



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No. IT-04-81-PT

Date: 11 May 2006

Original: ENGLISH

**IN THE TRIAL CHAMBER**

**Before:** Judge Patrick Robinson, Presiding  
Judge O-Gon Kwon  
Judge Iain Bonomy

**Registrar:** Mr. Hans Holthuis

**Decision of:** 11 May 2006

**PROSECUTOR**

v.

**MOMČILO PERIŠIĆ**

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**DECISION GRANTING DEFENCE  
MOTION FOR AUTHORIZATION TO EXCEED WORD LIMIT**

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**The Office of the Prosecutor**

**Ms. Susan Somers**

**Counsel for Momcilo Perišić**

**Mr. James Castle**

**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 (the “Tribunal”) is seized of a motion filed by counsel for Momčilo Perišić (the “Defence”) seeking permission to file a “memorandum brief” that exceeds the applicable word limit, and hereby renders a decision (“Decision”) thereon.

1. On 18 April the Defence filed a motion (“Motion”) seeking authorization from the Chamber to exceed the word limit set forth in Practice Direction IT/184/Rev.2 in a “memorandum brief” that it intends to file. According to the Defence, the brief will argue that “the manner in which the prosecution contemplates using Rules 92bis, 89 (F) and 94 (B) is violative of the accused rights to confrontation, equality of arms, to be tried in his presence, equality before the tribunal as well as the presumption of innocence.”<sup>1</sup> Because of the importance of the issue to be addressed, the Defence argues, “an extensive and thorough” review of legal materials will be necessary and this constitutes “exceptional circumstances” warranting an extension of the word limit for briefs.<sup>2</sup> As a result the Defence requests permission to file a brief that is 12,239 words in length.<sup>3</sup>
2. The Prosecution opposed the Defence Motion in a response filed on 21 April 2006 (“Response”).<sup>4</sup> In its Response the Prosecution argues that the Defence has failed to substantiate the assertion of exceptional circumstances[,] as required for variation of the 3000 word limit.”<sup>5</sup> More specifically, the Prosecution notes that Rules 92bis, 89 (F) and 94 (B) “have been the subject of considerable litigation” and therefore that the issues to be addressed in the Defence brief are well-settled and “cannot be considered an ‘exceptional circumstance’ justifying a variation.”<sup>6</sup> Nor, in the Prosecution’s view, does the “alleged importance” of the issue to be discussed warrant an extension of the word-limit.<sup>7</sup>
3. Four days after the Prosecution filed its Response, the Defence filed a reply brief (“Reply”). In its Reply the Defence stressed that the “memorandum brief” it intends to file will address fundamental issues relating to the “right to a fair trial” within the meaning of the Tribunal Statute and human rights conventions and that the specific issues to be addressed are not, as the

<sup>1</sup> Motion for Authorization to Exceed Word Limit, 18 April 2006, para. 1.

<sup>2</sup> *Id.* at para. 3.

<sup>3</sup> Reply, para. 7. .

<sup>4</sup> Prosecution’s Response in Opposition to Defence’s Motion for Authorization to Exceed Word Limit, 21 April 2006.

<sup>5</sup> *Id.* at para. 2.

<sup>6</sup> *Id.* at para. 3 and n. 4.

<sup>7</sup> *Id.* at para. 3.

Prosecution claims, well-settled in the jurisprudence of the Tribunal.<sup>8</sup> The Defence also noted in its Reply that although the issues to be addressed could be broken up into separate motions that would fall within the applicable word-limit, a single motion would be more “reader friendly” and efficient.<sup>9</sup> Finally, the Defence submitted that the Prosecution would suffer no prejudice if its Motion to exceed the word-limit were granted.<sup>10</sup>

4. The Prosecution responded by filing, on 27 April 2006, a motion to strike the Reply from the record. In its motion to strike the Prosecution argues that the Defence “failed to seek leave to file a reply pursuant to Rule 126 *bis* of the Rules of Procedure and Evidence and thus [that] the unauthorised Defence Reply should be struck from the record.”<sup>11</sup> It also submitted, in the alternative, that “if the Trial Chamber wishes to consider the additional arguments raised in the Defence Reply, the Prosecution seeks leave to file an additional response.”<sup>12</sup>
5. The Trial Chamber notes that the Practice Direction on the Length of Briefs and Motions of the International Tribunal provides that a response shall not exceed 10 pages or 3,000 words, whichever is greater, and that a party seeking authorisation to exceed this limit must do so in advance and “must provide an explanation of the exceptional circumstances that necessitate the oversized filing.”<sup>13</sup>
6. The Chamber considers that in this instance there are exceptional circumstances warranting an extension of the word limit ordinarily imposed for briefs and motions. In reaching this conclusion, the Chamber notes that the Prosecution has itself in the past argued that the importance and/or complexity of the issues addressed in a brief warrant an extension of the

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<sup>8</sup> Defence Reply to Prosecution’s Response to Motion for Authorization to Exceed Word Limit, 25 April 2006, para. 3.

<sup>9</sup> *Id.* at para. 5.

<sup>10</sup> *Id.*

<sup>11</sup> Prosecution’s Motion to Strike Defence Reply, 27 April 2006, para. 1.

<sup>12</sup> *Id.* at para. 2.

<sup>13</sup> Practice Direction IT/184/Rev. 2(16 September 2005), para. (C)(5).

number of words ordinarily allowed,<sup>14</sup> and that word-limit extensions have in the past been granted exclusively or partially on this basis.<sup>15</sup>

7. For these reasons, the Trial Chamber, pursuant to Rule 54 of the Rules of Procedure and Evidence of the Tribunal, **GRANTS** the Motion. In doing so the Trial Chamber notes that it would ordinarily consider a request to file a brief of 12,239 words — approximately three times the number of words ordinarily permitted under the Tribunal’s practice directions — to be excessive. But because, according to the Defence, “approximately one half of the reported words are for citations to case law or treatises,”<sup>16</sup> and therefore do not count towards the acceptable word-limit,<sup>17</sup> the Chamber in this instance grants the motion in full.
8. In addition, the Trial Chamber **REMINDS** the Defence of its obligation under Rule 126 *bis* to request leave to file a reply but in this instance grants, *proprio motu*, leave to the Defence to file the Reply and **DENIES** the Prosecution motion to strike it from the record. The Trial Chamber considers, however, that no justification has been offered by the Prosecution for the filing of a “sur-reply”, a filing not contemplated by the Rules, and accordingly **DENIES** the Prosecution’s alternative request for leave to file this submission.

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



Judge Patrick Robinson  
Presiding

Dated this eleventh day of May 2006  
At The Hague, The Netherlands

<sup>14</sup> See, e.g., *Prosecutor v. Milošević*, Case No. IT-02-54-T, Prosecution’s Motion for Specific Orders Relating to Trial in Absentia, 16 January 2006, para. 8; *Prosecutor v. Krstić*, Case No. IT-98-33-A, Prosecution’s Motion to be Relieved of Obligation to Disclose Sensitive Information pursuant to Rule 66 (C) and Motion for Leave to Exceed Page Limit, 26 February 2003, para. 13; *Prosecutor v. Popović et al.*, Case No. IT-05-88-PT, Prosecution Motion for Variation from Word Limits, 23 March 2006, para. 2; *Prosecutor v. Milutinović et al.*, Case No. IT-99-37-PT, Prosecution’s Motion to Extend Word Limit for the Response to General Ojdanić’s Preliminary Motion Challenging Jurisdiction: Indirect Co-Perpetration, 20 October 2005, para. 4; *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-PT, Prosecution Motion for Variation from Word Limits, 16 October 2002, para. 2.

<sup>15</sup> See, e.g., *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-PT, Order on Momir Nikolić’s Request for Leave to Exceed Page Limits, 1 July 2002; *Prosecutor v. Blaskić*, Case No. IT-95-14-A, Decision on the ‘Appellant’s Request for Authorization to Exceed the Page Limit for Appellant’s Third Motion to Admit Additional Evidence on Appeal Pursuant to Rule 115’, 10 April 2002.

<sup>16</sup> Reply, para. 7.

<sup>17</sup> Practice Direction IT/184/Rev. 2 (16 September 2005), para. (C) (6).  
Case No. IT-04-81-PT

11 May 2006