



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-95-11-A
Date: 10 March 2008
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohammed Shahabuddeen
Judge Mehmet Güney
Judge Andréia Vaz
Judge Wolfgang Schomburg
Registrar: Mr. Hans Holthuis
Decision of: 10 March 2008

PROSECUTOR

v.

MILAN MARTIĆ

PUBLIC

**DECISION ON MOTION FOR RECONSIDERATION OF ORAL
DECISION ISSUED ON 29 FEBRUARY 2008**

The Office of the Prosecutor:

Ms. Michelle Jarvis

Counsel for the Accused:

Mr. Predrag Milošanović
Mr. Nikola Perović

1. 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 “Tribunal”, respectively) is seized of an urgent “Motion to Reconsider Oral Decision of Pre-Appeal Judge of 29 February 2008” filed by Martić on 3 March 2008 (“Motion of 3 March 2008”).

I. BACKGROUND

2. On 25 February 2008, the Office of the Prosecutor (“Prosecution”) filed confidentially its “Prosecution Response Brief” in the instant case, responding to Martić’s Appellant Brief.¹ The Prosecution Response Brief does not follow the order of arguments and numbering of Martić’s Appellant Brief.

3. On 28 February 2008, Martić filed a “Motion to Order the Prosecution to Re-File the Respondent’s Brief” (“Motion of 28 February 2008”) based on the fact that the Prosecution Response Brief was not in compliance with the requirement, set out in the Practice Direction on Formal Requirements for Appeals from Judgement (Document IT/201) (“Practice Direction”), that, in a Respondent’s Brief, “[t]he statements and the arguments must be set out and numbered in the same order as in the Appellant’s Brief and shall be limited to arguments made in response to that brief”.²

4. At the Status Conference of 29 February 2008 the Pre-Appeal Judge, after having given the Prosecution the opportunity to respond³ and Martić the possibility to reply,⁴ issued an oral ruling rejecting the Motion of 28 February 2008 (“Oral Decision”).⁵ The Motion of 3 March 2008 requests the Appeals Chamber to reconsider the Oral Decision. The Prosecution responded on 6 March 2008.⁶

¹ [Confidential] Corrected Version of Appellant’s Brief, 31 January 2008.

² Practice Direction, Article 5. Article 20 of the Practice Direction grants ample discretion to the Appeals Chamber on how to address non-compliance with its provisions, stating that “[w]here a party fails to comply with the requirements laid down in this Practice Direction [...], a designated Pre-Appeal Judge or the Appeals Chamber may, within its discretion, decide upon an appropriate sanction, which can include an order for clarification or re-filing. The Appeals Chamber may also reject a filing or dismiss submissions therein.”

³ T. 11-14.

⁴ T. 14-16.

⁵ T. 18.

⁶ Prosecution Response to Defence Motion to Reconsider Oral Decision of Pre-Appeal Judge of 29 February 2008 (“Prosecution Response”), 6 March 2008.

II. STANDARD FOR RECONSIDERATION

5. According to the jurisprudence of the Tribunal and of the ICTR, a Chamber has inherent discretionary power to reconsider a previous decision in exceptional cases if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice.⁷

III. DISCUSSION

6. Martić submits that the wording of Article 5 of the Practice Direction is unambiguous and does not allow the Appeals Chamber to vary the order of the arguments contained in a respondent's brief; moreover, the Rules of Procedure and Evidence are silent on the matter.⁸ He further notes that the Prosecution itself conceded that it did not follow the provision in question⁹ and concludes that expeditiousness of the proceedings does not provide justification for departure from this mandatory rule.¹⁰ Therefore, Martić relies on the inherent power of a Chamber to reconsider its previous decisions, requesting to grant the Motion of 28 February 2008 and, additionally, to suspend the time limits for filing his Reply until resolution of this matter.¹¹ The Prosecution responds that Martić has not met the standard for reconsideration, because he has neither shown a clear error, nor has he demonstrated an injustice.¹²

7. In the instant case, the Appeals Chamber finds that the test for reconsideration has not been met. The Pre-Appeal Judge, when issuing the Oral Decision, considered the rationale for the provision of Article 5 of the Practice Direction, which was found to be the necessity that parties and Chambers could easily identify what arguments were made in response to which arguments of the opposing party.¹³ He went on to find that Section I of the Prosecution Response Brief provides the structure of the brief, organized in three main parts, and the reasons why it departed from the order.¹⁴ The Pre-Appeal Judge then considered the hierarchy of norms, coming to the conclusion that the fundamental right to an expeditious trial superseded in this case the letter of the Practice Direction, taking into account that the order chosen by the Prosecution does not make it "more difficult" for Martić to reply.¹⁵

⁷ See *Kajelijeli Appeals Judgement*, paras 203-204, and reference thereof; *Nahimana et al. v. Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motion for Leave to Present Additional Evidence Pursuant to Rule 15, 5 May 2006, para. 8; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, p. 2.

⁸ Motion of 3 March 2008, paras 3-5.

⁹ Motion of 3 March 2008, para. 5.

¹⁰ Motion of 3 March 2008, para. 6.

¹¹ Motion of 3 March 2008, paras 7-8.

¹² Prosecution Response, paras 3-6.

¹³ T. 16.

¹⁴ T. 16-17.

¹⁵ T. 17-18.

8. Considering the clarity of the reasons set forth by the Prosecution for why it chose to depart from the order of the arguments in Martić’s Appeal Brief,¹⁶ the discretion afforded by the Practice Direction on how to address non-compliance with its provisions,¹⁷ and despite the lack of prior request to depart by the Prosecution, the arguments brought do not show any clear error in reasoning nor particular circumstances leading to injustice so as to justify reconsideration of the Oral Decision.

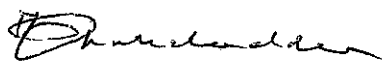
9. In light of the foregoing, the Appeals Chamber

DISMISSES the Motion of 3 March 2008;

CONFIRMS the deadline for filing the Reply Brief on 12 March 2008.¹⁸

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

Dated this 10th day of March 2008,
At The Hague, The Netherlands.



Mohammed Shahabuddeen
Acting Presiding Judge

[Seal of the Tribunal]

¹⁶ Prosecution Response Brief, paras 1-9; T. 11-12.

¹⁷ See *supra*, note 2.

¹⁸ T. 18.