



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-95-5/18-T

Date: 6 January 2012

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 6 January 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ACCUSED'S MOTION TO REJECT PROSECUTION RESPONSES

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

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 (“Tribunal”) is seised of the Accused’s “Motion to Reject Prosecution Responses”, filed on 21 December 2011 (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. In the Motion the Accused seeks an order from the Chamber rejecting two responses from the Office of the Prosecutor (“Prosecution”) on the basis that they were filed in violation of the Tribunal’s Practice Direction on the Length of Briefs and Motions (“Practice Direction”), namely the “Prosecution Response to Sixty-Fifth Motion for Finding of Disclosure Violation”, filed on 12 December 2011 (“First Response”) and the “Prosecution Response to Motion to Recall Twelve Municipality Witnesses”, filed on 16 December 2011 (“Second Response”) (together “Responses”).¹

2. With respect to the First Response, the Accused argues that the Prosecution attempted to circumvent the word limit for responses by placing 4,705 words, which included factual arguments in annexes.² On this basis the Accused seeks an order rejecting the First Response given that the Practice Direction “provides that only appendices which do not contain legal or factual arguments are exempt from the word limits”.³ The Accused further observes that the Prosecution in the body of the Second Response sought “leave to exceed the word limit for responses by approximately 600 words”, while the Practice Direction requires a party to seek such authorisation from the Chamber in advance.⁴ Given the failure to seek advance authorisation to exceed the word limits set in the Practice Direction, the Accused contends that the Second Response should also be rejected.⁵ The Accused requests that the Chamber reject the Responses and order the Prosecution to shorten them in compliance with the word limit set forth in the Practice Direction or seek leave in advance to exceed it.⁶

3. On 22 December 2011, the Prosecution filed the “Prosecution Response to Motion to Reject Prosecution Responses” (“Response”). With respect to the First Response, the Prosecution argues

¹ Motion, paras. 1, 3, 6, 9, referring to the Practice Direction on the Length of Briefs and Motions, IT/184 Rev. 2, 16 September 2005.

² Motion, para. 6.

³ Motion, para. 6.

⁴ Motion, paras. 2–5.

⁵ Motion, paras. 1, 5, 9.

⁶ Motion, para. 10.

that contrary to the Accused's submission it did not use annexes to circumvent the word limit but included them in the word count even though for the most part they contained "other relevant, non-argumentative material" which would not count towards the word limit.⁷ The Prosecution acknowledges that it did not seek authorisation to exceed the word limit for the Responses in advance but contends that rejecting the Responses would be contrary to the interests of justice and would not advance the proceedings.⁸ In support of this contention the Prosecution observes that the Accused was not prejudiced by the Responses exceeding the word limit or its failure to seek advance authorisation to do so.⁹

4. The Prosecution observes that in the practice of the Tribunal, leave to exceed the word limit for responses can be granted "even if such application is made at the same time as the filing for which the extension is sought".¹⁰ The Prosecution also notes that on one previous occasion it sought leave to exceed the word limit for responses in this manner, that the Accused did not object and that the Chamber granted such request on the basis of the number of witnesses and documents which the underlying motion addressed.¹¹ It thus followed the same approach when filing the Responses given the scope of material which needed to be covered, "the previous procedural accommodations exchanged by the parties and in light of the constraints imposed by the various deadlines on the week the Responses were filed".¹²

II. Applicable Law

5. Paragraph 5 of the Practice Direction provides that "[m]otions, responses and replies before a Chamber will not exceed 3,000 words". While the Practice Direction states that appendices do not count towards the word limit, they are not to contain legal or factual arguments.¹³ Paragraph 7 of the Practice Direction provides that:

A party must seek authorization in advance from the Chamber to exceed the word limits in this Practice Direction and must provide an explanation of the exceptional circumstances that necessitate the oversized filing. Upon filing by a party of a motion for an extension of time or word limit, the pre-appeal Judge may dispose of the motion without hearing the other party, unless he/she considers there is a risk that the other party may be prejudiced.

⁷ Response, para. 1, referring to First Response, fn. 4.

⁸ Response, paras. 1, 3.

⁹ Response, para. 3.

¹⁰ Response, para. 2.

¹¹ Response, para. 2, referring to Prosecution Response to Motion to Recall Eleven Sarajevo Witnesses, 9 September 2011, para. 3 and Decision on Accused's Motion to Recall Eleven Sarajevo Witnesses, 5 October 2011, para. 8.

¹² Response, para. 2.

¹³ Practice Direction, para. 6.

6. The practice of the Tribunal has been “in appropriate circumstances to grant leave to exceed the word limit on a retroactive basis where no advance application has been made”.¹⁴ Factors which may be considered in making that assessment include the subject matter of the motion,¹⁵ the number of documents which need to be addressed,¹⁶ whether the application to exceed the word limit would have been granted had it been made in advance and whether the Accused was prejudiced by the “excess words or by the Prosecution’s omission to seek prior authorisation”.¹⁷

III. Discussion

7. The Chamber reiterates that the failure by the Prosecution to seek advance authorisation to exceed the word limit for the Responses is contrary to the letter of the Practice Direction.¹⁸ The Chamber reminds the Prosecution of its obligations under the Practice Direction to seek advanced authorisation to exceed the word limit for motions, responses and replies, and requires them to do so for future filings.

8. However, the Chamber has reviewed the Responses and considers that oversized filings were necessary to address the number of witnesses and documents which were referred to in the underlying motions.¹⁹ The additional information contained in the Responses was necessary to ensure that the Chamber was informed in a comprehensive manner of the issues to consider for each witness. Given these circumstances, the Chamber would have granted the Prosecution’s application to exceed the word limit had it been made in advance.²⁰

9. The Chamber does not consider that rejecting the Responses or requiring the Prosecution to re-file them with shortened submissions would advance the proceedings or be in the interests of justice. In reaching that conclusion, the Chamber found that granting leave to exceed the word

¹⁴ Decision on Accused Motion to Reject Prosecution Motion to Amend the First Amended Indictment, 5 November 2008 (“Decision on Motion to Reject”) para. 6 citing, *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-PT, Decision on Prosecution Motion Seeking Leave to Amend the Second Amended Indictment and on Prosecution Motion to Include UN Security Council Resolution 1820 (2008) as Additional Supporting Material to Proposed Third Amended Indictment as well as on Milan Lukić’s Request for Reconsideration or Certification of the Pre-Trial Judge’s Order of 19 June 2008, 8 July 2008 (“*Lukić Decision*”), para. 27; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Ojdanić Renewed Motion for Admission of Documents from Bar Table, 21 November 2007 (“*Milutinović Decision*”), para. 8; *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-T, Decision on Lukić Defence Motions for Admission of Documents from Bar Table, 11 June 2008, para. 5; *Prosecutor v. Delić*, Case No. IT-04-83-PT, Decision on the Prosecution’s Submission of Proposed Amended Indictment and Defence Motion Alleging Defects in Amended Indictment, 30 June 2006, paras. 9, 11.

¹⁵ *Lukić Decision*, para. 27.

¹⁶ *Milutinović Decision*, para. 8.

¹⁷ Decision on Motion to Reject, para. 6.

¹⁸ Decision on Motion to Reject, para. 6.

¹⁹ The Chamber notes that the First Response refers to 14 witnesses, over 40 documents and over 30 statements and that the Second Response refers to 12 witnesses and seven documents.

²⁰ See Decision on Motion to Reject, para. 6.

limit for the Responses and the failure by the Prosecution to seek prior authorisation to do so did not prejudice the Accused.

IV. Disposition

10. Accordingly, the Chamber, pursuant to Rules 54 and 73 of the Rules of Procedure and Evidence of the Tribunal and paragraph 7 of the Practice Direction, hereby:

- a) **DENIES** the Motion; and
- b) **GRANTS** the Prosecution leave to exceed the word limit for the Responses.

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



Judge O-Gon Kwon
Presiding

Dated this sixth day of January 2012
At The Hague
The Netherlands

[Seal of the Tribunal]