



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: 20 June 2006  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mehmet Güney  
Judge Liu Daqun  
Judge Andréia Vaz  
Judge Wolfgang Schomburg

**Registrar:** Mr. Hans Holthuis

**Decision of:** 20 June 2006

**PROSECUTOR**

**v.**

**TIHOMIR BLAŠKIĆ**

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**DECISION ON PROSECUTION'S MOTION SEEKING A  
DECLARATION**

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**The Office of the Prosecutor**

Mr. Norman Farrell

**Counsel for Tihomir Blaškić**

Mr. Anto Nobile  
Mr. Russell Hayman  
Mr. Hoyt Sze

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**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 (“Appeals Chamber” and “International Tribunal”, respectively),

**RECALLING** that the Appeals Chamber is currently seized of the “Request for Review or Reconsideration” filed confidentially by the Prosecution on 29 July 2005 (“Request”) pursuant to Rule 119 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”),<sup>1</sup> in which the Prosecution requests review or reconsideration of the Appeal Judgement in this case rendered on 29 July 2004;

**RECALLING** the “Order Withdrawing Confidential Status of Pre-Review Order and Decisions” and “Order Withdrawing Confidential Status of Orders Assigning Judges”, both filed on 5 December 2005, whereby the Pre-Review Judge lifted the confidentiality of the fact that there are review proceedings in this case;

**NOTING** the “Decision on Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B)” issued in *The Prosecutor v. Prlić et al.*<sup>2</sup> case on 14 March 2006 (“Decision on Adjudicated Facts”), wherein the Trial Chamber considered the Prosecution’s motion to take judicial notice of facts derived from the trial and appeal judgements rendered by the International Tribunal in six cases and found, *inter alia*, that all of the facts taken from the *Blaškić* Trial and Appeal Judgements must be disregarded because they are potentially under review;<sup>3</sup>

**BEING SEIZED OF** the “Prosecution Motion Seeking a Declaration from the Appeals Chamber that the Review Proceeding Does Not Affect the Appeal Judgement Finding on International Armed Conflict”, filed confidentially on 29 May 2006 (“Motion”), wherein the Prosecution (1) observes that the *Prlić et al.* Trial Chamber was prevented from making a determination in the Decision on Adjudicated Facts with regard to facts concerning the question of whether an international armed conflict existed at the relevant time involving the Republic of Croatia in Bosnia and Herzegovina and, (2) requests the Appeals Chamber to issue a declaration confirming that the confidential *Blaškić* review proceedings do not affect the findings in the *Blaškić* Appeal Judgement concerning this issue;<sup>4</sup>

<sup>1</sup> IT/32/Rev. 37, as amended on 6 April 2006.

<sup>2</sup> Case No. IT-04-74-PT.

<sup>3</sup> Decision on Adjudicated Facts, para. 15(2).

<sup>4</sup> Motion, paras. 13-18.

**NOTING** the “Response to Prosecution Motion Seeking a Declaration from the Appeals Chamber that the Review Proceeding Does Not Affect the Appeals Judgement Finding on International Armed Conflict”, filed confidentially by Council for Tihomir Blaškić (“Defence”) on 1 June 2006 (“Defence Response”), in which the Defence does not object to the Prosecution’s Motion;<sup>5</sup>

**NOTING** that the Defence also requests the Appeals Chamber for an order that it be served with a previous motion filed *ex parte* by the Prosecution in this case, which it first learned of in the present Motion filed by the Prosecution, and further submits that the Appeals Chamber order the Prosecution to serve it with a notice regarding any future pleadings it may file *ex parte*;<sup>6</sup>

**NOTING** the “Prosecution Notice Regarding Blaškić’s Request for Order Included Within Blaškić Response Filed 1 June 2006”, filed confidentially on 7 June 2006 (“Notice”), in which the Prosecution (1) notes that because the Defence does not oppose its Motion in the Response, it will not seek leave to file a reply; (2) observes, however, that the Response includes a separate and unrelated request for relief by the Defence with regard to *ex parte* filings in this case, which goes beyond the issues raised in its Motion; (3) argues that it was impermissible for the Defence to include this request within the Response and that, as a result, the Prosecution could ask the Appeals Chamber to strike the offending paragraphs of the Response; (4) states that, in an effort to assist the Appeals Chamber to reach an expeditious determination of the matter, it will treat the request as a separate motion; and (5) informs the Appeals Chamber that unless the Chamber orders otherwise, the Prosecution will file a response to the request for relief in the Defence Response in accordance with Rule 126bis;<sup>7</sup>

**NOTING** the “Prosecution’s Response to the Defence Request for Relief Regarding *Ex Parte* Filings” filed confidentially on 15 June 2006 (“Prosecution Response”);

**CONSIDERING** that taking judicial notice of adjudicated facts through Rule 94(B) of the Rules is a method of achieving judicial economy and harmonising judgements of the International Tribunal;<sup>8</sup>

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<sup>5</sup> Response, para. 4.

<sup>6</sup> *Id.*, paras. 4-6.

<sup>7</sup> Notice, paras. 4-7.

<sup>8</sup> The Appeals Chamber concurs with this holding in *Prosecution v. Momčilo Krajišnik*, Case No. IT-00-39-T, Decision on Third and Fourth Prosecution Motions for Judicial Notice of Adjudicated Facts, 24 March 2005, para. 12.

**FINDING** that the review proceedings in this case do not in any way affect the Appeals Chamber's findings in the *Blaškić* Appeal Judgement that relate to the issue of the existence of an international armed conflict involving the Republic of Croatia in Bosnia and Herzegovina;

**CONSIDERING** that the purpose of a response is to give a full answer to issues raised in a motion by the moving party;<sup>9</sup>

**FINDING** that the Response contains a request for relief with regard to *ex parte* filings in this case that is not intended for the purpose of providing an answer or objecting to the issues raised in the Prosecution's Motion;<sup>10</sup>

**CONSIDERING** that it is in the interests of judicial economy and fairness to recognize, as validly filed, the Prosecution's Response to the Defence's request for relief with regard to *ex parte* filings raised in the Defence Response as if it were a separate motion seeking relief, rather than to strike the Defence's request and order a new round of filings by the parties on this issue;

**ON THE BASIS OF THE FOREGOING,**

**HEREBY GRANTS** the Prosecution's Motion and **DECLARES** that, having reviewed the parties' confidential filings in this case, the *Blaškić* review proceedings do not affect the findings in the *Blaškić* Appeal Judgement relating to the issue of an international armed conflict and involvement of the Republic of Croatia in Bosnia and Herzegovina.<sup>11</sup>

<sup>9</sup> *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Decision on Application by Prosecution for Leave to File Further Response, 6 June 2003, para. 2.

<sup>10</sup> Cf. The Practice Direction for the Filing of Written Submissions in Appeals Proceedings Before the International Tribunal (IT/155/Rev. 3), 16 September 2005, whereby the purpose of responses to interlocutory appeals or a motion filed during an appeal from the trial judgement is to clearly state whether the issues raised in an interlocutory appeal or motion are opposed and the grounds therefor. *See id.*, paras. 2, 10, 13. The purpose is not to raise a new request for relief unrelated to the motion or interlocutory appeal, which may be made in a separate motion under Rules 73 and 107 of the Rules. The same rationale applies to responses to motions filed during review proceedings.

<sup>11</sup> The Appeals Chamber notes that although all of the parties' submissions with regard to this Decision were filed confidentially because these review proceedings are confidential, it does not find that it is necessary for this Decision to be issued confidentially. The Appeals Chamber recalls that proceedings before the International Tribunal shall generally be public "unless there are exceptional reasons for keeping them confidential." *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-A, Decision on Vinko Martinović's Withdrawal of Confidential Status on Appeal Brief, 4 May 2005, p. 3; *Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-01-64-A, Decision on the Appellant's Rule 115 Motion and Related Motion by the Prosecution, 21 October 2005, para. 5. The Appeals Chamber does not find that such exceptional reasons exist here for issuing this Decision confidentially.

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



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Judge Fausto Pocar,  
Presiding

Dated this 20th day of June 2006,  
At the Hague  
The Netherlands