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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-04-82-A

Date: 25 November 2008

Original: English

BEFORE THE PRE-APPEAL JUDGE

Before: **Judge Mehmet Güney, Pre-Appeal Judge**

Registrar: **Mr. Hans Holthuis**

Order of: **25 November 2008**

PROSECUTOR

v.

LJUBE BOŠKOSKI
JOHAN TARČULOVSKI

PUBLIC

DECISION ON LJUBE BOŠKOSKI'S DEFENCE MOTION FOR EXTENSION OF WORD LIMIT

Office of the Prosecutor
Mr. Paul Rogers

Counsel for Ljube Boškoski
Ms. Edina Rešidović and Mr. Guénaël Mettraux

Counsel for Johan Tarčulovski
Mr. Alan M. Dershowitz, Mr. Nathan Z. Dershowitz, Mr. Antonio Apostolski and Mr. Jordan Apostolski

I, MEHMET GÜNEY, Judge of 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, and Pre-Appeal Judge in this case;[1]

NOTING the Judgement rendered in the present case by Trial Chamber II on 10 July 2008;[2]

NOTING the "Prosecution's Notice of Appeal" filed on 6 August 2008 and the "Prosecution's Appeal Brief" filed confidentially on 20 October 2008 ("Appeal Brief");[3]

BEING SEIZED of the "Boškoski Defence Motion for Extension of Word-Limit" filed on 20 November 2008 ("Motion") by Ljube Boškoski ("Boškoski") seeking leave for a 15,000-word extension of his respondent's brief;[4]

NOTING the "Prosecution Response to Boškoski's Motion for Extension of Word-Limit" filed on 21 November 2008 ("Response") opposing the Motion on the ground that Boškoski has failed to demonstrate the existence of exceptional circumstances;[5]

NOTING that Boškoski submits that his request for an extension of word limit is supported by the following exceptional circumstances:

(i) The Prosecution's failure to address the relevant evidential basis in its Appeal Brief, obliging Boškoski to provide a thorough analysis of the trial record to properly address the Prosecution's submissions and the issues at hand to assist the Appeals Chamber;

(ii) The number of basis upon which the Prosecution's ground of appeal could be dismissed;

(iii) The fact that paragraph 5 of the Practice Direction on Formal Requirements for Appeals from Judgement[6] expressly provides for one category of exceptional circumstances, namely when, as in the present case, the appellant relies on a particular ground of appeal to reverse an acquittal, the respondent supports the acquittal not only on the basis of the failure of the appellant's arguments, but also on additional grounds;

(iv) The impermissible variation of grounds of appeal;

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[1] Order Designating the Pre-Appeal Judge, 17 November 2008.
[2] *Prosecutor v. Ljube Boškoski and Johan Tarčulovski,* Case No. IT-04-82-T, Judgement, 10 July 2008.
[3] The Prosecution filed a public redacted version and a corrected public redacted version of the Appeal Brief on 3 and 4 November 2008, respectively (*see* also Notice of Filing of Corrected Public Redacted Version of Prosecution's Appeal Brief, 4 November 2008).
[4] Motion, para. 7.
[5] Response, paras 1, 8. On 22 November 2008, Counsel for Boškoski informed the Appeals Chamber that he does not intend to seek leave to reply to the Response.
[6] Practice Direction on Formal Requirements for Appeals from Judgement, IT/201, 7 March 2002 ("Practice Direction on Formal Requirements for Appeals from Judgement").

(v) The presentation of arguments and theories that did not form part of the Prosecution case at trial.[7]

NOTING that Boškoski further submits that it is in the Appeals Chamber's interests to have the arguments of the Defence presented as clearly as possible,[8] and that the extension of word limit sought would cause no prejudice to the Prosecution nor create any unfairness;[9]

CONSIDERING that paragraph C(1)(b) of the Practice Direction on the Length of Briefs and Motions[10] provides that the response of an appellee on an appeal from a final judgement of a Trial Chamber will not exceed 30,000 words;

CONSIDERING, however, that pursuant to paragraph C(7) of the Practice Direction on the Length of Briefs and Motions, variations of word limits may be authorized if requested in advance and supported by an explanation of the exceptional circumstances that justify the oversized filing;

CONSIDERING that the number of basis upon which the grounds of appeal could be rejected, the variation of grounds of appeal without leave and the presentation of arguments and theories that did not form part of the Prosecution case at trial are not in themselves factors that constitute exceptional circumstances on appeal;[11]

NOTING that paragraph 5 of the Practice Direction on Formal Requirements for Appeals from Judgement provides that "if an Appellant relies on a particular ground to reverse an acquittal, the Respondent may support the acquittal on additional grounds";

CONSIDERING that this provision does not imply that an exceptional circumstance in the sense of paragraph C(7) of the Practice Direction on the Length of Briefs and Motions automatically exists when a respondent supports the acquittal on additional grounds;

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[7] Motion, para. 8.
[8] Motion, para. 9, referring to *Prosecutor v. Sefer Halilović,* Case No. IT-01-48-A, Decision on Motion for Extension of Number of Words for Respondent's Brief, 14 July 2006 ("*Halilović* Decision"), p. 4.
[9] Motion, para. 10.
[10] 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").
[11] *Halilović* Decision, pp. 3-4. *See mutatis mutandis, Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-A, Decision on Defence Motion on Behalf of Enver Hadžihasanović Seeking Leave to Exceed Words Limit for the Appeal Brief, 22 January 2007 ("*Hadžihasanović* Decision"), p. 3, which states that "the number of grounds and sub-grounds on appeal [...] does not in itself provide sufficient reason for an enlargement of word limits". *See* also *Prosecutor v. Naser Orić,* Case No. IT-03-68-A, Decision on Defence Motion for Extension of Word Limit for the Defence Appellant's Brief, 6 October 2006 ("*Orić* Decision"), p. 3; *Prosecutor v. Radoslav Brđanin,* Case No. IT-99-36-A, Decision on Appellant's Motion for Extension of Time to File a Consolidated Brief and for Enlargement of Page Limit, 22 June 2005, para. 11.

CONSIDERING that while Boškoski provides the Appeals Chamber with a prospective draft Table of Contents,[12] he does not identify which are the purported additional grounds;

CONSIDERING that the length of the Appeal Brief is of 11,236 words, and that according to paragraph C(1)(b) of the Practice Direction on the Length of Briefs and Motions, Boškoski benefits from an additional 18,764 words to articulate his arguments in response;

CONSIDERING further that while it is in the interests of the Appeals Chamber to have the arguments of the Defence presented as clearly and fully as possible, the quality and effectiveness of a respondent's brief does not depend on the length but on the clarity and cogency of the presented arguments and that, therefore, excessively long briefs do not necessarily serve the cause of efficient administration of justice;[13]

CONSIDERING accordingly that the necessity for the Defence to provide a thorough analysis of the trial record does not warrant in itself an extension of words;[14]

CONSIDERING therefore that Boškoski has not demonstrated the existence of exceptional circumstances requiring an enlargement of word limit;

FOR THE FOREGOING REASONS,

DISMISS the Motion.

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

Done this 25th day of November 2008,
At The Hague,
The Netherlands.

Judge Mehmet Güney
Pre-Appeal Judge

[Seal of the International Tribunal]

[12] Motion, Annex A.
[13] *Halilović* Decision, p. 4; *Prosecutor v. Milan* Martić, Case No. IT-95-11-A, Decision on Motion for Extension of Time and Enlargement of Word Limit, 21 September 2007, para. 8; *Hadžihasanović* Decision, p. 3; *Orić* Decision, p. 3.
[14] *See Halilović* Decision, p. 4, which states that "the importance, the scope **and** the number of issues raised in the Prosecution's appeal, **and** the necessity for the Defence to provide a thorough analysis of the trial record warrant a reasonable extension of the number of words" (emphasis added). *See* also *Hadžihasanović* Decision, pp. 2-3, rejecting an enlargement of word limit based on the "need to address numerous exhibits and testimonies".