

IT-03-68-A
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30 January 2007

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**UNITED
NATIONS**



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: 30 January 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: 30 January 2007

PROSECUTOR

v.

NASER ORIĆ

**DECISION ON THE PROSECUTION'S MOTION TO STRIKE
PORTIONS OF DEFENCE BOOK OF AUTHORITIES**

Office of the Prosecutor:

Ms. Christine Dahl

Counsel for Naser Orić:

Ms. Vasvija Vidović
Mr. John Jones

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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 (“International Tribunal”), is seized of “The Prosecution Motion to Strike Portions of the Defence Book of Authorities” filed on 13 November 2006 (“Prosecution Motion”). Counsel for Naser Orić (“Appellant”) filed a response opposing the Prosecution Motion on 23 November 2006.¹ The Prosecution did not file a reply.

Background

2. On 30 June 2006, Trial Chamber II convicted the Appellant of two counts of violations of the laws or customs of war under Articles 3 and 7(3) of the Statute of the International Tribunal, and acquitted him of four counts of violations of the laws or customs of war under Articles 3, 7(1) and 7(3) of the Statute. He was sentenced to 2 years’ imprisonment.² Both the Prosecution and Appellant have filed appeals challenging the Trial Judgment.³ On 16 October 2006, the Appellant filed his “Defence Appellant’s Brief” as well as a “Book of Authorities for the Defence Appellant’s Brief” (“Book of Authorities”).

3. The Prosecution Motion requests the Appeals Chamber to strike out a compact disk (“CD”) containing 549 electronic files that appear to be excerpts from the record compiled by the Appellant and filed together with its Book of Authorities.⁴ The Prosecution submits that the CD is too voluminous, has not been certified by the Registrar, and does not belong in the Book of Authorities.⁵ According to the Prosecution, prior to submitting a filing in this format, the Appellant should have sought leave from the Appeals Chamber.⁶

4. In response, the Appellant notes that the CD contains electronic copies of Prosecution and Defence exhibits, transcripts, and the Defence Closing Brief of 17 March 2006, the Defence Response to the Prosecution’s Final Brief of 24 March 2006 and the Defence Filing Regarding Authenticity of 10 March 2006 submitted at trial.⁷ The Appellant argues that it prepared the CD in order to be “of utmost assistance to the Appeals Chamber and the Prosecution” and “considered that it would be most helpful to the Chamber to have not only [an] electronic copy of all the exhibits

¹ Defence Response to “The Prosecution Motion to Strike Portions of the Defence Book of Authorities”, 23 November 2006 (“Defence Response”).

² See *Prosecutor v. Naser Orić*, Case No. IT-03-68-T, Judgement, 30 June 2006 (“Trial Judgement”), paras 782-784.

³ See Prosecution’s Notice of Appeal, 31 July 2006; Defence Notice of Appeal, 5 October 2006.

⁴ Prosecution Motion, para. 1.

⁵ Prosecution Motion, para. 1.

⁶ Prosecution Motion, para. 2.

⁷ Defence Response, para. 4.

referred to in the [Defence Appellant's Brief], but to have them in folders *organised ground-by-ground for maximum ease of reference*.”⁸ The copies of transcripts and pleadings at trial were included in the CD for the same purpose.⁹ The Appellant contends that, in any event, he has provided precise references to exhibits and transcript pages in his Defence Appellant's Brief and thus, the Prosecution has shown no prejudice caused to it by having the CD at its disposal.¹⁰ The Appellant adds that the CD is not meant to be a substitute for this practice or for the Registrar's certification of the record.¹¹

Discussion

5. The Appeals Chamber notes that a book of authorities is produced in order to assist the Appeals Chamber in its consideration of an appeal,¹² or the other party in its work,¹³ by containing, for reference purposes, the source materials put forward by name and citation in an appellant's brief in support of the arguments made in that brief.¹⁴ It is not an appendix to a party's brief and should not contain any factual or legal arguments.¹⁵ Similarly, a delayed receipt of a book of authorities will generally not constitute good cause for extending a time limit for a particular filing.¹⁶

6. While a Chamber may, *proprio motu*,¹⁷ or if requested by the filing party,¹⁸ make an order regarding the validity of a particular book of authorities, an objection by an opposing party, particularly in relation to the book of authorities containing readily available and public authorities, will normally be uncalled for. In the present case, the objection primarily relates to the authenticity of excerpts from the record. The Appeals Chamber notes that these are furnished to Chambers by the Registrar, whose responsibility it is to supply the Judges of the Appeals Chamber and the parties with a sufficient number of certified copies of the record on appeal.¹⁹ It is for this reason not usually necessary to include within a book of authorities copies of the Tribunal's decisions or excerpts from

⁸ Defence Response, para. 6 (emphasis in original).

⁹ Defence Response, paras 7-9.

¹⁰ Defence Response, paras 10 and 12.

¹¹ Defence Response, para. 12.

¹² *Prosecutor v. Slobodan Milošević*, Case No. IT-99-37-AR73; IT-01-50-AR73; IT-01-51-AR73, Decision on Motion by Prosecution for Clarification or Alternative Relief, 25 January 2002 (“*Milošević Decision*”), para. 4.

¹³ *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Decision on “Defence Request for Variation of Time Limit to File Response to Prosecution's Appeal Brief” 13 June 2005 (“*Strugar Decision*”), p. 3.

¹⁴ *Milošević Decision*, para. 4.

¹⁵ *Milošević Decision*, para. 4.

¹⁶ *Strugar Decision*, p. 3.

¹⁷ *See Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-A, Scheduling Order, 7 September 2000 (“*Kupreškić et al. Scheduling Order*”), p. 3.

¹⁸ *See Milošević Decision*, para. 4.

¹⁹ Rules 81, 109, 110 and 117 of the Rules of Procedure and Evidence of the International Tribunal.

the record of the Tribunal's cases.²⁰ However, where the International Tribunal's decisions or record of proceedings are included in a book of authorities, the Appeals Chamber will still consult the Registrar's certified copies. Therefore, in these circumstances, there can be no prejudice to either party by the Appellant's filing of his Book of Authorities.

FOR THE FOREGOING REASONS, the Appeals Chamber

DISMISSES the Prosecution Motion;

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



Judge Fausto Pocar
Presiding Judge

Dated this 30th day of January 2007,
At The Hague, The Netherlands.

[Seal of the International Tribunal]

²⁰ *Milošević* Decision, para. 4. See also *Kupreškić et al.* Scheduling Order, p. 2.