



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: 9 November 2005  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Pre-Review Judge  
**Registrar:** Mr. Hans Holthuis  
**Decision of:** 9 November 2005

**PROSECUTOR**

v.

**TIHOMIR BLAŠKIĆ**

---

*Confidential*

**DECISION ON MOTION FOR EXTENSION OF TIME**

---

**The Office of the Prosecutor:**

Ms. Carla Del Ponte

**Counsel for Tihomir Blaškić:**

Mr. Anto Nobile  
Mr. Russell Hayman

*TH*

**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 seized 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;

**RECALLING** the “Decision on Request for Extension of Time and Motion to Enlarge Time” issued confidentially on 26 October 2005 (“Decision of 26 October 2005”), in which Counsel for Tihomir Blaškić (“Defence”) were granted an extension of time for filing a response to the Prosecution’s Request for Review or Reconsideration and were ordered to do so within fifteen days of the filing of that decision, or by 10 November 2005;

**BEING SEIZED OF** the “Motion for Extension of Time to Respond to Prosecutor’s Request for Review or Reconsideration” filed confidentially by the Defence on 3 November 2005 (“Motion for Extension of Time”), in which the Defence request a further one-month extension of time for filing their response to the Prosecutor’s Request for Review or Reconsideration from 10 November 2005 to 12 December 2005 on grounds that: 1) the Defence have not received confirmation from the Registry of the International Tribunal that they have full access to all relevant files from the Electronic Disclosure System (“EDS”); 2) the Defence have identified documents in the EDS system that are potentially relevant for the response, but they are awaiting translation of the documents into English by the Office of Document Management; 3) the Defence need time to travel to The Hague to conduct additional legal research on the Judicial Database System (“JDB”); 4) the Defence need time to meet with their client to discuss the draft response; 5) the response has been delayed by the time needed by the Defence for reviewing materials in this case and related cases as well as for engaging in motion practice during these review proceedings; and 6) the Defence have “long-standing personal and professional commitments in the month of November” that cannot be avoided;<sup>1</sup>

**NOTING** the Defence's "Addendum to Motion for Extension of Time to Respond to Prosecutor's Request for Review or Reconsideration" filed confidentially on 7 November 2005;

**NOTING** the "Prosecution Response to Defence's Third Request for an Extension of Time" filed confidentially on 9 November 2005 ("Response"), in which the Prosecution objects to the Defence's Motion for Extension of Time on grounds that all of the Defence's reasons for their delay in responding to the Request for Review or Reconsideration are unjustified and consequently submits that the Motion for Extension of Time should be denied;<sup>2</sup>

**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" and therefore, the Defence's response to the Request for Review or Reconsideration was due 40 days from 29 July 2005, or 7 September 2005;

**CONSIDERING** 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;

**RECALLING** that although the Defence failed to establish good cause as to why they did not receive a full copy of the Prosecution's Request for Review or Reconsideration until 31 August 2005, in light of the Prosecution's statement that they did not object, the Defence were allowed 40-days from that date for the filing of their response or until 10 October 2005;<sup>3</sup>

**RECALLING** that because the Prosecution did not explicitly notify the Defence of the names and dates of birth of two protected witnesses whose testimonies 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 until 29 September 2005, good cause was found to grant the Defence an additional month for the filing of their response, or until 10 November 2005;<sup>4</sup>

**CONSIDERING** that, as of 10 November 2005, 104 days will have elapsed since the filing of the Prosecution's Request for Review or Reconsideration and that the Defence will have had the benefit of 64 additional days for the filing of their response;

---

<sup>1</sup> Motion for Extension of Time, paras. 1-10.

<sup>2</sup> Response, paras. 1, 20, 24.

<sup>3</sup> Decision of 26 October 2005, p. 4.

<sup>4</sup> *Id.*, pp. 4-5.

**RECALLING** that the Defence have had access to the general collection of the EDS as well as to the specific *Blaškić* case folder in the EDS since before the Prosecution filed its Request for Review or Reconsideration;<sup>5</sup>

**CONSIDERING** that the EDS is a database developed by the Prosecution and not the Registry of the International Tribunal; that the Defence is only entitled to have access to materials disclosed by the Prosecution pursuant to its obligations under Rule 68 of the Rules in the *Blaškić* case folder; and that an accused in one case does not have a right to access materials disclosed by the Prosecution to an accused in another case through the EDS;<sup>6</sup>

**FINDING**, therefore, that the fact that the Defence does not have full access to the EDS does not constitute good cause for granting the Motion for Extension of Time;

**FINDING** further that because Lead Counsel for *Blaškić* is fluent in Bosnian/Serbian/Croat (“BCS”), any delay caused by the need to translate documents retrieved from the EDS does not constitute good cause for granting the Motion for Extension of Time;

**FINDING** that the Defence have failed to establish sufficient reasons for their inability to conduct additional legal research using the JDB within 104 days since the filing of the Prosecution’s Request for Review or Reconsideration notwithstanding any need to travel to The Hague to do so;<sup>7</sup>

**CONSIDERING** that Lead Counsel is based in Croatia and is able to meet with *Blaškić* on a regular basis and that, in fact, the Defence have already been meeting with *Blaškić* during these review proceedings;<sup>8</sup>

**FINDING**, therefore, that the Defence’s submission that they need additional time for meeting with *Blaškić* for discussion on their draft response does not constitute good cause for granting the Motion for Extension of Time;

<sup>5</sup> *Id.*, p. 4; *see also* Motion for Extension of Time, paras. 2-4 (wherein the Defence state that since receiving the Prosecution’s Request for Review or Reconsideration, they have been searching for documents in the EDS).

<sup>6</sup> The Pre-Review Judge notes, however, that an accused in one case may always seek access to *inter partes* confidential material disclosed by the Prosecution and filed in another case pursuant to Rule 75 of the Rules. *See e.g.*, *Prosecutor v. Naletilić and Martinović*, Case No. IT-98-34-A, Decision on “Slobodan Praljak’s Motion for Access to Confidential Testimony and Documents in *Prosecutor v. Naletilić and Martinović*” and “Jadranko Prlić’s Notice of Joinder to Slobodan Praljak’s Motion for Access”, 13 June 2005, pp. 5-6.

<sup>7</sup> The Pre-Review Judge recalls that Lead Counsel has had access to the JDB since 29 July 2005 and Co-Counsel since 29 September 2005. *See* Decision of 26 October 2005, p. 4.

<sup>8</sup> Motion for Extension of Time, para. 2.

**FINDING** that the Defence have failed to establish how the 104 days given to them for preparing a response has been insufficient for conducting the necessary review of materials in this case as well as in related cases and for engaging in motion practice during these review proceedings;

**FINDING** that the Defence's "long-standing personal and professional commitments" in the month of November do not constitute good cause for granting the Motion for Extension of Time<sup>9</sup> especially considering that it was the Defence who requested that the deadline for filing their response be extended to November 2005;<sup>10</sup>

**ON THE BASIS OF THE FOREGOING,**

**DENIES** the Defence's Motion for Extension of Time.

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

Dated this 9th day of November 2005,

At The Hague,

The Netherlands.



Judge Fausto Pocar, Pre-Review Judge

[Seal of the Tribunal]

---

<sup>9</sup> Cf. *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-A, Decision on Motion for Extension of Time for Filing of Prosecution Response Brief, 20 July 2005, p. 3; *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-A, Decision on Second Defence Motion to Enlarge Time for Filing Replies, 1 April 2005, p. 4; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Prosecution's Request for Extension of Time to File Respondent's Brief, 28 July 2004, p. 2.

<sup>10</sup> See Decision of 26 October 2005, pp. 3, 5. The Pre-Review Judge noted that the Defence requested in their "Motion to Enlarge Time to Respond to Prosecutor's Rule 119 Motion" filed confidentially on 29 September 2005 that the 40-day time period for filing a response begin to run from the date they received the full names and dates of birth of two of the protected witnesses relied upon by the Prosecution in its Request for Review or Reconsideration. The Pre-Review Judge found that such disclosure by the Prosecution was made on 29 September 2005. Therefore, the Defence requested a new deadline of 8 November 2005.