005

⁷ Practice Direction, para. (C)4.

⁸ *Ibid.* para. (C)7.

not contain any legal or factual arguments, but shall only include references, source materials, items from the record, exhibits, and other relevant, non-argumentative material;⁹

NOTING that the following factors have been considered by other Trial Chambers in granting word extensions: 1) the fact that there are multiple accused,¹⁰ 2) the amount of evidence relevant to the case,¹¹ and 3) the complexity of the case;¹²

NOTING, however, that in determining the length of final briefs, Trial Chambers have also taken into consideration the need for judicial economy, precision, and conciseness;¹³

CONSIDERING that this case does not involve multiple accused, and that the number of accused is therefore not a factor justifying an extension of the word limit for the Final Briefs;

CONSIDERING, however, that the voluminous amount of documentary and oral evidence received so far in this trial, the complex nature of the charges against the Accused, in particular, the multiple joint criminal enterprises charged in relation to the numerous crime sites, and the required analysis of the acts and conduct of the Accused vis-à-vis these charges, amount to exceptional circumstances as envisaged by paragraph C(7) of the Practice Direction;

CONSIDERING nonetheless that the Chamber expects the parties to strictly confine themselves to addressing matters relevant to the charges in the Indictment, and that it would be benefited by precision and conciseness of the Final Briefs;

CONSIDERING that the requested extension of up to 150,000 words, in the circumstances of this case, is excessive and that a word limit of 120,000 words is more appropriate;

⁹ Practice Direction, para. (C)6. The Chamber notes, moreover, that while the Practice Direction provides that the length of an appendix will normally be three times the page limit for the class of motion or brief it is appended to and that the length of appendices will naturally vary more than the lengths of briefs (*see* para. (C)(6), the practice of some other Trial Chambers has been to limit the length of appendices. *See e.g., Prosecutor v. Šešelji*, Case No. IT-03-67-T, Order Amending the “Scheduling Order (Final Briefs, Prosecution and Defence Closing Arguments)” of 31 October 2011, 24 November 2011, p. 6; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Scheduling Order (Final Briefs, Closing Arguments for the Prosecution and the Defence), 4 November 2010, pp. 6, 7.

¹⁰ *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-T, Decision on Prosecution Motion to Exceed Word Limit for Final Brief, 4 May 2009, p. 2; *Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Miletić, Gvero, Pandurević*, Case No. IT-05-88-T, Order on Final Trial Briefs and Closing Arguments, 27 March 2009 (“*Popović* Order on Word Extension”), p. 1.

¹¹ *Popović* Order on Word Extension, p. 1.

¹² *Popović* Order on Word Extension, p. 1; *Prosecutor v. Orić*, Case No. IT-03-68-T, Order on Defence Motion for Variation of the Word Limit for Final Trial Brief, 9 March 2006, p. 2; *Prosecutor v. Delić*, Case No. IT-04-83-T, Decision on Urgent Defence Motion to Exceed Word Limit for Final Trial Brief, 8 May 2008 (“*Delić* Decision on Word Extension”), p. 2.

¹³ *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, Reasons for Decision Denying Prosecution’s Request for Leave to Exceed Word Limit for Final Trial Brief, 16 August 2006, p. 1; *Cf. Delić* Decision on Word Extension, p. 2.

CONSIDERING the legitimate concerns of the Defence that enough time should be provided to it to prepare a Final Brief;

CONSIDERING, however, that it is premature at this stage of the proceedings, where the Defence case is yet to start, to set a deadline for the filing of the parties' Final Briefs, and that an order setting the deadline for Closing Arguments, if any, pursuant to Rule 86 of the Rules of Procedure and Evidence ("Rules) and the deadline for the filing of the Final Briefs is more appropriately to be issued towards the end of the Defence case;

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

HEREBY GRANTS the Motion **IN PART** and sets the limit for the length of the parties' Final Brief to 120,000 words, with any appendices to the Final Briefs limited to 100 pages, to be filed at a date yet to be determined.

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



Judge Christoph Flügge

Presiding Judge

Dated this twelfth day of January 2012
At The Hague
The Netherlands

[Seal of the Tribunal]