



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-95-13/1-R.1
Date: 22 March 2010
Original: English

BEFORE THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Andrézia Vaz

Registrar: Mr. John Hocking

Decision of: 22 March 2010

PROSECUTOR

v.

VESELIN ŠLJIVANČANIN

PUBLIC

**DECISION ON VESELIN ŠLJIVANČANIN'S MOTION
REQUESTING AN ORDER TO THE PROSECUTION TO
JUSTIFY ITS OVERSIZED FILING**

The Office of the Prosecutor:

Mr. Peter Kremer, QC

Counsel for Veselin Šljivančanin:

Mr. Novak Lukić and Mr. Stéphane Bourgon

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);

RECALLING that the Appeals Chamber is seised of the “Application on Behalf of Veselin Šljivančanin for Review of the Appeals Chamber Judgment of 5 May 2009” (“Review Motion”) filed by Counsel for Veselin Šljivančanin (“Šljivančanin”) on 28 January 2010;

NOTING the public redacted “Prosecution Response to Šljivančanin’s Application for Review” (“Review Response”) filed by the Office of the Prosecutor (“Prosecution”) on 9 March 2010;

BEING SEISED of the “Motion on Behalf of Veselin Šljivančanin Requesting the Appeals Chamber to Order the Prosecution to Justify its Oversized Filing” (“Motion”) filed by Šljivančanin on 10 March 2010;

NOTING that the Motion requests an order by the Appeals Chamber requiring the Prosecution to justify its filing of an oversized response to Šljivančanin’s Review Motion and, in the event that the Prosecution is allowed to retain its current filing, permission to file a reply brief of up to 6,000 words;¹

NOTING the “Prosecution Response to Šljivančanin’s Motion Requesting the Appeals Chamber to Order the Prosecution to Justify its Oversized Filing” (“Response”) filed on 11 March 2010, in which the Prosecution asserts that the Motion should be dismissed and Šljivančanin’s reply limited to 1,866 words;²

NOTING the “Motion Seeking Leave to Reply and Reply to Prosecution Response to Šljivančanin’s Motion Requesting the Appeals Chamber to Order the Prosecution to Justify its Oversized Filing” (“Reply”) filed by Šljivančanin on 12 March 2010, in which he modifies his original request and seeks leave to file a reply brief of up to 3,000 words to the Prosecution’s Review Response;³

NOTING that the Review Motion consists of 2,969 words⁴ whereas the Review Response contains 5,599 words;⁵

¹ Motion, para. 6.

² Response, para. 6.

³ Reply, para. 10.

⁴ Review Motion, p. 10.

⁵ Review Response, p. 15.

NOTING that Šljivančanin submits: (i) that the Prosecution's Response is in violation of the Practice Direction on the Length of Briefs and Motions⁶ ("Practice Direction");⁷ and (ii) that if Review Response is allowed, he should be permitted to file a reply brief not exceeding 3,000 words;⁸

NOTING that the Prosecution responds: (i) that the Practice Direction does not apply to review proceedings and that its Review Response therefore "conforms fully to the law of the Tribunal";⁹ and (ii) that in accordance with general principles applicable to motions before the Tribunal Šljivančanin should be allowed to file a reply approximately one third the size of the Review Response, i.e. not exceeding 1,866 words;¹⁰

RECALLING 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"¹¹ and that the Rules of Procedure and Evidence of the Tribunal ("Rules") are also 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;¹²

CONSIDERING 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;¹³

CONSIDERING the lack of specificity in the Practice Direction with regards to word limits for written submissions filed in review proceedings,¹⁴ and the special circumstances of this case;

FINDING that in the particular circumstances of this case the Prosecution's Review Response is not in violation of the rules of the Tribunal;

FINDING further that in the particular circumstances of this case Šljivančanin's request to file a reply brief not exceeding 3,000 words is reasonable;

FOR THE FOREGOING REASONS,

⁶ IT/184 Rev. 2, 16 September 2005.

⁷ Motion, para. 2, referring to Practice Direction, para. 7.

⁸ Reply, para. 9. Šljivančanin explains that the "filing of a Reply equal in size to the Prosecution [Review] Response is objectively justified". See *id.*, para. 8. However, he submits that his assessment of the Review Response has convinced him that a reply brief of 3,000 words is sufficient. See *id.*, para. 9.

⁹ Response, para. 3. See also *id.*, para. 2.

¹⁰ *Id.*, paras 4-5.

¹¹ *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Decision on Word Limits in Review Proceedings, 1 February 2006 ("Blaškić Decision"), fn. 8.

¹² See Rules 119-122 of the Rules.

¹³ *Blaškić Decision*, pp. 4-5.

¹⁴ See *id.*, p. 5.

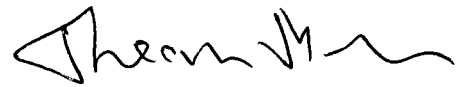
GRANTS Šljivančanin's request to file a reply brief not exceeding 3,000 words;

GRANTS Šljivančanin an extension of five days from the date of this decision to file his reply brief; and

DISMISSES the Motion in all other respects.

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

Dated this 22nd day of March 2010,
At The Hague,
The Netherlands.



Judge Theodor Meron
Presiding Judge

[Seal of the Tribunal]