

IT-95-14-A
A16455-A16452
24 SEPTEMBER 2002

16455
AT

**UNITED
NATIONS**



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-95-14-A
Date: 24 September 2002
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge David Hunt
Judge Mehmet Güney
Judge Asoka de Zoysa Gunawardana
Judge Theodor Meron

Registrar: Mr. Hans Holthuis

Decision of: 24 September 2002

PROSECUTOR

v.

TIHOMIR BLAŠKIĆ

**DECISION ON PROSECUTION'S CLARIFICATION TO ITS RESPONDENT'S
BRIEF AND PROSECUTION'S OBJECTIONS TO THE SCOPE OF THE
APPELLANT'S BRIEF IN REPLY**

Counsel for the Prosecutor:

Mr. Norman Farrell

Counsel for the Appellant:

**Mr. Anto Nobile
Mr. Russell Hayman
Mr. Andrew M. Paley**

THE APPEALS 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 (“International Tribunal”),

BEING SEISED OF the “Prosecution’s Clarifications to its Respondent’s Brief and Prosecution’s Objections to the Scope of the Appellant’s Reply Brief” filed confidentially by the Prosecution on 26 June 2002 (“Motion”), whereby the Prosecution: 1) rejects the Appellant’s suggestion made in his confidential Brief in Reply of 3 June 2002 (“Brief in Reply”), that the Prosecution has implicitly conceded to the Appellant’s arguments based on proposed additional evidence, because the Prosecution has chosen not to respond in its Respondent’s Brief (“Respondent’s Brief”) to the additional evidence whose admission is being sought through two motions filed (on 19 January and 18 October 2001 respectively) pursuant to Rule 115 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”) (“Rule 115 Motions”); 2) submits that the Brief in Reply exceeds the proper scope in that it again addresses in detail the additional evidence attached to the first two motions for additional evidence, and even refers to new evidence which did not form part of the first two motions; 3) alleges that, since the Prosecution’s Respondent’s Brief does not address the arguments based on the additional evidence, the Appellant is not permitted to raise “new arguments” in relation to the additional evidence again in his Reply since, as such, there is no argument to which a reply is warranted; and 4) requests that the paragraphs of the Brief in Reply which do not address the arguments of the Respondent’s Brief be excluded from the Brief in Reply;¹

NOTING the “Appellant’s Response to Prosecution’s Clarifications to its Respondent’s Brief and Prosecution’s Objections to the Scope of the Appellant’s Reply Brief”, filed confidentially on 8 July 2002, wherein the Appellant argues that: 1) it was incumbent on the Prosecution to respond to the additional evidence that he had chosen to discuss in his confidential Appellant’s Brief of 14 January 2002 (“Appellant’s Brief”); 2) that to allow the Prosecution to submit an additional brief upon admission of the additional evidence would result in an improper expansion of the page limit of the Respondent’s Brief, for which the

¹ The Prosecution refers to the following paragraphs from the Brief in Reply as examples: paras 19, 20, 21, 22, 23, 27, 34, 38, 52, 54, 68, 69, 75, 82, 84. Motion at para. 15, fn. 15.

Pre-Appeal Judge had already authorised an extension of 300 pages, and that the relevant provisions in the Practice Direction, IT/201, 7 March 2002 (“Practice Direction”), relied upon by the Prosecution in the Motion, do not require the Appellant to limit his Brief in Reply to a discussion of the *evidence* cited in the Respondent’s Brief but to that of *arguments* raised in the latter;

NOTING that the Appellant recognises that the purpose of the Practice Direction is to prevent an appellant from raising new arguments in his Brief in Reply as the respondent would not have an opportunity to respond to such new arguments, that the Appellant asserts that his Brief in Reply contains no new arguments, and that the Appellant submits that the objections in the Motion should be overruled;

RECOGNISING that the silence of the Prosecution in its Respondent’s Brief with respect to the additional evidence contained in the Rule 115 Motions should not be taken as indicative of acceptance of such evidence at this stage of the appeal;

CONSIDERING that the Appeals Chamber has stated previously that it would be better placed in reaching a decision on the admissibility of the evidence proffered if it could avail itself of detailed arguments supporting the grounds of appeal²;

CONSIDERING that, should additional evidence be admitted, both parties will be allowed to submit supplementary briefs;

CONSIDERING that the paragraphs in the Brief in Reply which the Prosecution claims should be excluded, refer to additional evidence in support of the arguments of facts or law that were made in the Appellant’s Brief;

HEREBY DISMISSES the Motion in relation to items 2, 3, and 4, and accepts the submission contained in item 1.

² *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Order, 16 Oct. 2001. See transcripts of Status Conference held on 18 October 2001, at pages 29, 30.

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



Fausto Pocar
Presiding Judge

Done this twenty-fourth day of September 2002,
At The Hague,
The Netherlands.

[Seal of the Tribunal]