



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-R
Date: 26 October 2005
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Pre-Review Judge

Registrar: Mr. Hans Holthuis

Decision of: 26 October 2005

PROSECUTOR

v.

TIHOMIR BLAŠKIĆ

Confidential

**DECISION ON REQUEST FOR EXTENSION OF TIME
AND MOTION TO ENLARGE TIME**

The Office of the Prosecutor:

Ms. Carla Del Ponte

Counsel for Tihomir Blaškić:

Mr. Anto Nobile
Mr. Russell Hayman

I, FAUSTO POCAR, PRE-REVIEW JUDGE in this case,

RECALLING the “Judgement” rendered by the Appeals Chamber on 29 July 2004 (“Appeal Judgement”);

NOTING that the Appeals Chamber is seised of the “Request for Review or Reconsideration” of the Appeal Judgement filed confidentially by the Prosecution on 29 July 2005 (“Request for Review or Reconsideration”) pursuant to Rule 119 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”);

RECALLING the “Order of the Presiding Judge Appointing a Pre-Review Judge” issued confidentially on 25 October 2005 designating me as Pre-Review Judge in this case;

BEING SEISED OF the “Request for Extension of Time to Respond to Prosecutor’s Rule 119 Motion” file confidentially by Counsel for Tihomir Blaškić (“Defence”) on 7 September 2005 (“Request for Extension of Time”), in which the Defence state that they did not received a full copy of the Prosecution’s Request for Review or Reconsideration until 31 August 2005 and therefore, provisionally request an extension of time to 17 October 2005 to respond to the Request for Review or Reconsideration contingent upon their review of that filing to ascertain the actual time necessary to prepare an appropriate response;¹

NOTING the “Prosecution Response to Defence Request for Extension of Time” filed confidentially on 13 September 2005 (“Prosecution Response to Defence Request”), in which the Prosecution does not in principle object to the Request for Extension of Time so long as the Defence’s response to its Request for Review or Reconsideration is filed by 10 October 2005;²

NOTING that the Defence did not file a reply to the Prosecution Response to Defence Request;

BEING FURTHER SEISED OF the “Motion to Enlarge Time to Respond to Prosecutor’s Rule 119 Motion” filed confidentially by the Defence on 29 September 2005 (“Motion to Enlarge Time”), in which the Defence offer additional reasons for requesting an extension of time for responding to the Request for Review or Reconsideration including, *inter alia*, that: 1) the Defence is without access to the Electronic Disclosure System (“EDS”) and is thus not able to prepare a complete response; and 2) the Prosecution has failed to formally disclose the identities of two

¹ Request for Extension of Time, paras. 6-7.

² Prosecution Response to Defence Request, paras. 2, 7.

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protected witnesses relied upon in its Request for Review or Reconsideration and therefore, the Defence is unable to assess whether these witnesses and their proffered testimony are indeed “new” for purposes of the Request for Review or Reconsideration;³

NOTING the Defence’s request in the Motion to Enlarge Time that the 40-day time period that the Defence has for filing its response under Rule 119 not begin to run until the Defence has access to the EDS and the Prosecution provides the Defence with the full names and dates of birth of the two protected witnesses at issue after which the Defence will be “in an appropriate position to assess and advise the Appeals Chamber of how much time it will need to respond competently” to the Prosecution’s Request for Review or Reconsideration;⁴

NOTING the Prosecution’s “Response to Defence Motion to Enlarge Time to Respond to Request for Review” filed confidentially on 4 October 2005 (“Prosecution Response to Defence Motion”), in which the Prosecution objects to the Defence’s Motion to Enlarge Time;⁵

NOTING the Defence’s “Reply in Support of Motion to Enlarge Time to Respond to Prosecutor’s Rule 119 Motion” filed confidentially on 6 October 2005;

CONSIDERING that pursuant to Rule 119(B) of the Rules, “[a]ny brief in response to a request for review shall be filed within forty days of the filing of the request”;

FINDING therefore that the Defence’s response to the Request for Review or Reconsideration was due 40 days from 29 July 2005, or 7 September 2005;

CONSIDERING however that, under Rule 127(A)(i) and (B), the Appeals Chamber may, upon good cause being shown by motion, enlarge any time prescribed under the Rules;

CONSIDERING that the Registry of the International Tribunal has confirmed that the Defence did not receive a full copy of the Prosecution’s Request for Review or Reconsideration until 31 August 2005;

FINDING that this fact alone does not constitute good cause for granting the Defence an extension of time for filing its response given that the Registry sent, by facsimile, the majority of the

³ Motion to Enlarge Time, paras. 2, 11-12.

⁴ *Id.*, para. 14.

⁵ Prosecution Response to Defence Motion, paras. 2, 18.

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Prosecution's Request for Review or Reconsideration to the Defence on 1 August 2005 and its further attempts to serve a full copy of the filing were unsuccessful in large part because Lead Counsel was on vacation until 19 August 2005;⁶

CONSIDERING however that the Prosecution states that, in this case, it does not object to 31 August 2005 as the date from which the 40-day time period for filing a response should run such that the Defence's response should be filed by 10 October 2005;⁷

FINDING therefore that it is in the interests of justice to allow 31 August 2005 as the date from which the 40-day time period for filing the Defence's response under Rule 119 shall run;

CONSIDERING the Defence's arguments that: (1) access to the EDS is required in these Review proceedings in order "to search and review extensive hearing transcripts and other documentary material in the instant case and other Lasva Valley cases" so that they may determine whether the Prosecution's alleged "new facts" are indeed new; (2) this database contains documents in the possession of the Prosecution including documents never disclosed to the Defence during discovery of the appeal proceedings; and (3) at the time of filing its Motion to Enlarge Time, the Defence did not have access to the EDS because, after completion of the appeal in this case, the Defence's password for access was deactivated by the Registry;⁸

CONSIDERING that the Registry has represented to the Pre-Review Judge that according to their records, the Defence were given passwords for access to the general collection of the EDS as well as to the specific *Blaškić* case folder in the EDS prior to Prosecution's filing of its Request for Review or Reconsideration, that those passwords were not deactivated following the completion of the appeal proceedings in this case, and that the Defence continues to have said access;

CONSIDERING that the Registry has also informed the Pre-Review Judge that as of 29 July 2005, Lead Counsel for Tihomir Blaškić has had access to the Judicial Database ("JDB"), while Co-Counsel's password for access to the JDB was only reactivated as of 29 September 2005;

CONSIDERING that although the Prosecution states that the Defence was notified by 22 August 2005 that the names of the two protected witnesses at issue in this decision were not redacted from

⁶ Request for Extension of Time, para. 5.

⁷ Prosecution Response to Defence Request, paras. 2, 6-7.

⁸ Motion to Enlarge Time, para. 11.

the Annexes to its Request for Review or Reconsideration, it did not explicitly notify the Defence of the names and dates of birth of the two protected witnesses until 29 September 2005;⁹

CONSIDERING the Prosecution's submission that the testimonies of these two protected witnesses constitute two of the three items of evidence proffered in support of an alleged new fact in the Prosecution's Request for Review or Reconsideration;¹⁰

ON THE BASIS OF THE FOREGOING,

FIND that good cause exists for granting the Request for Extension of Time and Motion for Enlargement of Time in part and,

HEREBY ORDER that the Defence shall file its response to the Prosecution's Request for Review or Reconsideration on behalf of Tihomir Blaskic within fifteen (15) days of the filing of this decision and the Prosecution shall file its reply, if any, within fifteen (15) days of the filing of the Defence's response.

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

Dated this 26th day of October 2005,

At The Hague,

The Netherlands.



Judge Fausto Pocar, Pre-Review Judge

[Seal of the Tribunal]

⁹ Prosecution Response to Defence Motion, paras. 5-7.

¹⁰ *Id.*, para. 8.