



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-02-54-R77.5-A  
Date: 6 November 2009  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Patrick Robinson, Presiding  
Judge Andréia Vaz  
Judge Theodor Meron  
Judge Burton Hall  
Judge Howard Morrison

**Registrar:** Mr. John Hocking

**Decision:** 6 November 2009

**IN THE CASE AGAINST FLORENCE HARTMANN**

***PUBLIC***

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**DECISION ON MOTIONS TO STRIKE AND REQUESTS TO  
EXCEED WORD LIMIT**

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**Amicus Curiae Prosecutor**

Mr. Bruce Mac Farlane

**Counsel for the Appellant**

Mr. Karim A. A. Kahn, Lead Counsel  
Mr. Guénaél Mettraux, Co-Counsel

~~CONFIDENTIAL~~

**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 seised of: (1) the “Urgent Prosecutor’s Motion for Order Striking Notice of Appeal and Requiring Refiling”, filed by the *Amicus Curiae* Prosecutor (“*Amicus* Prosecutor”) on 2 October 2009 (“*Amicus* Motion”); (2) the “Motion to Strike Motion by Former *Amicus* Prosecutor”, filed by Florence Hartmann (“Appellant”) on 5 October 2009 (“Appellant’s Motion”); (3) the “Motion Seeking Leave for Extension of World [*sic*] Limit for Appeals Brief”, filed by the Appellant on 9 October 2009 (“Motion for Extension of Word Limit”); and (4) the “Prosecutor’s Motion Seeking Leave to Exceed the Word Limit”, filed by the *Amicus* Prosecutor on 21 October 2009 (“*Amicus* Motion to Exceed Word Limit”).

### I. Background

1. On 14 September 2009, a Specially Appointed Chamber issued the “Judgement on Allegations of Contempt” in the present case, convicting the Appellant of two counts of contempt of the Tribunal and sentencing her to pay a fine of 7,000 euros. On 24 September 2009, the Appellant filed her notice of appeal.<sup>1</sup> The *Amicus* Prosecutor filed the *Amicus* Motion on 2 October 2009, requesting the Appeals Chamber to strike the Notice of Appeal and order the Appellant “to re-file a Notice of Appeal that complies with the requirements of the Tribunal”.<sup>2</sup> The Appellant filed the Appellant’s Motion on 5 October 2009, challenging the *Amicus* Prosecutor’s standing in the appeal proceedings and accordingly requesting that the *Amicus* Motion be stricken from the record.<sup>3</sup>

2. On 9 October 2009, the Appeals Chamber ordered the Registry to serve a copy of the Notice of Appeal on the *Amicus* Prosecutor, as well all related filings.<sup>4</sup> The same day, the Appellant filed her appeal brief,<sup>5</sup> along with her Motion for Extension of Word Limit. The Appellant filed her book of authorities on 12 October 2009.<sup>6</sup>

<sup>1</sup> Notice of Appeal of Florence Hartmann Against the Judgment of the Specially Appointed Trial Chamber, 24 September 2009 (confidential) (“Notice of Appeal”). A public version was filed the same day.

<sup>2</sup> *Amicus* Motion, para. 1.

<sup>3</sup> Appellant’s Motion, paras 20-21.

<sup>4</sup> Order to the Registrar to Serve Appeal Related Filings on the *Amicus Curiae* Prosecutor, 9 October 2009 (“Order of 9 October”).

<sup>5</sup> Florence Hartmann’s Appellant Brief, 9 October 2009 (“Appeal”).

<sup>6</sup> Book of Authorities, 12 October 2009.

3. On 13 October 2009, the *Amicus* Prosecutor filed a response to the Appellant's Motion for Extension of Word Limit.<sup>7</sup> The same day, the Appellant filed a response to the *Amicus* Motion.<sup>8</sup> On 14 October 2009, the Appellant filed a reply to the *Amicus* Prosecutor's Response to the Motion for Extension of Word Limit.<sup>9</sup>

4. On 21 October 2009, the *Amicus* Prosecutor filed a request for leave to exceed the word limit for the respondent's appeal brief.<sup>10</sup> On 21 October 2009, Counsel for the Appellant indicated by email to the Office of the President that they had no objection to the *Amicus* Prosecutor's Motion for Extension of Word Limit.

## II. Applicable law

5. Rule 108 of the Rules of Procedure and Evidence of the Tribunal ("Rules"), entitled "Notice of Appeal", provides as follows:

A party seeking to appeal a judgement shall, not more than thirty days from the date on which the judgement was pronounced, file a notice of appeal, setting forth the grounds. The Appellant should also identify the order, decision or ruling challenged with specific reference to the date of its filing, and/or the transcript page, and indicate the substance of the alleged errors and the relief sought. The Appeals Chamber may, on good cause being shown by motion, authorise a variation of the grounds of appeal.

6. The Practice Direction on Formal Requirements for Appeals from Judgement provides in relevant part:

1. A party seeking to appeal from a judgement of a Trial Chamber ("Appellant") shall file, in accordance with the Statute of the International Criminal Tribunal for the Former Yugoslavia ("Statute"), in particular Article 25 of the Statute, and the Rules, a Notice of Appeal containing, in the following order:

- (a) the date of the judgement;
- (b) the specific provision of the Rules pursuant to which the Notice of Appeal is filed;
- (c) the grounds of appeal, clearly specifying in respect of each ground of appeal:
  - (i) any alleged error on a question of law invalidating the decision, and/or
  - (ii) any alleged error of fact which has occasioned a miscarriage of justice;

<sup>7</sup> Urgent Prosecutor's Response to Defence "Motion Seeking Leave for Extension of World [*sic*] Limit for Appeals Brief", 13 October 2009 (confidential) ("Response to the Motion for Extension of Word Limit"). A public redacted version of the Response to the Motion for Extension of Word Limit was filed on 14 October 2009.

<sup>8</sup> Florence Hartmann's Response to the *Amicus* Motion to Strike Notice of Appeal, 13 October 2009 ("Response to *Amicus* Motion").

<sup>9</sup> Amended Reply *Re* Motion Seeking Leave for Extension of Word Limit for Appeals Brief, 14 October 2009 ("Reply Concerning Motion for Extension of Word Limit"). Prior to filing the amended Reply Concerning Motion for Extension of Word Limit, the Appellant filed the "Reply *Re* Motion Seeking Leave for Extension of Word Limit for Appeals Brief" on 14 October 2009.

<sup>10</sup> Prosecutor's Motion Seeking Leave to Exceed the Word Limit, 21 October 2009 ("*Amicus* Motion to Exceed Word Limit"), para. 7.

(iii) an identification of the finding or ruling challenged in the judgement, with specific reference to the page number and paragraph number;

(iv) an identification of any other order, decision or ruling challenged, with specific reference to the date of its filing, and/or transcript page;

(v) the precise relief sought;

(d) if relevant, the overall relief sought.

[...]

17. Where a party fails to comply with the requirements laid down in this Practice Direction, or where the wording of a filing is unclear or ambiguous, 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.<sup>11</sup>

7. The Appeals Chamber has held that “[t]hese rules are based on principles of fair trial and effectiveness, aimed at ensuring that both parties have adequate opportunity to be fully apprised of each others’ submissions and to respond in good time to these.” The Rules also “clarify for the parties, and for the public, which arguments have been considered by the Appeals Chamber in reaching a particular decision.”<sup>12</sup>

### III. *Amicus* Motion

8. The *Amicus* Prosecutor argues that the Notice of Appeal is defective because it fails to identify a respondent.<sup>13</sup> The *Amicus* Prosecutor also avers that it is unclear how many grounds of appeal there are or what the grounds of appeal are.<sup>14</sup> It is also submitted that the Notice of Appeal does not set out clearly whether the alleged errors are errors of law or fact, but rather puts each instance of a ground of appeal in the alternative, and that this prevents the *Amicus* Prosecutor from reasonably responding because different legal standards apply to alleged errors of law and alleged errors of fact.<sup>15</sup> The *Amicus* Prosecutor further argues that the Notice of Appeal: (a) fails to identify the finding or ruling challenged in the Judgement with specific reference to the page and paragraph number; (b) intermingles grounds of appeal relating to the Judgement with grounds of appeal relating to other decisions; and (c) is replete with arguments and extraneous information.<sup>16</sup> The *Amicus* Prosecutor accordingly requests the Appeals Chamber to strike the Notice of Appeal and order its re-filing, suggests a modified briefing schedule, and requests the Appeals Chamber to

<sup>11</sup> Practice Direction on Formal Requirements for Appeals from Judgement, IT/201, 7 March 2002, paras 1, 17.

<sup>12</sup> *Prosecutor v. Mrkšić and Šijivančanin*, Case No. IT-95-13/1-A, Decision on the Prosecution’s Motion to Order Veselin Šijivančanin to Seek Leave to File an Amended Notice of Appeal and to Strike New Grounds Contained in His Appeal Brief, 26 August 2008 (“*Mrkšić* Decision”), para. 9.

<sup>13</sup> *Amicus* Motion, para. 6.

<sup>14</sup> *Id.*, paras 13, 15–17.

<sup>15</sup> *Id.*, paras 13–14, 18–22.

<sup>16</sup> *Id.*, para. 23.

order the Appellant to correct her defective service of the Notice of Appeal by including the *Amicus Prosecutor* as the respondent in the re-filed Notice of Appeal and all appeal related filings.<sup>17</sup>

9. In her Response to the *Amicus* Motion, the Appellant argues that the *Amicus* Motion is without merit because: (a) given the number of errors alleged, the Notice of Appeal contains much more information than that required under the Tribunal's Rules and jurisprudence; (b) the Notice of Appeal sufficiently clarifies the alleged errors and the findings to which they pertain; and (c) the Notice of Appeal clearly specifies under each ground whether an error of law, fact and/or abuse of discretion is alleged, and many errors alleged are errors of law and/or fact.<sup>18</sup>

10. The Appellant further argues that the *Amicus* Motion was rendered moot by the filing of the Appeal, which specifies whether each alleged Trial Chamber error is one of law, fact, and/or an abuse of discretion and indicates the law and evidence relevant to each alleged error, as well as whether the errors invalidate the judgement or result in a miscarriage of justice.<sup>19</sup> The Appellant accordingly requests the Appeals Chamber to dismiss the *Amicus* Motion.<sup>20</sup>

11. In respect of the request of the *Amicus Prosecutor* for the Appeals Chamber to order the Appellant to serve him with the Notice of Appeal and all appeal related filings, the Appeals Chamber notes that it has already resolved this issue in its order to the Registrar issued on 9 October 2009.<sup>21</sup>

12. In respect of the *Amicus* Prosecutor's complaints about the substance of the Notice of Appeal, the Appeals Chamber has spent considerable time and effort attempting to decipher the notice of appeal and finds merit in the *Amicus* Prosecutor's arguments. The Appeals Chamber recalls that the purpose of an appellant setting forth grounds of appeal is to provide notification to the respondent of the scope of the appeal from the time of the filing of the notice of appeal.<sup>22</sup> The Appellant submits 14 grounds of appeal, which contain dozens of arguments that may be construed as sub-grounds of appeal. The failure to number the possible sub-grounds of appeal is not fatal to the Notice of Appeal, but it does contribute to a lack of clarity regarding the precise specification of each ground and sub-ground of appeal. There is a significant amount of repetition throughout the grounds and sub-grounds of appeal, which contributes to confusion about what exactly the Appellant is challenging with respect to the Judgement and the impugned decisions taken by the

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<sup>17</sup> *Id.*, paras 24–26.

<sup>18</sup> Response to *Amicus* Motion, paras 6–8.

<sup>19</sup> *Id.*, paras 6 and 9.

<sup>20</sup> *Id.*, para. 11.

<sup>21</sup> Order of 9 October.

<sup>22</sup> *Prosecutor v. Orić*, Case No. IT-03-68-A, Decision on Prosecution's Motion for an Order Striking Defence Notice of Appeal and Requiring Refiling, 3 October 2006, p. 4.

Trial Chamber. Furthermore, the Notice of Appeal sometimes lacks precise references to the Judgement or relevant impugned decisions.

13. At paragraphs 5 and 136 of the Notice of Appeal, the Appellant states that each of the alleged errors of the Trial Chamber, if granted by the Appeals Chamber, would lead to a reversal of her conviction. In this regard, the Appellant complies with paragraph 1(c)(v) of the Practice Direction, which requires an appellant to specify with respect to each ground of appeal the precise relief sought. However, the Appeals Chamber considers that the Appellant’s persistent and pervasive use of alternative formulations for alleged errors of law and alleged errors of fact throughout the Notice of Appeal leads to imprecision and confusion and does not give the *Amicus* Prosecutor sufficient notification of the scope of the appeal. If the Appellant is of the view that an issue is one of law, then this should be stated. If it is one of fact, then it should be stated as such. Only where there is a genuine issue of mixed law and fact, or where there is a real uncertainty, should an alternative formulation be used.

14. Finally, the Appeals Chamber recalls that “[t]he only formal requirement under the Rules is that the notice of appeal contains a list of the grounds of appeal; it does not need to detail the arguments that the parties intend to use in support of the grounds of appeal, the place for detailed arguments being in the Appellant’s brief.”<sup>23</sup> The Appeals Chamber notes that the Notice of Appeal is so long and complex that it is difficult for the Appeals Chamber to separate out the grounds and sub-grounds of appeal therein from what might be argumentation. Moreover, the Notice of Appeal contains sections that are clearly argumentation, such as paragraphs 95 to 99. The Appellant is reminded that a notice of appeal requires her to clearly specify the alleged error in question and then identify the challenged finding or ruling in the judgement or decision. Detailed argumentation is to be included in the appeal brief. In light of the foregoing, the Appellant is instructed to re-file the Notice of Appeal in conformity with the above requirements.

**IV. Appellant’s Motion**

15. The Appellant moves the Appeals Chamber to strike the *Amicus* Motion.<sup>24</sup> The Appellant argues that the *Amicus* Prosecutor lacks standing to move the Appeals Chamber to strike her Notice of Appeal due to the fact that his mandate lapsed on 14 September 2004 at the end of the trial proceedings.<sup>25</sup> The Appeals Chamber considers that the assignment of an *Amicus* Prosecutor to a trial proceeding necessarily continues until the close of all related proceedings. The Appeals

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<sup>23</sup> *Mrkšić* Decision, para. 8.  
<sup>24</sup> Appellant’s Motion, para. 21.  
<sup>25</sup> *Id.*, para. 9.

Chamber considers that such continuance is especially important in circumstances such as the present case, where the appellant is appealing convictions that were litigated by the *Amicus* Prosecutor during the trial. In accordance with this principle, as noted above, the Appeals Chamber has already ordered the Registry to serve the notice of appeal on the *Amicus* Prosecutor.

16. The Appeals Chamber does not agree with the Appellant that the participation of the *Amicus* Prosecutor would have the “incongruous effect of allowing a proxy of the Trial Chamber to defend on appeal the case that it has prosecuted on its behalf”.<sup>26</sup> This argument is based upon the faulty premise that the *Amicus* Prosecutor and the Trial Chamber were one and the same entity. Having been appointed by the Registrar, upon order of the Trial Chamber, the *Amicus* Prosecutor proceeded to prosecute the case on behalf of the Chamber without becoming an “agent” or “proxy” thereof. Moreover, the Appeals Chamber has already stated that the participation of the *Amicus* Prosecutor would assist it in its consideration of the appeal.<sup>27</sup>

17. The Appellant also argues that the involvement of the *Amicus* Prosecutor in the Appeal proceedings would be inappropriate given that in the Appeal, the Appellant challenges many actions taken by the *Amicus* Prosecutor during the trial, including his “improper contacts with the Trial Chamber”, and the Appeals Chamber may therefore decide to call him as a witness in the appeal proceedings.<sup>28</sup> In this respect, the Appellant contends that if the *Amicus* Prosecutor is allowed to participate in the appeal proceedings, he will be put “beyond the reach of the Defence and/or the Chamber for the purpose of giving evidence potentially relevant to this case”.<sup>29</sup> The Appellant further submits that since Ground 3 of the Appeal concerns these inappropriate contacts, the involvement of the *Amicus* Prosecutor in the appeal proceedings would create the appearance that the Appeals Chamber condones such contacts, which a special panel found to be a basis for the disqualification of two Judges during the trial.<sup>30</sup>

18. The Appeals Chamber notes that it is not uncommon for a party to challenge on appeal the actions of an opposing party during trial, and that such a challenge does not preclude the Appeals Chamber from presenting questions to the opposing party on appeal in relation to the actions being challenged. The Appeals Chamber thus finds no merit in the Appellant’s contention that the involvement of the *Amicus* Prosecutor in the Appeal proceedings would preclude the Defence and/or the Appeals Chamber from hearing evidence potentially relevant to this case. Furthermore, the Appeals Chamber reminds the Appellant that the Appeals Chamber determines an appellant’s

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<sup>26</sup> *Id.*, para. 14.

<sup>27</sup> Order of 9 October.

<sup>28</sup> Appellant’s Motion, paras 15–18.

<sup>29</sup> *Id.*, paras 17–18

<sup>30</sup> *Id.*, para. 19.

grounds of appeal after the Appeals Chamber has had the benefit of reviewing the submissions of both parties and hearing their oral arguments. The Appeals Chamber accordingly finds no basis in the Appellant's argument that allowing the *Amicus* Prosecutor to participate in the appeal proceedings would create the appearance that the Appeals Chamber condones the alleged improper contacts challenged under Ground 3 of the Appeal.

## V. Motion for Extension of Word Limit

19. The Appeal totals 30,700 words. Paragraph (C)(2) of the Practice Direction on the Length of Briefs and Motions prescribes a word limit of 9,000 words.<sup>31</sup> An appellant wishing to exceed the word limit "must seek authorization in advance from the Chamber" and "must provide an explanation of the exceptional circumstances that necessitate the oversized filing."<sup>32</sup> The Appellant's Motion for Extension of Word Limit requests leave to exceed the prescribed word limit for her Appeal by 21,700 words.<sup>33</sup>

20. The Appellant submits that the following factors constitute exceptional circumstances necessitating an oversized appeal brief: (1) the number, range and complexity of the legal and factual issues on appeal;<sup>34</sup> (2) the numerous grounds and sub-grounds of appeal resulting from the "dozens of errors of fact and/or law" in the trial judgement, and the Trial Chamber's "systematic failure" to refer to authorities and evidence referenced in the Appellant's final trial brief;<sup>35</sup> (3) the fact that the duration of the proceedings, size of the procedural background and number of orders and decisions issued in the instant case are greater than in other contempt proceedings;<sup>36</sup> (4) the need for the extensive citation of numerous and varied authorities;<sup>37</sup> and (5) the importance of the issues on appeal.<sup>38</sup> The Appellant also submits that a portion of her Appeal is necessarily devoted to three pre-trial decisions in respect of which the Trial Chamber denied the Appellant's respective applications for leave to appeal. She argues that as a result of the Trial Chamber's refusal to grant leave to appeal these three decisions, she is compelled "to run four parallel appeals into one brief, which, separately, would amount to 36,000 words."<sup>39</sup>

<sup>31</sup> Practice Direction on the Length of Briefs and Motions, IT/184 Rev. 2, 16 September 2005 ("Practice Direction on the Length of Briefs and Motions"), para. (C)(2). See also Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal, IT/155 Rev. 3, para. 8, which provides that in appeals from decisions of a Trial Chamber pursuant to Rule 77 of the Rules, the word limit prescribed under paragraph (C)(2) of the Practice Direction on the Length of Briefs and Motions shall apply.

<sup>32</sup> Practice Direction on the Length of Briefs and Motions, para. (C)(7).

<sup>33</sup> Motion for Extension of Word Limit, paras 5 and 15.

<sup>34</sup> *Id.*, para. 9.

<sup>35</sup> *Id.*, paras 8 and 9.

<sup>36</sup> *Id.*, paras 8 and 13.

<sup>37</sup> *Id.*, paras 8 and 11.

<sup>38</sup> *Id.*, para. 8.

<sup>39</sup> *Id.*, para. 12.

21. In his Response to the Motion for Extension of Word Limit, the *Amicus* Prosecutor submits that neither the various factual and legal issues on appeal, nor the Trial Chamber's rejection of the Appellant's requests for leave to appeal the three pre-trial decisions, constitute exceptional circumstances for the purpose of extending the word limit.<sup>40</sup> He argues that an extension is unnecessary given that the Appeal is needlessly repetitive.<sup>41</sup> The *Amicus* Prosecutor also asserts that the Appellant, by filing her motion for extension on a Friday, shortly before midnight, a few minutes before filing her Appeal, caused prejudice to the *Amicus* Prosecutor as "the Appellant guaranteed that the Respondent would not have the time guaranteed by the Practice Direction unless the Appeals Chamber varied the time."<sup>42</sup> The *Amicus* Prosecutor also submits that he would be unable to provide a meaningful response to an appeal brief "which is three times the size contemplated in the Rules" within the time set for filing a response, and that consequently, allowing the extension of the word limit on such short notice, would cause him prejudice.<sup>43</sup> Regarding the Appellant's Book of Authorities, the *Amicus* Prosecutor submits that given the limited time available for the filing of the *Amicus* Prosecutor's Brief and the Appellant's insufficient Notice of Appeal, the Appellant should have provided copies of the legal authorities cited, and that her failure to do so caused him prejudice.<sup>44</sup> The *Amicus* Prosecutor accordingly requests that the Appeals Chamber: (i) strike the Appellant's Notice of Appeal;<sup>45</sup> (ii) order the Appellant to re-file her Notice of Appeal within 7 days; (iii) order the Appellant to re-file her Appeal and Book of Authorities within 7 days of the re-filed Notice of Appeal; and (iv) grant an extension of time to the *Amicus* Prosecutor "to compensate for the additional time gained by the Appellant and prejudice that it caused."<sup>46</sup>

22. In the Reply Concerning Motion for Extension of Word Limit, the Appellant argues that the *Amicus* Prosecutor failed to explain precisely how: (1) the timing of the filing of the Motion for Extension of Word Limit just prior to the filing of the Appeal caused him prejudice,<sup>47</sup> and (2) the increased size of the Appellant's Appeal would compromise his ability to respond to the Appellant's case, and the quality of his response.<sup>48</sup> She also submits that the *Amicus* Prosecutor failed to controvert the Appellant's submission that the need to appeal three interlocutory decisions in a single appeal brief necessitated an extension of the word limit, and to address the Appellant's

<sup>40</sup> Response to the Motion for Extension of Word Limit, para. 17.

<sup>41</sup> *Id.*, para. 20.

<sup>42</sup> *Id.*, paras 18 - 19 and 23.

<sup>43</sup> *Id.*, para. 23.

<sup>44</sup> *Id.*, para. 24.

<sup>45</sup> *Id.*, para. 25.

<sup>46</sup> *Id.*, para. 27.

<sup>47</sup> Reply Concerning Motion for Extension of Word Limit, paras 7 and 16.

<sup>48</sup> *Id.*, para. 15.

remaining arguments as to the exceptional circumstances justifying an extension of the word limit.<sup>49</sup> Regarding the Book of Authorities, the Appellant submits that the Practice Direction does not require an Appellant to provide actual copies of the authorities on which it intends to rely, but merely gives an appellant the discretion to do so. The Appellant contends that judicial economy weighs against the Appellant being ordered to re-file her Notice of Appeal, Appeal and Book of Authorities.<sup>50</sup>

23. The Appeals Chamber finds that the Appellant has failed to demonstrate that the factors cited in support of her Motion to Exceed Word Limit constitute exceptional circumstances. She has asserted the complexity of the legal and factual issues on appeal<sup>51</sup> without defining exactly what these complexities are. It is also well established that the number of grounds and sub-grounds of appeal,<sup>52</sup> the number of authorities cited,<sup>53</sup> and the extensiveness of the trial record and length of the trial<sup>54</sup> do not inevitably impede an appellant's ability to present salient and cogent appeal briefs within the prescribed word limit, and that these factors do not therefore, in and of themselves, constitute exceptional circumstances. Regarding the Appellant's assertion that an extension of the word limit is also necessitated by the Trial Chamber's refusal to grant the Appellant's requests for leave to appeal three of the Trial Chamber's preliminary decisions, the Appeals Chamber notes that the Appellant has failed to explain precisely why this is the case. The mere fact that the Trial Chamber denied the requests for leave to appeal these three decisions does not invariably prevent the Appellant from concisely discussing the most relevant aspects of these decisions within the prescribed word limit.

24. While a number of the issues on appeal, including an examination of European and international law on freedom of expression, are important issues, the significance of the issues on appeal does not in and of itself prevent an appellant from presenting sound submissions on those issues within the set word limit.<sup>55</sup> The quality and effectiveness of an appellant's brief are not contingent on the length of the submissions, but on the cogency and clarity of the arguments

<sup>49</sup> *Id.*, para. 8.

<sup>50</sup> *Id.*, para. 12.

<sup>51</sup> Motion for Extension of Word Limit, para. 9.

<sup>52</sup> *Prosecutor v. Enver Hadžihasanović, Amir Kubura*, IT-01-47-A, Decision on Defence Motion on Behalf of Enver Hadžihasanović Seeking Leave to Exceed Words [*sic*] Limit for the Appeal Brief, 22 January 2007, p. 3; *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Decision on Defence Motion for Extension of Word Limit for Defence Appellant's Brief, 6 October 2006, p. 3 ("*Orić* Decision").

<sup>53</sup> *Prosecutor v. Sefer Halilović*, Decision on Motion for Extension of Number of Words for Respondent's Brief, 14 July 2006, pp. 3-4.

<sup>54</sup> *Prosecutor v. Radoslav Brdanin*, IT-99-36-A, Decision on Appellant's Motion for Extension of Time Limit to File a Consolidated Brief and For Enlargement of Page Limit, 22 June 2005, para. 12.

<sup>55</sup> In the *Orić* Decision, the Appeals Chamber stated at p. 3 that "[...] although this appeal raises important legal and factual issues, the Defence is required to demonstrate exceptional circumstances which distinguish this case and necessitate an extension of the prescribed word limits."

presented.<sup>56</sup> In the instant case the Appeal is somewhat unnecessarily repetitive.<sup>57</sup> Also, the discussion of certain related issues extending over numerous paragraphs could be consolidated into fewer paragraphs, and more concise phrasing used throughout the Appeal as a whole.<sup>58</sup> In view of the foregoing therefore, the Appellant's request for extension of the word limit is, by majority, Judge Morrison dissenting, denied.

25. The Appellant's Book of Authorities cites 113 legal authorities, 41 of which are from the Tribunal, five from the International Criminal Tribunal for Rwanda ("ICTR"), and the remainder from the Special Court for Sierra Leone, the European Court for Human Rights, the United Kingdom, Ireland, the United States of America, Canada, South Africa and Australia.<sup>59</sup> Regarding the *Amicus* Prosecutor's request that the Appellant's Book of Authorities be struck for failure to file copies of these authorities, the Appeals Chamber recalls that paragraph 9 of the Practice Direction on Formal Requirements for Appeals from Judgement provides that Tribunal and ICTR authorities need not be provided, but that all other authorities shall be provided in an authorised version complete with English or French translations where the originals are not in one of the languages of the Tribunal. In view of the foregoing therefore the Appellant shall provide the *Amicus* Prosecutor with copies of all authorities cited in the Appellant's Book of Authorities, with the exception of those from the Tribunal and the ICTR.

#### **VI. *Amicus* Motion to Exceed Word Limit**

26. The *Amicus* Prosecutor requests an extension of 6,000 words in order to respond to the Appellant's 30,700 word Appeal.<sup>60</sup> However, in view of the fact that the Appeals Chamber has denied the Appellant's Motion for Extension of Word Limit in its entirety, and given that the Practice Direction on the Length of Briefs and Motions follows the principle of allowing a respondent to file a brief of the same length as an appellant's brief,<sup>61</sup> the *Amicus* Motion to Exceed Word Limit is denied.

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<sup>56</sup> *Id.*

<sup>57</sup> Thus, for example, para. 62 of the Appeal Brief in essence repeats para. 57. Similarly, as the Prosecution correctly observes at para. 20 of the *Amicus Curiae* Prosecutor's Response, para. 196 of the Appeal Brief repeats verbatim an extract from an interview previously quoted at para. 172.

<sup>58</sup> For example, paras 57, 59, 63 and 64 are somewhat repetitive in substance and the phrasing used could be more concise.

<sup>59</sup> The Appellant's Book of Authorities cites two authorities from the Special Court for Sierra Leone, 27 from the European Court for Human Rights, 15 from the United Kingdom, one from Ireland, six from the United States, one from Canada, two from South Africa and 13 from Australia.

<sup>60</sup> *Amicus* Motion to Exceed Word Limit, para. 8.

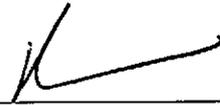
<sup>61</sup> *Orić* Decision, p. 3; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Decision on Prosecution's Urgent Motion for Extension of Page Limit, 5 April 2004, p. 2.

## VII. Disposition

27. For the foregoing reasons:

- (a) The *Amicus* Motion is hereby **GRANTED** in part.
- (b) The Appellant is **ORDERED** to re-file her notice of appeal no later than 13 November 2009, as directed above in accordance with the requirements of Rule 108 of the Rules and paragraph 1 of the Practice Direction on Formal Requirements for Appeals from Judgement.
- (c) The Appellant's Motion for Extension of Word Limit is, by majority, Judge Morrison dissenting, **DENIED**.
- (d) The Appellant is, by majority, Judge Morrison dissenting, **ORDERED** to re-file her appeal brief, which shall not exceed 9,000 words, no later than 20 November 2009.
- (e) The Appellant is **ORDERED** to re-file her Book of Authorities which shall contain copies of all authorities cited, with the exception of authorities from the Tribunal and the ICTR, in either of the working languages of the Tribunal.
- (f) The *Amicus* Motion to Exceed Word Limit is **DENIED**.
- (g) The *Amicus* Prosecutor is **ORDERED** to file his response, not exceeding 9,000 words, no later than 30 November 2009.
- (h) The Appellant shall file a reply, if any, no later than 4 December 2009.
- (i) The Appellant shall designate the *Amicus* Prosecutor as the Respondent on all filings in the present case, unless there is a specific reason for an *ex parte* filing.
- (j) The Appellant's Motion is **DENIED**.

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



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Judge Patrick Robinson  
Presiding

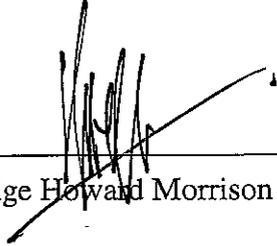
Dated this 6th day of November 2009,  
At The Hague,  
The Netherlands

**[Seal of the Tribunal]**

**DISSENTING OPINION OF JUDGE HOWARD MORRISON**

I agree that the word limit requested by the Appellant, and the corresponding request for an equal increase by the respondent, was grossly in excess of what is required to prepare a full and proper argument. However, it seemed to me that the arguments advanced potentially justified an increase in the allowable limit. The limit I would have imposed was one of 12,000 words for each party.

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



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Judge Howard Morrison

Dated this 6<sup>th</sup> day of November 2009,  
At The Hague,  
The Netherlands

**[Seal of the Tribunal]**