



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: 1 February 2006  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Pre-Review Judge

**Registrar:** Mr. Hans Holthuis

**Decision of:** 1 February 2006

**PROSECUTOR**

v.

**TIHOMIR BLAŠKIĆ**

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**DECISION ON WORD LIMITS IN REVIEW  
PROCEEDINGS**

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**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,<sup>1</sup>

**RECALLING** that the Appeals Chamber is seized of the “Request for Review or Reconsideration” filed confidentially by the Prosecution on 29 July 2005 (“Prosecution’s Request”) pursuant to Rule 119 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”) against the Appeal Judgement in this case rendered on 29 July 2004;

**BEING SEIZED OF** the “Application for Authorization to Exceed the Word Limit Applicable to Defense Response to Prosecutor’s Request for Review or Reconsideration” filed confidentially on 10 November 2005 by Counsel for Tihomir Blaškić (“Defence”) and the “Corrigendum to Application for Authorization to Exceed the Word Limit Applicable to Defense Response to Prosecutor’s Request for Review or Reconsideration” filed confidentially by the Defence on 12 December 2005 (collectively “Defence’s Application”), in which the Defence seeks leave to file a 16,354-word response to the Prosecution’s Request, which the Defence claims is 20,547 words;<sup>2</sup>

**NOTING** the “Defense Response to Prosecutor’s Request for Review or Reconsideration,” which the Defence represents consists of 16,354 words, and the “Compendium of Exhibits in Support of Defense Response to Prosecutor’s Request for Review or Reconsideration” both filed confidentially by the Defence on 10 November 2005 (collectively “Defence’s Response”);

**NOTING** the “Prosecution’s Response to Application for Extension of Word Limit” filed confidentially on 21 November 2005 (“Prosecution’s Response”) in which the Prosecution states that it does not oppose the Defence Application and, “[i]n light of the volume of the Defence Response [...] and the material filed in the Compendium attached to it, [...] anticipates that it will need to file a lengthy brief in reply”;<sup>3</sup>

**BEING FURTHER SEIZED OF** the “Prosecution’s Application for Extension of Word Limit” filed confidentially on 25 November 2005 (“Prosecution’s Application”), in which the Prosecution requests that it be allowed to file a reply of 16,000 words to the Defence’s Response in order to fully reply to the Defence’s Response, which it claims is “both lengthy and complex,” and to provide “argumentation on evidence and issues raised for the first time in the Defence Response”;<sup>4</sup>

<sup>1</sup> See Order of the Presiding Judge Appointing a Pre-Review Judge, 25 October 2005.

<sup>2</sup> Defence’s Application, paras. 1, 4.

<sup>3</sup> Prosecution’s Response, paras. 5-6.

<sup>4</sup> Prosecution’s Application, paras. 5-6.

**NOTING** the “Prosecutor’s Reply to Defense’s ‘Response to Prosecutor’s Request for Review or Reconsideration’”, which the Prosecution represents consists of 15,741 words, and the Annexes attached thereto, filed confidentially on 25 November 2005 (“Prosecution’s Reply”);

**NOTING** the Defence’s “Response of Tihomir Blaškić to Prosecution’s Response to Application for Extension of Word Limit” filed confidentially on 1 December 2005 and “Corrigendum to Response of Tihomir Blaškić to Prosecution’s Application for Extension of Word Limit” filed confidentially on 12 December 2005 (collectively “Defence’s Response to Prosecution’s Application”), in which the Defence: objects to the Prosecution’s Application on grounds that a 16,000-word reply is not permissible because it is nearly as long as the Defence’s Response of 16,354 words, argues that the Prosecution has failed to demonstrate that “exceptional circumstances” necessitate an oversized reply, and contends that the Prosecution’s Reply should be no longer than one-third of the Prosecution’s Request, or 7,000 words;<sup>5</sup>

**NOTING** the “Prosecution’s Reply to Response of Tihomir Blaškić to Prosecution’s Application for Extension of Word Limit” filed confidentially on 8 December 2005 (“Prosecution’s Reply to Defence’s Response to Prosecution’s Application”);

**BEING FURTHER SEIZED OF** the Defence’s “Motion for Leave to File a Sur-Reply to Prosecutor’s Reply to Defense’s Response to Prosecutor’s Request for Review or Reconsideration” filed confidentially on 1 December 2005 (“Defence’s Sur-Reply Motion”), in which the Defence seeks leave to file a Sur-Reply of not more than 6,000 words to the Prosecution’s Reply of 15, 741 words “for the purpose of briefly correcting misstatements, and addressing the new arguments and new evidence”;<sup>6</sup>

**NOTING** the “Prosecutor’s Response to Tihomir Blaškić’s Motion for Leave to File a Sur-Reply Regarding Prosecutor’s Request for Review or Reconsideration” filed confidentially on 15 December 2005 and “Tihomir Blaškić’s Reply to Prosecutor’s Response to His Motion for Leave to File Sur-Reply to Prosecutor’s Reply to Defense’s Response to Prosecutor’s Request for Review or Reconsideration” filed confidentially on 22 December 2005;

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<sup>5</sup> Defence’s Response to Prosecution’s Application, paras. 1-2, 6-8.

<sup>6</sup> Defence’s Sur-Reply Motion, paras. 1-2.

**CONSIDERING** that the Rules of Procedure and Evidence of the International Tribunal<sup>7</sup> as well as the Practice Direction on the Length of Briefs and Motions<sup>8</sup> are silent on word limits for requests for review filed under Rule 119 of the Rules and any responses or replies to those requests or related motions;

**CONSIDERING** however that it is the general practice of the Appeals Chamber that the word limits for briefs and responses to those briefs shall be the same while the word limit for a reply is approximately one-third the word limit of the original brief<sup>9</sup> unless a party seeks authorization in advance from the Appeals Chamber to exceed those word limits and shows that exceptional circumstances necessitate an oversized filing;<sup>10</sup>

**CONSIDERING** further that under the general practice of the Appeals Chamber, appendices shall not contain additional legal or factual arguments and do not count towards a word limit but should be of reasonable length or no more than three times the length of the motion or brief to which they are attached;<sup>11</sup>

**FINDING** that the length of the Defence's Response to the Prosecution's Request is reasonable in light of the fact that it: (1) constitutes fewer words than the Prosecution's Request; (2) includes appendices that are only twice the page length of the Defence's Response to the Prosecution's Request; and (3) is not contested by the Prosecution;

**CONSIDERING** that the Prosecution's Reply is at least more than 75% the length of the Prosecution's Request, much longer than the allowed ratio for replies filed in all other proceedings

<sup>7</sup> See Rules 119-122 of the Rules.

<sup>8</sup> IT/184/Rev. 2, 16 September 2005 ("Practice Direction"). The Appeals Chamber notes that the Practice Direction was issued "in order to establish a limit on the length of written briefs and motions *at trial and on appeal*" (emphasis added) and sets word limits for appeals from judgements, interlocutory appeals, pre-trial and final trial briefs, and "other motions, replies, and responses" but says nothing with respect to review proceedings. See *id.*, para. I(C)(1)-(5). While Rule 119 of the Rules does refer to a request for review as a "motion" and the Practice Direction stipulates that "[o]ther motions" should not exceed 3,000 words, the Appeals Chamber considers that the Practice Direction does not apply to a request for review of a judgement because it is not filed during a trial or as part of an appeal. See Rule 119(A) of the Rules. Furthermore, the subject matter of a request for review under Rule 119 is generally more substantive and complex than typical motions of no longer than 3,000 words filed during a trial or an appeal, which are often procedural in nature.

<sup>9</sup> See *e.g.*, Practice Direction, paras. I(C)(1)-(2), (5) for the word limits for appeals from judgement, sentencing appeals, interlocutory appeals, and Rule 115 motions. The exception to this general practice is for "other motions, replies or responses," which are limited to 3,000 words and which the Appeals Chamber has determined do not apply to requests for review under Rule 119. See *supra* n. 8.

<sup>10</sup> See Practice Direction, para. I(C)(7).

<sup>11</sup> See *id.*, para. I(C)(6).

before the Appeals Chamber, except where “other motions” limited to 3,000 words are filed in appeals proceedings, which does not apply here;<sup>12</sup>

**CONSIDERING** further that the longest brief that may be filed before the Appeals Chamber under the Practice Direction is an appeal from judgement, which must be limited to 30,000 words, that the length of a reply to an appeal from judgement is limited to 9,000 words, and that Prosecution’s Reply in these review proceedings is approximately 75% longer than the allowed length of a reply in appeals proceedings from judgement;

**CONSIDERING** the Prosecution’s arguments that the length of its Reply at 15,741 words is justified because: (1) “[t]he Defence Response is replete with numerous very specific arguments in response to each new fact and the underlying evidence submitted by the Prosecution,” which required a detailed reply; (2) the Prosecution was required to respond to new issues raised by the Defence’s submission of and reliance upon a number of documents in the Defence Response that, it claims, were not part of the Prosecution’s Request; and (3) Blaškić will not be prejudiced by the length of the Prosecution’s Reply alone and it is of “utmost importance for the Chamber to have the full arguments of both parties before it”;<sup>13</sup>

**FINDING** that the Prosecution has failed to sufficiently demonstrate that it needs 15,741 words to fully reply to arguments in the Defence’s Response that address each new fact and argument raised in the Prosecution’s Request or that Tihomir Blaškić will not be prejudiced by the length of the Prosecution’s Reply;

**CONSIDERING** however that, under the circumstances of this case, in light of the lack of specificity in the law of the International Tribunal with regard to the word limits for briefs filed in review proceedings and of the documents relied upon in the Defence’s Response, which the Prosecution must address, the Prosecution’s Reply need not be strictly limited to one-third the length of its Request;

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<sup>12</sup> See *supra* fn. 8.

<sup>13</sup> Prosecution’s Reply to Defence’s Response to Prosecution’s Application, paras. 7, 16-25.

On the basis of the foregoing, **HEREBY:**

**GRANT** the Defence's Application;

**GRANT** the Prosecution's Application in part;

**ORDER** the Prosecution to withdraw its Reply of 15,741 words and to re-file, within ten days, a revised Reply consisting of not more than 9,000 words with any appendices attached thereto not exceeding three times the page length of its revised Reply;

**DISMISS** the Defence's Sur-Reply Motion as moot.

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

Dated this 1st day of February 2006,

At The Hague,

The Netherlands.



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Judge Fausto Pocar, Pre-Review Judge

**[Seal of the International Tribunal]**