



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-03-68-A  
Date: 7 June 2007  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Liu Daqun  
Judge Andréia Vaz  
Judge Theodor Meron  
Judge Wolfgang Schomburg

**Registrar:** Hans Holthuis

**Decision of:** 7 June 2007

**PROSECUTOR**

v.

**NASER ORIĆ**

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*Public*

**DECISION ON THE MOTION TO STRIKE DEFENCE REPLY  
BRIEF AND ANNEXES A-D**

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**The Office of the Prosecutor:**

Ms. Christine Dahl

**Counsel for Naser Orić:**

Ms. Vasvija Vidović  
Mr. John Jones

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## I. INTRODUCTION

1. The Appeals Chamber of the International Criminal 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) is seized of appeals from both parties from the Judgement of Trial Chamber II in the case *Prosecutor v. Naser Orić*, Case No. IT-03-68-T, rendered on 30 June 2006 (“Judgement”).<sup>1</sup> The Appeals Chamber is also presently seized of “[t]he Prosecution’s Motion to Strike Defence Reply Brief and Annexes A-D”, filed by the Prosecution on 15 December 2006 (“Motion”).

2. Naser Orić (“Orić”) filed confidentially the “Defence Appellant’s Brief” on 16 October 2006 (“Appeal Brief”). On 27 November 2006, the Prosecution filed confidentially “[t]he Prosecution’s Response Brief” (“Response Brief”), and on 12 December 2006 Orić filed the “Defence Reply Brief” (“Reply Brief”).

## II. ARGUMENTS OF THE PARTIES

3. With the Motion, the Prosecution requests the Appeals Chamber to strike the Reply Brief because of a violation of the word limit set out in the “Practice Direction on the Length of Briefs and Motions”<sup>2</sup> (“Practice Direction”).<sup>3</sup> The Prosecution submits two arguments: (1) the word count of the Reply Brief was unreliable because of a large number of typographical errors and the inclusion of text material as pictographs, which both affected the automatic word count of the computer-assisted word processing, and (2) that Annexes A to D to the Reply Brief impermissibly contain argument.<sup>4</sup> In support of the second submission, the Prosecution contends that Orić himself admits that several of the annexes contain argument, and that Annex B in fact is in large part a reproduction of an annex to another Defence Brief, which was itself the object of a motion to strike.<sup>5</sup>

4. With his Response,<sup>6</sup> Orić submitted a “Corrigendum to Defence Reply Brief”, in which the typographical errors have been corrected and the pictographs have been replaced by standard text.<sup>7</sup>

<sup>1</sup> The Prosecution filed the “Prosecution’s Notice of Appeal” on 31 July 2006 and “The Prosecution’s Appeal Brief” on 16 October 2006. Orić filed the “Notice of Appeal on Behalf of Naser Orić Pursuant to Rule 108” on 5 October 2006 and the “Defence Appellant’s Brief” on 16 October 2006.

<sup>2</sup> IT/184 Rev. 2 of 16 September 2005.

<sup>3</sup> Motion, para. 1.

<sup>4</sup> Motion, para. 2.

<sup>5</sup> Motion, paras 19-20. The Prosecution refers to “[t]he Prosecution’s Motion to Strike Defence Response Brief Annex”, filed on 4 December 2006, which was granted by the Decision on the Prosecution’s Motion to Strike Defence Response Brief Annex, issued on 29 January 2007 (“Decision of 29 January 2007”).

<sup>6</sup> “Defence Response to the Prosecution’s Motion to Strike Defence Reply Brief and Annexes A-D”, filed on 22 December 2006 (“Response”).

As to the Annexes, Orić contends that the Prosecution does not provide any reason for striking them.<sup>8</sup> The Prosecution did not file a reply.

### III. DISCUSSION

5. At the outset, the Appeals Chamber notes that the Prosecution did not object to the filing of the revised Reply Brief, which implements the relief sought by the Prosecution with respect to the first argument<sup>9</sup> it raises in the Motion.<sup>10</sup> The Appeals Chamber therefore considers the Motion moot insofar as the word count of the Reply Brief is concerned.

6. With regard to the Annexes, Paragraph C(6) of the Practice Direction provides as follows:

[...] An appendix or book of authorities will not contain legal or factual arguments, but rather references, source materials, items from the record, exhibits, and other relevant, non-argumentative material. An appendix will be of reasonable length, which is normally three times the page limit for that class of motion or brief (e.g., for a brief that is limited to 30 pages by the above practice direction, the appendix should be limited to 90 pages), although it is understood that the length of appendices will naturally vary more than the length of briefs.

The Appeals Chamber recalls its earlier decision in the present case on Orić's Motion to Strike Annexes A, C, D and E of the Prosecution's Appeal Brief, where it stated that "the parties enjoy a certain measure of discretion as to what to include in the appendices and will intervene only in cases where a party abuses that discretion".<sup>11</sup>

7. Annexes A and D to the Reply Brief are entitled "Allegations in the [Prosecution's Response Brief] which have already been address [sic] by Defence submissions" and "Arguments in the Defence Appeals Brief which the Prosecution did not address at all in the Prosecution's Response Brief", respectively. Both Annexes purport to support Orić's argument that "[m]any Defence submissions are simply not addressed at all (see Annexes A and D)" in the Prosecution's briefs.<sup>12</sup> Annex A consists of a number of excerpts or paraphrases of statements from the Prosecution's Response Brief, and comments from Orić on these statements. Similarly, Annex D contains a number of excerpts from Orić's Appeal Brief and his comments on them, which either read "[t]he Prosecution did not respond to these points" or "[t]he Prosecution's purported response [...] is insubstantial".

<sup>7</sup> Response, paras 7-9.

<sup>8</sup> Response, para. 6.

<sup>9</sup> See *supra* para. 3.

<sup>10</sup> Motion, para. 3.

<sup>11</sup> Decision on the Motion to Strike Annexes A, C, D and E of the Prosecution's Appeal Brief, rendered on 18 May 2007, para. 7.

<sup>12</sup> Reply Brief, para. 13.

8. The Appeals Chamber finds that, although some of Orić's comments in Annex A consist of simple references to his own briefs, there are also many comments that are clearly argumentative. For example, concerning a submission by the Prosecution about the responsibility for the prison in Srebrenica, Orić provides excerpts from a trial exhibit and some explanation about his interpretation of this exhibit.<sup>13</sup> In another instance, Orić comments extensively on the evidentiary value of a number of exhibits on which the Prosecution relies.<sup>14</sup> As noted above, the Practice Direction stipulates that an appendix should contain "references, source materials, items from the record, exhibits, and other relevant, non-argumentative material".<sup>15</sup> As far as Annex A contains references, these are not references to some extrinsic material, but to the briefs of the parties. In other words, Annex A does not present some additional material, but material which belongs to the very substance of the parties' briefs. This is not the proper function of an appendix.

9. The same reasoning applies to Annex D. Although Orić's comments in this annex are less argumentative than in Annex A, it does not provide any additional material, but simply a list of excerpts from Orić's own briefs. The Appeals Chamber therefore finds that both Annexes A and D are impermissible under paragraph C(6) of the Practice Direction.

10. Annex B is entitled "Documents cited by the Prosecution which do not support its argument that Orić had effective control over the SMP". This is a list of exhibits with quite extensive comments by Orić on the evidentiary value of each of the exhibits. Pages 1 through 15 of Annex A are, with some very minor differences, identical with pages 1 to 14 of Annex A to Orić's "Defence Respondent's Brief" filed on 27 November 2006, which has been declared null and void by the Appeals Chamber in the Decision of 29 January 2007.<sup>16</sup> The additional material submitted by Orić in Annex B is of the same nature, so that the reasoning of the Decision of 29 January 2007 applies to it as well. Accordingly, the Appeals Chamber finds that Annex B is impermissible under paragraph C(6) of the Practice Direction.

11. Annex C is entitled "Evidence not considered by the Trial Chamber". It consists of a list of factual propositions, references to the evidence allegedly supporting the proposition, and explanations as to what findings by the Trial Chamber were contrary to the propositions and to the supporting material. The propositions and Orić's explanations about their relevance to the Trial Chamber's findings are clearly argumentative and therefore impermissible in an annex under paragraph C(6) of the Practice Direction.

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<sup>13</sup> Annex A, p. 7 (regarding para. 55 of the Prosecution's Response Brief).

<sup>14</sup> Annex A, pp. 10-11 (regarding para. 288 of the Prosecution's Response Brief).

<sup>15</sup> Practice Direction, para. C(6).

<sup>16</sup> Decision of 29 January 2007, p. 2.

#### IV. DISPOSITION

12. On the basis of the foregoing, the Appeals Chamber **GRANTS** the Prosecution's Motion with respect to Annexes A-D, and **DENIES** the Motion as moot with respect to the Reply Brief itself;

**RECOGNIZES** the revised Reply Brief attached to the Defence's Response to the Prosecution's Motion as the valid Reply Brief;

**DECLARES** the Reply Brief Annexes A-D to be null and void;

**DIRECTS** the Registry to remove the Reply Brief Annexes A-D from the case file; and

**ORDERS** Orić, if he so wishes, to re-file the Reply Brief Annexes in compliance with the Practice Direction on the Length of Briefs and Motions within five (5) days of the date of this Decision.

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



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Judge Fausto Pocar  
Presiding

Dated this 7<sup>th</sup> day of June 2007  
At The Hague  
The Netherlands

[Seal of the International Tribunal]