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-95-14-R
		Date:	23 November 2006
		Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mehmet Güney
Judge Liu Daqun
Judge Andrésia Vaz
Judge Wolfgang Schomburg

Registrar: **Mr. Hans Holthuis**

Decision of: **23 November 2006**

PROSECUTOR

v.

TIHOMIR BLAŠKIĆ

Public Redacted Version

DECISION ON PROSECUTOR'S REQUEST FOR REVIEW OR RECONSIDERATION

The Office of the Prosecutor

Ms. Carla Del Ponte

Counsel for Tihomir Blaškić

Mr. Anto Nobilo
Mr. Russell Hayman
Mr. Hoyt Sze

1. The Appeals Chamber of the International Criminal 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 "International Tribunal", respectively) is seized of a "Request for Review or Reconsideration" filed confidentially by the Prosecution on 29 July 2005 with the accompanying "Corrigendum to the Prosecutor's 'Request for Review or Reconsideration'" filed confidentially on 10 July 2006 and "Further Corrigendum to 'Prosecution Request for Review or Reconsideration'" filed on 7 August 2006 (collectively, "Request").[1]

I. BACKGROUND

2. On 3 March 2000, Trial Chamber I rendered its judgement against Tihomir Blaškić ("Blaškić") finding him guilty of several crimes against humanity, violations of the laws or customs of war and grave breaches of the Geneva Conventions of 1949.[2] The Trial Chamber found Blaškić responsible for these crimes both individually and as a superior pursuant to Articles 7(1) and 7(3) of the Statute of the International Tribunal and sentenced him to 45 years of imprisonment.[3] The convictions and the sentence related to crimes that were committed between 1 May 1992 and 31 January 1994 in several towns and villages in the Vitez, Busovača and Kiseljak municipalities of the Lašva Valley region of Central Bosnia during the conflict between the Croatian Defence Council ("HVO") and the Bosnian Muslim Army ("ABiH"). Blaškić was the Commander of the HVO Armed Forces in Central Bosnia at the time the crimes at issue were committed. The Trial Chamber found, *inter alia,* that he ordered the attack on the village of Ahmići with the awareness that crimes would be committed and that he was also responsible for crimes committed in the village of Grbavica.[4]

3. Blaškić filed his Notice of Appeal on 17 March 2000. On 29 July 2004, following the admission and consideration of a substantial body of new evidence that was not available at trial,[5] the Appeals Chamber rendered its judgement and reversed a number of Blaškić's convictions, including those relating to responsibility for crimes committed in Ahmići and Grbavica.[6] As a result, Blaškić's sentence was reduced to nine years of imprisonment. Immediately following the Appeals

[1] The public redacted version of the Request was filed on 10 July 2006.
[2] *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Judgement, rendered on 3 March 2000 and filed on 20 April 2000 ("Trial Judgement"), pp. 267-269.
[3] *Id.*, pp. 267, 269-270.
[4] *Id.*, paras. 437-438, 495,
[5] *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Scheduling Order, 31 October 2002; Decision on Evidence, 31 October 2003 ("Decision of 31 October 2003"); and Decision on Additional Evidence confidentially rendered on 31 October 2003. *See also Prosecutor v. Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004 ("Appeals Judgement"), para. 32.
[6] Appeals Judgement, pp. 257 and 258.

Judgement, Blaškić filed a request for early release as he had been detained since 1 April 1996,[7] which was granted by the President of the International Tribunal the same day and became effective on 2 August 2004.[8]

4. The Prosecution subsequently filed its Request pursuant to Article 26 of the Statute of the International Tribunal ("Statute") and Rule 119 of the Rules of Procedure and Evidence ("Rules"). The Prosecution argues that the Appeals Chamber should, in light of six new facts discovered by it, review the decision in the Appeals Judgement overturning the Trial Chamber's finding that Blaškić was responsible for ordering crimes in the village of Ahmići on 16 April 1993.[9] In addition, the Prosecution argues that the Appeals Chamber should review its decision during the appeal proceedings to reject the admission of Witness AT's *Kordić and Čerkez*[10] trial testimony as rebuttal material with regard to events at Ahmići.[11] Finally, the Prosecution submits that the Appeals Chamber should review its holding in the Appeals Judgement overturning the Trial Chamber's finding that Blaškić was responsible for crimes committed in the village of Grbavica.[12] In the alternative, the Prosecution requests the Appeals Chamber to apply its inherent power to reconsider its finding in the Appeals Judgement that Blaškić was not responsible for ordering crimes committed in Ahmići.[13]

5. On 10 November 2005, Counsel for Blaškić ("Defence") filed its confidential "Defense Response to Prosecutor's Request for Review or Reconsideration" ("Response").[14] In the Response, the Defence argues that neither review nor reconsideration of any part of the *Blaškić* Appeals Judgement is appropriate as the Prosecution has failed to satisfy the legal tests for review and reconsideration.[15] The "Prosecutor's Reply to Defense's 'Response to Prosecutor's Request for

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[7] *Id.*, p. 258. *See also Prosecutor v. Blaškić*, Case No. IT-95-14-A, Request for Early Release from Detention, 29 July 2004.
[8] *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Order of the President on the Application for the Early Release of Tihomir Blaškić, 29 July 2004.
[9] Request, paras. 11-111.
[10] *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-T, Judgement, 26 February 2001 ("*Kordić and Čerkez* Trial Judgement").
[11] Request, paras. 132-144. During the appeal proceedings, Blaškić filed four Motions pursuant to Rule 115 of the Rules and the Prosecution filed its rebuttal material. Amongst the rebuttal material was the testimony of Witness AT, given in the *Kordić and Čerkez* trial. That testimony dealt with the HVO operations in the Vitez Municipality on 16 April 1993, the HVO attack on the village of Ahmići and Blaškić's role in these events. On 31 October 2003, the Appeals Chamber rendered a confidential and a public decision on evidence deciding which items of additional evidence and rebuttal material were to be admitted, and rejected admission of the testimony of Witness AT in its public decision. *See* Decision of 31 October 2003.
[12] Request, paras. 112-131.
[13] *Id.*, paras. 145-190.
[14] The public redacted version of the Response was filed on 21 September 2006.
[15] Response, paras. 1-3.

Review or Reconsideration'" was filed confidentially on 25 November 2005.[16] On 1 February 2006, the Pre-Review Judge issued a "Decision on Word Limits in Review Proceedings" ("Decision on Word Limits"), ordering the Prosecution to withdraw its reply of 15,741 words and re-file a revised Reply of not more than 9,000 words.[17] On 13 February 2006, the "Prosecutor's Revised Reply to Defense's 'Response to Prosecutor's Request for Review or Reconsideration'" was filed confidentially and, on 25 May 2006, the Prosecution filed its "Corrigendum to Prosecutor's Revised Reply" (collectively, "Reply").[18]

II. THE REQUEST FOR REVIEW

A. Applicable Law

6. The Appeals Chamber recalls that pursuant to Article 26 of the Statute:

> [w]here a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal an application for review of the judgement.

Rule 119(A) governs the filing of an application for review of a judgement by a party and stipulates, in relevant part, that:

> [w]here a new fact has been discovered which was not known to the moving party at the time of the proceedings before a Trial Chamber or the Appeals Chamber and could not have been discovered through the exercise of due diligence, the defence or, within one year after the final judgement has been pronounced, the Prosecutor, may make a motion to that Chamber for review of the judgement.
> [. . .]

Rule 120 provides that, upon preliminary examination of a party's Rule 119(A) motion for review, "[i]f a majority of Judges of the Chamber constituted pursuant to Rule 119 agree that the new fact, if proved, could have been a decisive factor in reaching a decision, the Chamber shall review the judgement, and pronounce a further judgement after hearing the parties."

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[16] On 26 October 2005, the Pre-Review Judge granted a Defence motion requesting extension of time to file its response, *see Prosecutor v. Blaškić*, Case No. IT-95-14-R, Decision on Request for Extension of Time and Motion to Enlarge Time, 26 October 2005. The Defence was ordered to file its response 15 days after the filing of that decision. The Defence then sought another extension, but this motion was denied by the Pre-Review Judge, *see Prosecutor v. Blaškić*, Case No. IT-95-14-R, Decision on Motion for Extension of Time, 9 November 2005.
[17] Decision on Word Limits, p. 6.
[18] The public redacted version of the Reply was filed on 4 September 2006.

7. The combined effect of Article 26 of the Statute and Rules 119 and 120 of the Rules is such that for a moving party to succeed in persuading a Chamber to review its judgement, the party must first satisfy the following cumulative requirements:[19]

a) there is a new fact;
b) the new fact was not known to the moving party at the time of the original proceedings;
c) the failure to discover the new fact was not due to a lack of due diligence on the part of the moving party; and
d) the new fact could have been a decisive factor in reaching the original decision.

8. In "wholly exceptional circumstances", review may still be permitted even though the new fact was known to the moving party, or was discoverable by it through the exercise of due diligence.[20] In such a case, where a Chamber "is presented with a new fact that is of such strength that it *would* affect the verdict [...]," it may determine that review of its judgement is necessary because the impact of the new fact on the decision is such that to ignore it would lead to a miscarriage of justice.[21]

9. Before examining each of the six "new facts" alleged by the Prosecution to determine whether they meet the test for review under Rule 119 listed above, the Appeals Chamber turns to consider two preliminary matters raised in the parties' filings related to the applicable law in a review proceeding.

1. The Determination of a "New Fact"

10. The first issue before the Appeals Chamber relates to the appropriate legal standard for determining whether a fact is "new" according to the jurisprudence of the International Tribunal. The Prosecution, relying on the *Barayagwiza* Review Decision, argues that when deciding whether a fact is "new", the issue for determination is not whether the "broader factual issue" was considered or litigated in the original proceedings, but whether the "specific fact was in issue before the Chamber who rendered the decision in question."[22] Thus, while certain broader issues had been litigated in *Barayagwiza* by the first Appeals Chamber, namely Cameroon's willingness to transfer

[19] *See Prosecutor v Josipović*, Case No. IT-95-16-R2, Decision on Motion for Review, 7 March 2003 para. 12 ("*Josipović* Review Decision"). *See also Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Request for Review, 30 June 2006 ("*Niyitegeka* Review Decision"), paras. 6-7; *Prosecutor v. Žigić*, Case No. IT-98-30/1-R.2, Decision on Zoran Žigić's Request for Review under Rule 119, 25 August 2006, para. 8; *Prosecutor v. Radić*, Case No. IT-98-30/1-R.1, Decision on Defence Request for Review, 31 October 2006 ("*Radić* Review Decision"), para. 10.
[20] *Josipović* Review Decision, para. 13, *citing Barayagwiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Decision on Prosecutor's Request for Review or Reconsideration, 31 March 2000 ("*Barayagwiza* Review Decision"), para. 15; *Niyitegeka* Review Decision, para. 7; *Radić* Review Decision, para. 11.
[21] *Prosecutor v Tadić*, Case No. IT-94-1-R, Decision on Motion for Review, 30 July 2002 ("*Tadić* Review Decision"), paras. 26, 27 (emphasis added).
[22] Request, para. 10.

Barayagwiza to the International Tribunal and the cause for delay in bringing Barayagwiza before the Tribunal for his first appearance, specific facts relating to these matters were not addressed and were thus considered to be "new" in the review proceeding. For example, evidence demonstrating that Cameroon was not prepared to effect Barayagwiza's transfer due to elections and evidence showing that Defence Counsel assented to delay in the initial appearance, were considered to be new facts.[23]

11. In response, the Defence submits that the Prosecution misconstrues the holding in *Barayagwiza* with regard to the meaning of a new fact. According to the Defence, the basis for the finding of a new fact in that decision was that the fact was not in issue in the original proceedings and this is the only appropriate standard. Thus, the Appeals Chamber in the *Barayagwiza* Review Decision held that because the underlying decision had not considered whether Cameroon was willing to transfer Barayagwiza, the fact that it was unwilling to do so was new.[24] The Defence further submits that the distinction made by the Prosecution between "broad facts" and "specific facts" is not supported by any authority in the jurisprudence of the International Tribunal and is only a means to circumvent the correct standard. The Defence contends that use of this distinction to determine whether a fact is new would open the floodgates to Rule 119 motions.[25]

12. In reply, the Prosecution argues that the Defence misses the point. The key to defining a "new fact" on review lies in defining the fact in issue in the earlier proceedings.[26] The Prosecution notes that in the original *Barayagwiza* proceedings, a scheduling order was issued prior to the appeal hearing calling on the parties to address the Appeals Chamber with all relevant documentation in order to explain, among other things, the reasons for any delay between the request for transfer and the actual transfer of Barayagwiza to the International Tribunal. Thus, the broader issue of the reasons for delay was considered by the Appeals Chamber prior to the review proceedings. Yet, the Chamber concluded in the review that new evidence of specific matters, such as Cameroon's unwillingness to effect Barayagwiza's transfer before 24 October 1997, were found to be new facts even though they related to the wider issue of delay, which had been previously litigated.[27]

13. The Prosecution further contends that previous decisions before the Appeals Chamber on review "have uniformly supported a focus on very specific issues addressed at trial" and refutes the Defence's "opening the floodgates to Rule 119 motions" argument by noting that past review

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[23] *Id.*, paras. 8-9.
[24] Response, paras. 13-14.
[25] *Id.*, para. 15.
[26] Reply, para. 9, citing to the *Josipović* Review Decision, para. 19.
[27] *Id.*, paras. 8-13.

decisions have actually rejected review applications while adopting such an approach.[28] This approach, according to the Prosecution, is not only "uniform but principled" because it "preserves the doctrine of *res judicata* by ensuring that factual findings are not re-litigated with repetitive evidence" while, at the same time, maintaining "the importance and relevance of the review procedure" by "allowing the consideration of new features that relate to more general contentious issues" raised in the original proceedings.[29] The Prosecution notes that new facts raised in review proceedings will always have some relationship to more general contentious issues previously litigated otherwise, "they would be simply irrelevant."[30] However, this should not preclude the availability of review.

14. The Appeals Chamber recalls that a new fact within the meaning of Article 26 of the Statute and Rules 119 and 120 of the Rules refers to "new information of an evidentiary nature of a fact that was not in issue during the trial or appeal proceedings".[31] This "means that it must not have been among the factors that the deciding body could have taken into account in reaching its verdict."[32] In other words, "[w]hat is relevant is whether the deciding body [...] knew about the fact or not" in arriving at its decision.[33]

15. In light of its past jurisprudence, the Appeals Chamber considers that the test for determining whether a fact proffered in a review proceeding is actually "new" is as follows: the key concern is that it must not have been in issue during the original proceedings. While the Prosecution is correct to note that the definition of the facts in the original proceedings will affect the availability of the review procedure,[34] the Prosecution implies that it is appropriate for a Chamber, when considering a review request, to characterize the facts previously at issue in a pre-determined way, in other words, by maintaining a narrow focus on previously litigated facts.

16. The Appeals Chamber does not agree. By arguing that a review Chamber should consistently maintain a narrow focus, the Prosecution suggests that it is incumbent upon the review Chamber to maintain the "relevance" of review proceedings by increasing the likelihood that they will be more available for moving parties. Such is not the case. It is the obligation of the moving party to satisfy

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[28] *Id.*, para. 9, 14. By way of example, the Prosecution recounts *Prosecutor v. Delić*, Case No. IT-96-21-R-R119, Decision on Motion for Review, 25 April 2002 ("*Delić* Review Decision"), and the *Josipović* Review Decision. *See id.*, paras. 14-15.
[29] *Id.*, para. 17.
[30] *Ibid.*
[31] *Prosecutor v Jelisić*, Case No. IT-95-10-R, Decision on Motion for Review, 2 May 2002 ("*Jelisić* Review Decision"), p. 3.
[32] *Tadić* Review Decision, para. 25.
[33] *Ibid.; see also Niyitegeka* Review Decision, para. 6.

the review Chamber that a review proceeding should be made available to it by meeting the requirements under Rule 119.

17. More importantly, the Prosecution misunderstands the process by which a Chamber determines the facts that were in issue during the original proceedings. In a review proceeding, the moving party defines for the Chamber its purported "new facts." It is then for the review Chamber to compare those alleged new facts against the previously litigated facts as found in the plain language of the final judgement or decision at issue and the record underlying that final judgement or decision. Where the "new facts" are identical to facts already at issue, then review under Rule 119 is not available. Of course, at times, the facts previously litigated are not entirely clear and they could be interpreted more broadly or narrowly *vis-à-vis* the alleged new facts. In those cases, the review Chamber does not, *a priori*, decide to interpret the previous facts more narrowly. It will, after considering the final judgement or decision and underlying record, weigh the arguments of the parties in order to determine the most appropriate characterization of the facts as they were considered by the original Chamber for purposes of comparing them to the purported "new facts."

18. The Appeals Chamber does not consider that its past jurisprudence supports the Prosecution's position that, as a rule, review Chambers have maintained a narrow focus on previously litigated facts despite there being "broad facts" that were at issue in the original proceedings to which the proffered "new facts" were related. In other words, the Appeals Chamber does not find that past review Chambers have been inclined to compare alleged "new facts" against "narrow facts" previously litigated rather than against related "broad facts" in the original proceedings. Rather, the focus has rightly been on looking to the previously litigated facts that are most relevant *vis-à-vis* the alleged "new fact", whether "broad" or "narrow", to determine whether they preclude the availability of a review.

2. The Types of Decisions Subject to Review

19. The second issue before the Appeals Chamber relates to the types of decisions that may be subject to review proceedings under Article 26 of the Statute and Rules 119 and 120 of the Rules. The Prosecution notes that "upon it being decided that the new facts, if proved, could have been a decisive factor in 'reaching the decision'", the Chamber shall review the part of the judgement to

[34] *See Josipović* Review Decision, para. 19 ("It is therefore the definition of the fact in issue at trial which will determine the availability of the review procedure.").

which the new facts are relevant and pronounce a new judgement.[35] In doing so, the Prosecution contends that the Chamber should also review all relevant decisions made prior to the judgement that are affected by the new facts just as it reviews all facts in the original judgement "accepted or rejected if a different conclusion could have been reached in relation to those facts."[36]

20. Thus, in this case, the Prosecution argues that "[i]f any of the first four new facts (1-4) is found, if proved, could affect the verdict, it is submitted that these new facts warrant a review of the Appeals Chamber's Decision of 31 October 2003[37] to reject Witness AT's testimony as rebuttal evidence" to additional evidence that was admitted during the appellate proceedings under Rule 115 "in addition to the ultimate determinations of fact found in the Judgement."[38] The Prosecution submits that the testimony of Witness AT was clearly relevant to rebut the additional evidence put forward by the Defence, "was, on its face, reasonably capable of belief as it was found credible by a Trial Chamber of this Tribunal", and "was reliable for the same reason."[39] Furthermore, the Prosecution claims that the testimony of Witness AT corroborates all of the first four new facts proffered in this review and the factual findings to which they relate in the Appeals Judgement.[40]

21. The Defence contends, in response, that the Prosecution is in effect seeking to introduce Witness AT's testimony from the *Kordić and Čerkez* trial regarding an alleged oral order from Blaškić to commit crimes as a "new fact".[41] However, because that testimony was "previously offered and excluded by the Appeals Chamber" it was "both 'in issue' and 'considered' by the Appeals Chamber" and therefore, "Witness AT's testimony and the purported facts therein are the very paradigm of previously litigated facts."[42] The Defence argues that Rule 119 was not intended to allow the Prosecution "an opportunity to re-litigate failed arguments" such as those with respect to admission of the testimony of Witness AT.[43]

22. The Appeals Chamber recalls that "[t]he jurisprudence of the Tribunal with respect to proceedings under Article 26 of the Statute and Rule 119 is clear": "review is only available with respect to final judgement."[44] A "final judgement" in the sense of those provisions under the Statute

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[35] Request, para. 132.
[36] *Id.*, paras. 132, 144.
[37] *See supra* fn. 11.
[38] Request, paras. 133, 135.
[39] *Id.*, para. 134.
[40] *Id.*, paras. 136-143.
[41] Response, para. 82.
[42] *Id.*, paras. 82-83.
[43] *Id.*, para. 83.
[44] *Josipović* Review Decision, para. 15; *see also Niyitegeka* Review Decision, para. 8; *Tadić* Review Decision, para. 14; *Barayagwiza* Review Decision, para. 49.

and Rules is a decision "which terminates the proceedings; only such a decision may be subject to review."[45] Thus, "[t]he finality of a decision is a pre-requisite to the exercise of review" because, as stated in the *Tadić* Review Decision:

> Review is an extraordinary way of appealing a decision, and its purpose is precisely that of permitting an accused or the Prosecution to have a case re-examined in the presence of exceptional circumstances, even after a number of years have elapsed. Indeed, no time limit is set in the Rules for the filing of a motion for review by an accused, and a time limit of one year is given to the Prosecution.[46]

23. The Appeals Chamber considers that the above cited jurisprudence establishes that the scope of review proceedings before the International Tribunal does not extend to decisions reached during the ongoing proceedings in a case prior to the rendering of the final judgement or final decision. Indeed, in the *Barayagwiza* Review Decision, the Appeals Chamber explicitly held that interlocutory decisions are not subject to review after the rendering of the final judgement or final decision.[47] Review proceedings are, by their very nature, extraordinary and exceptional because they allow for the re-opening of a closed case and thus, are limited to the final judgement or decision in a case, especially in light of the fact that there is no time-limit for an accused seeking review. If decisions reached prior to the final judgement or final decision were also subject to review, the outcome of a case would always be in question and the parties would never reach resolution. Thus, the Appeals Chamber does not agree with the Prosecution that it should review the Decision of 31 October 2003, issued before the Appeals Judgement to exclude the testimony of Witness AT as rebuttal material, even if that testimony is corroborative of four of the alleged new facts proffered by the Prosecution in this review. In this case, the Appeals Chamber is clearly limited under the Statute and Rules of the International Tribunal to reviewing the Appeals Judgement if the Prosecution satisfies the preliminary requirements of Rules 119 and 120.

B. The Alleged "New Facts"

24. The six new facts alleged by the Prosecution are as follows:

> (1) Blaškić issued an oral order to the Vitez Municipal Government on 15 April 1993 to conduct preparations during the night of 15-16 April 1993 for the attack scheduled for 16 April 1993 in Vitez Municipality;

[45] *Barayagwiza* Review Decision, para. 49.
[46] *Tadić* Review Decision, para. 24.
[47] *Barayagwiza* Review Decision, fn. 64.

(2) A meeting was held on 15 April 1993 by the Vitez Municipal Government at which "Conclusions" were reached to try to postpone the attack which had been ordered by Blaškić as the Commander of the Central Bosnia Operative Zone ("CBOZ");

(3) Blaškić was approached during the evening of 15 April 1993 by members of the Vitez Municipal Government and asked to stop the attack, but Blaškić declined and, as a result, General Praljak and Dario Kordić were approached;

(4) Oral orders from Blaškić in relation to the attack on Ahmići included orders to commit crimes;

(5) The MUP Report filed by Blaškić as Exhibit 1 to the Second Rule 115 Motion and relied upon extensively by the Appeals Chamber had been manipulated and altered from the original MUP report; and

(6) On the order of Blaškić, the Vitezovi were involved in the attack on Grbavica in September 2003.[48]

The Appeals Chamber now turns to consider each of these alleged new facts to determine whether they meet the preliminary requirements under Rules 119 and 120 such that review of the Appeals Judgement in this case is warranted.

1. The Vitez Municipal Government's Activities on 15 April 1993

25. Because the first three of the Prosecution's alleged new facts all relate to information received and action taken by the Vitez Municipal Government a day prior to the attack on Ahmići on 16 April 1993, and the Prosecution offers the same documents as new evidentiary information in support of these alleged facts, the Appeals Chamber will consider them together before turning to the Prosecution's fourth, fifth and sixth alleged new facts.

26. The Prosecution submits the following three documents as evidence of its alleged new facts with regard to the Vitez Municipal Government's activities: (1) Conclusions of the Extraordinary Session of the Government of Vitez held on 15 April 1993 at 22:00 hours ("Conclusions");[49] (2) a statement of Nikola Križanović dated 29 November 2004 ("Križanović statement");[50] and (3) transcripts of an interview with Witness BR-A [REDACTED].[51]

[48] Request, para. 2.
[49] *Id.*, Annexes 1 and 2, Exs. BR1(a) and BR2(a).
[50] *Id.*, Annex 3, Ex. BR3.
[51] *Id.*, Annex 4, Ex. BR4.

a. Whether the Alleged Facts are "New"

27. The Prosecution contends that in the *Blaškić* case, there was no fact in issue as to whether Blaškić issued an oral order to the Vitez Municipal Government with regard to preparing for an attack in Vitez municipality on 16 April 1993 as a result of his oral order to attack Bosnian Muslims within the Vitez municipality. Rather "[t]he only reference to municipal government authorities was Blaškić's testimony when he states that he met with concerned civilian authorities from Vitez on the night of 15 April 1993 and told them that 'we did not wish nor had we planned any combat operations.'"[52] Likewise, the Prosecution asserts that the fact that a meeting was held by the Vitez Government at 22:00 on the evening of 15 April 1993 to formulate a response to the CBOZ order to attack Bosnian Muslims the next day was not an issue of fact in the previous proceedings.[53] Finally, the Prosecution argues that the fact that Blaškić, when approached by members of the Vitez Municipal Government on 15 April 1993 to stop the attack scheduled for the next day declined to do so and, as a result, members of the Vitez Municipal Government then contacted General Praljak and Dario Kordić to try and postpone the attack, is also new.[54]

28. The Defence responds that, in the first place, the Prosecution's Request "contains numerous misstatements concerning the contents of the Vitez Municipal Government Evidence" and that this hearsay evidence does not establish purported new facts as stated by the Prosecution with regard to the activities of the Vitez Municipal Government on 15 April 1993.[55] In particular, the Defence claims that "nothing in the Vitez Municipal Government Evidence establishes the [Prosecution's] proffered facts that: (1) Blaškić ordered the Municipal Government to prepare for an attack (or indeed, that Blaškić ordered the Municipal Government to do anything at all) [. . .]; (2) Blaškić issued any attack order [. . .]; or (3) Blaškić was ever aware of any HVO "attack," much less able to prevent it [. . .]."[56] The Defence further contends that, even if this evidence does support the Prosecution's alleged new facts, it establishes no new facts.[57] In addition, the purported new facts "are irrelevant to the Final Judgement and to this Request, unless they in fact establish that Blaškić ordered the 16 April 1993 attack on Bosnian Muslim civilians in Ahmići. They do not."[58] The Defence argues that "[e]ven assuming *arguendo* that the Vitez Municipal Government Evidence bears some remote relationship with this purported fact, [. . .] additional evidence of a fact at issue

[52] *Id.*, para. 13.
[53] *Id.*, para. 25.
[54] *Id.*, paras. 37-39.
[55] Response, paras. 27-44.
[56] *Id.*, para. 27.
[57] *Id.*, para. 45.
[58] *Id.*, para. 46.

or considered in the original proceedings, but which evidence was not available in those proceedings, is not a new fact."[59]

29. The Prosecution replies that "whether the facts are proved is not the issue at this stage" in the review proceedings and, "[i]f the new fact(s) could be sustained on the evidence if believed, the issue becomes whether the fact—if proved—would have been a decisive factor in the previous judgement."[60] Thus, "[a]rguments about inconsistencies in the evidence or possible alternative interpretations do not alter the present inquiry."[61] Furthermore, the Prosecution contends that even accepting the Defence's interpretation of the evidence with regard to the Vitez Municipal Government such that Blaškić's order was not directed specifically at the municipal government, the evidence "still result[s] in the new fact that the HVO municipal government, upon becoming aware of the Order from CBOZ (Blaškić), tried to postpone the attack" and this fact is "clearly new."[62] Finally, the Prosecution acknowledges that there was litigation at trial as to whether Blaškić ordered the attack on civilians in Ahmići and whether exhibits D267, 268 and 269, which were written orders issued by Blaškić, were offensive or defensive. However, the Prosecution asserts that this is not determinative of the question as to whether its alleged new specific facts that "the Municipal Government was informed of an order from CBOZ, of whom Blaškić was the commander, of an attack in the municipality the next morning, [REDACTED] Kordić and Praljak were not litigated at trial" and are therefore new.[63]

30. The Appeals Chamber considers that, when making its assessment under the requirements of Rules 119 and 120 whether to review its Appeals Judgement, the Prosecution is not required, at this stage in the review proceedings, to prove its alleged new facts. If the Appeals Chamber is satisfied that the preliminary requirements under those Rules are met, including that the new facts, *if proved*,[64] could have been a decisive factor in reaching the Appeals Judgement or would have affected the verdict, it will then grant review. Then, in a second stage, the Appeals Chamber will order the parties to appear before it in order to hear their arguments with regard to establishing proof of the new facts and their resulting impact on the Appeals Judgement. After hearing the parties and examining and weighing the new evidence, it will review the judgement and pronounce a new judgement where necessary.[65] Therefore, because in the present Decision the Appeals

[59] *Id.*, para. 45.
[60] Reply, para. 37.
[61] *Ibid.*
[62] *Id.*, para. 39.
[63] *Id.*, paras. 40-42.
[64] *See* Rule 120 of the Rules.
[65] *See supra* paras. 6, 7.

Chamber is merely concerned with whether the Prosecution has met the preliminary requirements for review under the Rules, it will not consider the Defence's arguments as to whether the new evidentiary information proffered by the Prosecution for demonstrating its alleged new facts amounts to hearsay or fails to establish proof of the alleged new facts. Rather, in examining whether the Prosecution's alleged new facts are indeed new, the Appeals Chamber will consider whether the Prosecution has provided "new information of an evidentiary nature" of the alleged new facts which, *prima facie,* demonstrates those facts.[66]

31. With regard to the first alleged new fact, the Appeals Chamber finds that nothing in the three documents make reference to the issuance of a separate oral order by Blaškić *to the Vitez Municipal Government* to conduct preparations for the attack on Vitez Municipality on 16 April 1993. The Conclusions document states that the Vitez Municipal Government met at 22:00 hours on the night of 15 April 1993 to discuss "the latest ORDER of the Central Bosnia Operations Zone regarding the operation /set/ for 16 April 1993 in Vitez municipality" and subsequently, *they themselves* ordered "[a]ll heads of the Vitez municipal government departments [. . .] to carry out preparations that are in their competence" in accordance with or in the spirit of the CBOZ order.[67] The Križanović statement provides that Križanović attended a meeting of the Government in Vitez on 15 April 1993 at around 22:00 hours [REDACTED].

32. Finally, Witness BR-A states [REDACTED]. The Prosecution failed to offer information of an evidentiary nature in these three documents that "Blaškić issued an oral order to the Vitez Municipal Government on 15 April 1993 to conduct preparations during the night of 15-16 April 1993 for the attack scheduled for 16 April 1993 in Vitez Municipality." Therefore, the Appeals Chamber need not consider whether this constitutes a "new fact."[68]

33. With regard to the Prosecution's second and third[69] alleged "new facts", the Appeals Chamber finds that, the Conclusions, the Križanović statement and the Witness BR-A interview do provide new information of an evidentiary nature that a meeting was held on 15 April 1993 by the Vitez Municipal Government at which conclusions were reached to prepare for and try to postpone the attack on Vitez Municipality which had been ordered by CBOZ and that, subsequently, persons from the meeting approached Blaškić, General Praljak and Dario Kordić to stop the attack, which

[66] *See Jelisić* Review Proceeding, pp. 2-3.
[67] *See* Request, Annexes 1 and 2, Exs. BR1(a) and BR2(a).
[68] *Cf. Jelisić* Review Proceeding, p. 3. The Appeals Chamber notes that the Prosecution appears to concede that the evidence offered in support of this alleged new fact may not support that Blaškić's order was directed specifically at the Vitez Municipal Government. *See* Reply, para. 39.
[69] Request, paras. 37-39, 44, 46-48.

they declined to do. Furthermore, examination of the Appeals Judgement and evidence under consideration in reaching that judgement indicates that these facts relating to the activities of the Vitez Municipal Government were not at issue in the original proceedings.

34. However, the Appeals Chamber considers that the Prosecution's Request is not actually submitting the Conclusions, the Križanović statement, and the Witness BR-A interview for the purpose of establishing these particular alleged new facts. Indeed, when providing its arguments in its Request as to why these alleged new facts could have been decisive factors in reaching the original decision, the Prosecution does not show how the fact that [REDACTED] Blaškić, General Praljak and Dario Kordić, impacts upon the Appeals Chamber's decision that Blaškić was not culpable for crimes committed against civilians during the attack on Ahimići on 16 April 1993. The Prosecution could not demonstrate as much because the activities of the Vitez Municipal Government here, in and of themselves, bear no relevance for that decision. Rather, the Appeals Chamber finds that the Conclusions, the Križanović statement, and the Witness BR-A interview are submitted as new evidentiary information of other alleged new facts arising out of the substance of the meeting of the Vitez Municipal Government of 15 April 1993 and the subsequent discussions between certain persons from that meeting with Blaškić, General Praljak and Dario Kordić, which do have some relevance to the Appeals Chamber's decision that Blaškić did not order crimes committed in the attack on Ahmići. The Appeals Chamber ascertains them as follows from the Prosecution's Request.

35. First, the Prosecution contends that these documents demonstrate that [REDACTED]. The Prosecution asserts that these documents show that this order was different from the defensive written orders issued by Blaškić that were considered in the trial and appeals proceedings, particularly D269, because it was verbal and relates to all of Vitez municipality rather than just Ahmići.[70] The Prosecution contends that this was the "real order issued by CBOZ" to launch an offensive attack the next morning issued prior to the written so-called "defensive orders".[71]

36. Second, Blaškić, General Praljak and Kordić confirmed the existence of this separate oral order to launch an attack on Vitez municipality on 15/16 April [REDACTED].[72]

37. Third, the oral order discussed by the Vitez Municipal Government during their meeting of 15 April, and later with Blaškić, General Praljak and Kordić, was "not referring to a defensive HVO

[70] Reply, paras. 55-56.
[71] *Id.*, para. 56.

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operation, but a planned attack on Vitez municipality" drawn up in the afternoon or early evening of 15 April 1993.[73]

38. Fourth, the Vitez Municipal Government, in its meeting on 15 April, considered that the results of the offensive attack would be "catastrophic" for the civilian population, expressed concern about the political implications of the attack, and consequently identified other less extreme options than an attack.[74]

39. Fifth, when persons from that meeting subsequently approached Blaškić, General Praljak and Kordić warning of the disastrous implications of the attack, those individuals nevertheless declined to intervene or stop it and supported it on the basis that it was needed to prevent an attack by Bosnian Muslim forces.[75]

40. The Appeals Chamber finds that none of these alleged facts found in the Conclusions, the Križanović statement, and the Witness BR-A interview may be considered "new" as they were already at issue in the original proceedings. Thus, these new documents merely constitute additional evidence of already litigated facts. The Appeals Chamber recalls that "a distinction exists between a fact and evidence of that fact."[76] Simply because a party offers new evidentiary information in a review proceeding in support of a fact, this does not lead to the conclusion that the fact itself is "new". Rather, the key question before a Chamber is whether the fact raised by the new evidentiary information was at issue during the trial or appeal proceedings. Where the fact was already at issue, the new information offered merely constitutes additional evidence of that fact and the review procedure is not available pursuant to Rule 119.[77]

41. An issue at trial and on appeal in this case was whether Blaškić was culpable for crimes committed against civilians during the attack on Ahmići on 16 April 1993. A key fact at issue with regard to that question was whether Blaškić was responsible under Article 7(1) of the Statute of the International Tribunal because he *ordered* crimes.[78] This fact encompassed all types of orders allegedly issued by Blaškić, whether written or oral, defensive or offensive in nature. Indeed, as noted by the Trial Chamber, the theory of the Prosecution's case was "that the accused gave the

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[72] *Id.*, paras. 40, 56.
[73] Request, para. 31; *see also* paras. 33, 36; Reply, para. 56.
[74] Request, paras. 31-33, 36.
[75] *Id.*, para. 48; Reply, para. 50.
[76] *Barayagwiza* Review Decision, para. 42 (internal citation omitted).
[77] *Delić* Review Decision, para. 11.
[78] *See generally* Appeals Judgement, paras. 304-348; Trial Judgement, paras. 429-438.

order to attack the villages of central Bosnia on 16 April 1993 [. . .]. *Irrespective of their nature* - written, oral, express or implied - those orders instructed all the units to destroy and burn the Muslims' houses, to kill the Muslim civilians and to destroy their religious institutions."[79] Thus, evidence was proffered by both parties as to various types of orders allegedly issued by Blaškić during this time. The Prosecution submitted evidence, which was heard by the Trial Chamber, of a practice of issuing oral orders from 1 May 1992 to 31 January 1994.[80] The Defence, on the other hand, submitted three written orders given by Blaškić the day before the attack, which it claimed to be defensive following a report from the HVO Busovača intelligence services, dated 14 April 1993, notifying Blaškić of a probable attack by the ABiH on Vitez from Zenica, through Vrohdine and Ahmići.[81] In the end, the Trial Chamber found Blaškić responsible for the crimes committed in Ahmići on the basis of the third written order proffered by the Defence, D269.[82] In the Appeals Judgement, the Appeals Chamber overturned the Trial Chamber's finding that this was an offensive order to commit crimes and that, therefore, Blaškić was culpable.[83] While the findings of the Chambers in the original proceedings focused on the evidence of written orders proffered by the Defense, the fact at issue was not limited to a consideration of evidence as to written or defensive orders. The Chambers in the original proceedings considered more broadly whether Blaškić issued orders to commit crimes in Ahmići, "irrespective of their nature".[84]

42. Thus, while the alleged new facts noted above[85] with regard to an allegedly separate offensive oral order issued by Blaškić prior to D269, which was discussed in the meeting of the Vitez Municipal Government on the night of 15 April 1993 as well as with [REDACTED] General Praljak and Kordić, may not have specifically been considered at trial or on appeal, the Appeals Chamber considers that this does not make them new facts. Rather, they constitute additional evidence going to a fact previously at issue in the original proceedings.

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[79] Trial Judgement, para. 430 (emphasis added).
[80] Appeals Judgement, paras. 309-310.
[81] *Id.*, paras. 325-335; Trial Judgement, paras. 432-438.
[82] Trial Judgement, para. 437.
[83] Appeals Judgement, paras. 332-335.
[84] For example, during the Appeals Hearing, the Prosecution stated as follows:

> We also know on the record that on the 15th of April, in the afternoon - and it's reflected in the war diary - that the Appellant met with the commander of the 4th Military Police, Pasko Ljubičić, at approximately 5.00 in the afternoon. He met with him at the same time as the Vitezovi commander, the commander of the Tvrtko 2, which is a special purposes unit. In his testimony, he acknowledges that he spoke with them at that time and explained to them and issued the orders, I think it was 267 and 268, orally. Those orders actually hadn't been sent, and he issued those orders orally to them at the time. *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Appeals Hearing, AT. 743, 17 December 2003.

[85] *See supra* paras. 35-36.

43. Furthermore, facts relevant to the main fact at issue in the original proceedings with respect to whether Blaškić ordered crimes, which were themselves also at issue included: whether the attack was offensive or defensive in nature;[86] whether there were military objectives that justified the attack;[87] whether the attack on Ahmići was planned and organized;[88] and the scale and uniformity of the attack.[89] The Appeals Chamber finds that, clearly, these facts are the same as the alleged new facts listed above[90] that are evidenced in the Conclusions, the Križanović statement, and the Witness BR-A interview. Thus, these documents merely constitute additional evidence with regard to these previously litigated facts.

b. Conclusion

44. In light of the above, the Appeals Chamber finds that the Prosecution's first, second and third alleged new facts do not constitute new facts within the meaning of Rules 119 and 120 of the Rules and therefore, review of the Appeals Judgement is not warranted on that basis.

2. Oral Orders from Blaškić in Relation to the Attack on Ahmići Included Orders to Commit Crimes

45. The Prosecution offers the following documents as new evidentiary information in support of its fourth alleged new fact that Blaškić issued oral orders concerning the attack on Ahmići *and* that these orders contained an order to commit crimes against Bosnian Muslim civilians: (1) the transcript of an interview with Witness BR-C [REDACTED] ("Witness BR-C interview");[91] (2) the admission by Miroslav "Cicko" Bralo of the Factual Basis for his Plea Agreement and Amended Indictment filed on 18 July 2005 ("*Bralo* materials");[92] and (3) two statements of Witness BR-D [REDACTED] ("Witness BR-D statements").[93]

a. Whether the Alleged Fact is "New"

46. The Prosecution contends that at trial, Blaškić was convicted for crimes committed at Ahmići on the basis of three written orders and, on appeal, the Appeals Chamber concluded that those orders were defensive in nature, especially order D269. On the basis of the wording of D269 and

[86] Appeals Judgement, paras. 324, 330, 334-335; Trial Judgement, para. 437.
[87] Appeals Judgement, paras. 331-335; Trial Judgement, para. 437.
[88] Appeals Judgement, paras. 309, 310, 324; Trial Judgement, paras. 467-468.
[89] Appeals Judgement, paras. 309-310; Trial Judgement, paras. 467-468.
[90] *See supra* paras. 37-39.
[91] Request, Annex 5, Ex. BR 5.
[92] *Id.*, Annex 7, Ex. BR 7.

additional evidence admitted on appeal, the Appeals Chamber concluded that D269 was a preventative order in light of an ABiH presence in Ahmići and neighbouring villages, and did not instruct troops to launch an offensive attack. Thus, the Prosecution claims that the fact of whether Blaškić issued *oral* orders was not at issue. The Prosecution does note that on appeal, it attempted to have the testimony of Witness AT, who testified as to an oral order to commit crimes issued by Paško Ljubičić at the Bungalow allegedly coming from Blaškić, admitted as rebuttal material. However, it argues that although the fact of an oral order was known to the Prosecution on appeal on the basis of Witness AT's testimony, that fact was not fully litigated on appeal as Witness AT's evidence was neither admitted by the Appeals Chamber nor was it at issue before the Trial Chamber.[94]

47. In addition, the Prosecution contends that its new evidentiary information demonstrates that Blaškić's oral orders included orders to commit crimes. The evidence at trial and the "new facts" proffered in the Prosecution's Request indicate that the crimes were to ensure that the Vitez area became "Croat" land. Furthermore, the Appeals Chamber and Trial Chamber considered the role of Kordić in a persecutory campaign. Because the "new facts" in the Prosecution's Request demonstrate that "Blaškić was operating in conjunction with and pursuant to orders from Kordić, the acts of Kordić as filed in the Defence additional evidence must now be seen as implicating Blaškić, not distancing himself from those very acts."[95]

48. In response, the Defence argues that the claim that the fact of an alleged oral order from Blaškić to commit crimes is "new" because Witness AT's testimony from the *Kordić and Čerkez* trial was not admitted by the Appeals Chamber is specious. The Defence submits that "Witness AT's testimony regarding an alleged oral order from Blaškić to commit crimes was offered and rejected on Appeal. That testimony was both 'in issue' and 'considered' by the Appeals Chamber. The fact that the testimony was rejected does not make it 'new'. Rather, Witness AT's testimony and the purported facts therein are the very paradigm of previously-litigated facts."[96]

49. Furthermore, the Defence notes that the Prosecution argued before the Appeals Chamber that it should uphold Blaškić's conviction on the basis of an oral order, stating that:

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[93] *Id.*, Annex 6, Ex. BR 6.
[94] *Id.*, paras. 50-52, 54-55.
[95] *Id.*, para. 53.
[96] Response, paras. 82, 83.

> In Response to the Appellant's argument that the Trial Chamber erred in convicting him in the absence of evidence, the Prosecution asserts that the argument lacks merit, as the Trial Chamber heard evidence of a practice of issuing oral orders.[97]

The Defence submits that the Prosecution, in the original proceedings, was unable to produce any competent evidence on its assertion as to an oral order and has not, in its Request, produced any such evidence. In any event, "corroborative evidence of a previously litigated fact is not new evidence" and thus, the Prosecution "cannot introduce testimony by Witnesses BR-C, BR-D and Bralo in its attempt to corroborate the previously-litigated fact concerning whether Blaškić gave an oral order."[98]

50. In reply, the Prosecution contends that the Defence fails to distinguish between the broader factual issue before the previous Chamber as to whether Blaškić ordered the attack on Ahmići and the specific new fact presented here. According to the Prosecution, that new fact is that [REDACTED].[99]

51. The Appeals Chamber notes that under this alleged new fact, the Prosecution submits the Witness BR-C interview, *Bralo* materials and Witness BR-D statements as evidentiary information that at a gathering during the night between 15 and 16 April 1993 in the Bungalow, a building located near the village of Ahmići, Paško Ljubičić issued orders to soldiers of the 4th Military Police Battalion, including an anti-terrorist platoon known as the Jokers and at least some elements of the Vitez Brigade, to attack Ahmići and commit various crimes against Bosnian Muslim civilians. The Prosecution submits that it is clear [REDACTED].[100]

52. The Appeals Chamber recalls its earlier finding in this Decision, when examining the Prosecution's second and third alleged new facts, that a main fact in issue in the original proceedings was whether Blaškić issued orders to commit crimes during the attack on Ahmići irrespective of their nature—oral or written.[101] On the basis of that finding, the Appeals Chamber does not consider that the Prosecution's fourth alleged new fact with respect to Blaškić allegedly issuing oral orders that were passed on by Ljubičić to soldiers in the Bungalow on the night of 15/16 April 1993, constitutes a new fact. Rather, this alleged new fact constitutes additional evidence going to a fact already at issue at trial and on appeal. The Appeals Chamber notes, furthermore, that the Prosecution's attempt to have Witness AT's evidence admitted on appeal as

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[97] *Id.*, para. 89 citing the Appeals Judgement at para. 310.
[98] *Id.*, paras. 90-91.
[99] Reply, para. 80.
[100] Request, para. 64. *See also id.*, paras. 59-63.

rebuttal material further demonstrates that the matter of Blaškić issuing oral orders with respect to Ahmići was at issue in the original proceedings. Although the Appeals Chamber ultimately decided that Witness AT's evidence did not meet the test for admissibility as rebuttal material, it reached that conclusion after considering the content of Witness AT's testimony's with respect to an alleged oral order.[102]

53. In addition, the Appeals Chamber notes that the Prosecution argues that the Witness BR-C interview, *Bralo* materials and Witness BR-D statements demonstrate that the crimes ordered were to ensure that the Vitez area became "Croat" land; Blaškić was operating in conjunction with and pursuant to orders from Kordić and thus, participated in this persecutory campaign against Bosnian Muslims; and the Vitez Brigade participated in committing crimes, thereby implicating their commander Blaškić. The Appeals Chamber considers that these arguments further show that these documents are merely proffered as additional evidence of previously litigated facts. In the Appeals Judgement, the Appeals Chamber considered that the crimes committed in Ahmići were specifically aimed at Bosnian Muslim civilians and resulted in a massacre of Bosnian Muslim civilians;[103] whether regular HVO units, such as the Viteška Brigade were involved;[104] and whether Blaškić was working in close coordination with Kordić such that he was a part of Kordić's alleged persecutory campaign against the Muslim population in Central Bosnia, including Ahmići.[105]

b. Conclusion

54. In light of the foregoing, the Appeals Chamber finds that the Prosecution's fourth alleged fact does not constitute a new fact within the meaning of Rules 119 and 120 of the Rules and therefore, review of the Appeals Judgement is not warranted on this basis.

3. The MUP Report filed by Blaškić as Exhibit 1 to the Second Rule 115 Motion and relied upon extensively by the Appeals Chamber had been manipulated and altered from the original MUP Report

55. In support of its fifth alleged new fact that the 20-page Ministry of Interior Police ("MUP") report of 6 October 2000 ("filed MUP report"), which the Appeals Chamber admitted as additional evidence under Rule 115 of the Rules during the appeal proceedings, was manipulated and altered,

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[101] *See supra* para. 41.
[102] *Cf. Tadić* Review Decision, para. 47.
[103] Appeals Judgement, paras. 334-335.
[104] *Id.*, paras. 336-339.
[105] *Id.*, paras. 340-343.

the Prosecution proffers a document alleged to be the original MUP report dated 21 August 2000 ("alleged original MUP report").[106] The latter report is 40 pages long, and the Prosecution contends that a comparison of the two documents reveals that the alleged original MUP report was deliberately altered to hide Anto Nobilo as a source of the information for the report. The Prosecution claims that the Appeals Chamber would not have extensively referred to the 20-page filed MUP report in the Appeals Judgement[107] and relied upon it, had the Judges known the extent to which many of the crucial factual assertions therein came from Blaškić's Defence Counsel.[108]

a. Whether the Alleged Fact is "New"

56. The Prosecution submits that this alleged fact is new because the Appeals Chamber did not consider whether the 20-page MUP report filed on appeal was an altered and manipulated version of an original document. According to the Prosecution, "[t]he new information which demonstrates that it has been manipulated and thereby altered is equivalent to a forged document."[109] The Prosecution notes that in some national jurisdictions, a document is considered to be forged if it purports to stem from one author when it in truth stems from another.[110]

57. In response, the Defence contends that the Prosecution's "arguments related to the 20-page report are in fact a request for reconsideration of an issue that has already been decided by the Appeals Chamber" and does not constitute a new fact.[111] The Defence argues that the Prosecution strains to claim that the 20-page filed MUP Report is a forgery or was improperly manipulated or altered and, in fact, the true substance of the Prosecution's alleged new fact is that the 20-page filed MUP report is not persuasive or reliable because Anto Nobilo was a source for some of the information in the report.[112] However, this fact was previously raised before the Appeals Chamber.[113]

58. The Defence notes that in its Response to the Defence's Second Motion to Admit Additional Evidence on Appeal Pursuant to Rule 115 filed on 10 December 2001, the Prosecution claimed that it had concrete proof that the 20-page filed MUP report was based in large part on a police

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[106] Request, Annex 8, Ex. BR 8.
[107] According to the Prosecution, the Appeals Chamber referred to the 20-page filed MUP report in the following parts of the Appeals Judgement: paras. 253, 320, 352, 400, 418 and fns. 656, 659, 701, 705, 722, 772, 803-805. *See* Request, fn. 94.
[108] Request, paras. 84, 88-89.
[109] *Id.*, para. 101.
[110] *Ibid.*
[111] Response, paras. 108, 111.
[112] *Id.*, para. 108.

interview with Anto Nobilo. In its reply to the Prosecution's response, the Defence conceded that the 20-page filed MUP report appeared to incorporate information from an interview with Anto Nobilo. Furthermore, during the hearing before the Appeals Chamber in November 2002 with regard to admission of additional evidence, the Prosecution argued that a certain passage from the 20-page filed MUP report concerning a clandestine meeting in the house of Dario Kordić on the night of 15 April 1993 is based solely on an interview with Anto Nobilo.[114]

59. In reply, the Prosecution claims that contrary to the Defence's contentions, its argument "is not that the MUP report is merely unpersuasive or unreliable, but rather *that a new fact exists:* the (filed) report upon which the Appeals Chamber relied was manipulated."[115] The Prosecution argues that this new fact is further supported by [REDACTED] shows that in response to a request from the Prosecution to the Croatian government in September 2000 for a true and complete copy of the recent report on Ahmići, the Croatian government provided the 20-page filed MUP report. However, this is an altered version of the alleged original 40-page MUP report [REDACTED].[116] As a consequence,

> [f]rom this "adapted" report certain information (e.g. that Anto Nobilo was a source) was removed and sometimes replaced with other information. As a result, some highly significant passages (in particular regarding the meeting in Kordić's house) appeared as if they were founded upon a synthesis of "real" evidence ("information available"), whereas the original report honestly identified Nobilo as a source.[117]

60. The Appeals Chamber considers that, as noted by the Defence and also stated by the Prosecution,[118] the question of whether Anto Nobilo was a source for some of the contents of the 20-page filed MUP report and the extent thereof, was raised several times in the appeals proceedings. In its response contesting the Defence's Second Rule 115 Motion seeking admission of the 20-page filed MUP report,[119] the Prosecution explicitly stated that "the Prosecution has concrete proof that this report is based in large part on a police interview which counsel for the Appellant, Mr. Ante Nobilo, had with the police officers of the State of Croatia [. . .] on 6 June 2000",[120] that "the report is largely composed of the views of one of Appellant's counsel on the

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[113] *Id.*, paras. 107-108.
[114] *Id.*, para. 109. *See also* Request, fn. 113.
[115] Reply, para. 88 (emphasis in the original).
[116] *Id.*, paras. 89-91.
[117] *Id.*, para. 92.
[118] Request, paras. 86, 87.
[119] *Prosecutor v. Blaškić*, Case No. IT-94-14-A, Redacted Version of Appellant's Second Motion to Admit Additional Evidence on Appeal Pursuant to Rule 115, 7 March 2002.
[120] *Prosecutor v. Blaškić*, Case No. IT-94-14-A, Public Redacted Version of "Prosecution Response to Appellant's Second Motion to Admit Additional Evidence on Appeal Pursuant to Rule 115", 7 March 2002 ("Prosecution Response to Second Rule 115 Motion"), para. 45.

incidents in Ahmići",[121] and that "the report is not 'reasonably capable of belief or reliance'".[122] The Prosecution further pointed out that the authors of the report stressed that it was initial and operative in nature, that the contents therein were neither complete nor verified in detail, and that efforts were being made to verify it and make it more exact.[123] In reply to the Prosecution's Response to Blaškić's Second Rule 115 Motion, while the Defence admitted that the 20-page filed MUP report appeared to incorporate information from the notes of investigators who interviewed Blaškić's Counsel and contained some errors, it argued that it was sufficiently credible to meet the standards for admission of evidence on appeal.[124] As part of its evidence submitted in rebuttal, the Prosecution repeated the same arguments raised in its Response to the Second Rule 115 Motion. It submitted a comparison between the 20-page filed MUP report and an interview with Anto Nobilo on 6 June 2000 by the Croatian Ministry of the Interior and argued that this demonstrated that entire sections of the MUP report were taken nearly verbatim from Nobilo's statement and that there were irregularities.[125] Finally, during a hearing before the Appeals Chamber, the Prosecution again stated as follows:

> First of all, the appellant [has] relied on the first exhibit to the second Rule 115 motion, and that's the ministry of the interior report, and it's called the MUP report. And it's been relied on extensively in the written submissions and was referred to yesterday by the appellant, because that document describes the meeting on the night of the 15th at Dario Kordić's house. [. . .] And there's just one thing I wish to bring to your attention, and it's included in the submissions in any event, but when you're considering this investigations report years later, note that the report is partially based on the information provided to the Ministry of the Interior investigators from counsel for Blaškić. [. . .] And in the appellant's reply brief, in support of their second motion to admit additional evidence, registry pages 13897, here's a recognition that the MUP report appears to incorporate information the investigators obtained from interviewing Mr. Nobilo. With respect, unless the underlying evidence is brought forward, *this report is of little evidentiary value.*[126]

61. The Appeals Chamber finds that clearly, the issue of whether the 20-page filed MUP report was capable of belief or reliance as additional evidence in light of, *inter alia,* Anto Nobilo allegedly being a source for certain portions of the report, was litigated during the appeals proceedings. While the Prosecution's representation under its fifth alleged new fact that the 20-page filed MUP report is purportedly a summary of an original 40-page MUP report, which was allegedly altered to

[121] *Id.*, para. 46.
[122] *Id.*, para. 49. *See also* paras. 48, 50-52.
[123] *Id.*, para. 50.
[124] *Prosecutor v. Blaškić*, Case No. IT-94-14-A, Redacted Version of Appellant's Reply Brief in Support of Second Motion to Admit Additional Evidence on Appeal Pursuant to Rule 115, 7 March 2002, p. 7.
[125] *Prosecutor v. Blaškić*, Case No. IT-94-14-A, Public Redacted Version of the Prosecution's Rebuttal Evidence and Arguments in Response to Additional Evidence Admitted on Appeal (Dated 6 January 2003), 24 January 2003, para. 3.25.
[126] *Prosecutor v. Blaškić*, Case No. IT-94-14-A, Public Transcript of Hearing 17 December 2003, 17 December 2003, AT. 749 (emphasis added).

conceal Anto Nobilo as a source was not discussed on appeal, this merely constitutes additional evidence of a previously litigated fact—the credibility and reliability of the 20-page filed MUP report. For this reason, the Prosecution's request to admit the fifth alleged new fact must fail.

62. In this particular case, even if the Appeals Chamber found that the Prosecution's fifth alleged new fact was new, and assuming that all of the other requirements for review under Rules 119 and 120 of the Rules were met, the Appeals Chamber considers that the Prosecution fails to demonstrate that this alleged new fact, if proved, could have had an impact on the ultimate findings reached in the Appeals Judgement. As a general matter, the Appeals Chamber recalls that during the appeals proceedings, the Chamber admitted a large amount of additional evidence and considered that new evidence in the context of evidence which was submitted during Blaškić's trial and not in isolation as is required under the jurisprudence of the International Tribunal. While the Appeals Judgement refers to specific evidence in support of the Appeals Chamber's findings, the evidence cited only constituted some examples of a substantial body of additional evidence, which was considered as a whole by the Appeals Chamber in reaching its conclusions, and was too large to reference in its entirety in the Appeals Judgement.

63. The Prosecution first claims that the Appeals Chamber relied upon the 20-page filed MUP report "almost exclusively" for its finding that Blaškić was not responsible for planning and ordering crimes in Ahmići under Article 7(1) of the Statute of the International Tribunal.[127] According to the Prosecution, paragraph 342 of the Appeals Judgement shows that the Appeals Chamber relied on three pieces of evidence to support its finding that Blaškić was not involved in the Ahmići incident, namely, Exhibits 1 and 13 to the First Rule 115 Motion, together with the filed MUP report. However, the Prosecution further claims that the exculpatory value of Exhibits 1 and 13 is minimal[128] and that the filed MUP Report was directly relevant to the involvement of Blaškić in the attack on Ahmići.[129] The Prosecution contends that, as evidenced in footnote 705 of the Appeals Judgement, the filed MUP report was used by the Appeals Chamber to establish that others had ordered the crimes, namely the group of persons in Kordić's house, and without the report, no basis remains for this proposition since the two other documents referred to by the appeals Chamber in support of this proposition are of no independent evidentiary value.[130] As a result, the

[127] Request, paras. 104-105.
[128] According to the Prosecution, Exhibit 13 is a handwritten page with an illegible signature and suggests that the crimes in Ahmići were committed in revenge for the death of three members of the Jokers unit. The Prosecution notes that this is contrary to the Defence theory that a group, which excluded Blaškić, planned the crimes, and is also contrary to Blaškić's evidence that the attack had to have been planned. Exhibit 1 only speaks of the execution of the crimes but says nothing about whether Blaškić ordered or planned them. *See* Request, paras. 107-108.
[129] Request, paras. 106-109.
[130] Reply, para. 102.

Prosecution argues that removing this part of the findings, as would be required if the filed 20-page MUP report were excluded, could result in a different assessment of the totality of the evidence with regard to Blaškić's individual responsibility and could therefore be a decisive factor in the ultimate decision reached.[131]

64. The Appeals Chamber does not agree. With respect to paragraph 342 of the Appeals Judgement, the Appeals Chamber recalls that in this section of the judgement, the Chamber overturned the Trial Chamber's conviction of Blaškić under Article 7(1) of the Statute as individually responsible for crimes against the Bosnian Muslim civilian population as a result of his ordering an offensive attack on Ahmići on 16 April 1993 primarily on the basis of four findings. These were: (1) that Blaškić's order D269 was a lawful, defensive order, a command to prevent an attack, and there was no evidence to show that crimes against Bosnian Muslim civilians were committed in response to it; (2) that the Trial Chamber's finding that crimes committed in Ahmići were also attributable to regular HVO units such as the Viteška Brigade and the Domobrani could not be sustained on the basis of the trial record and evidence admitted on appeal; (3) that individuals other than Blaškić planned and ordered the commission of crimes and the 4th Military Police Battalion and the Jokers committed the crimes; and (4) that, in the execution of order D269, Blaškić was not aware of a substantial likelihood that crimes would be committed.[132]

65. Although undoubtedly an important piece of evidence for its third factual finding above, the 20-page filed MUP report was not exclusively relied upon by the Appeals Chamber as noted by the Prosecution. Exhibit 13 to the First Rule 115 Motion, cited in footnote 705 of the Appeals Judgement, is an HVO Security and Information Service ("SIS") report dated 8 June 1993 based upon an interview with wounded individuals in a hospital in Split who laid the blame for the Ahmići massacre on Ljubičić and the Jokers and stated that a certain Zoran Krišto bombed a mosque.[133] Exhibit 1 to the First Rule 115 Motion, referred to in paragraph 342 of the Appeals Judgement, is an SIS investigative report of 26 November 1993, which was cited by the Appeals Chamber as evidence that the attack on Ahmići was carried out by the Jokers under the command of Vlado Ćosić and Paško Ljubičić as well as by an attached criminal squad.[134] Even if the third factual finding with respect to others being responsible for crimes in the attack on Ahmići on 16 April 1993 was reversed on the basis of the exclusion of the 20-page filed MUP report, the Appeals

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[131] *Id.*, para. 103.
[132] *See generally* Appeals Judgement, paras. 324-348.
[133] *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Appellant's Brief in Support of Motion to Admit Additional Evidence on Appeal Pursuant to Rule 115 in Accordance with the Appeals Chamber's Decision of 26 September 2000 ("First Rule 115 Motion"), 19 January 2001, p. 23.
[134] Appeals Judgement, fn. 706.

Chamber finds that this would not result in a different assessment of the totality of the evidence with regard to Blaškić's individual responsibility. The Appeals Chamber's finding still stands that the relevant trial evidence and additional evidence admitted on appeal is insufficient to prove beyond reasonable doubt that Blaškić himself is responsible for the crimes committed on 16 April 1993 because he ordered them in light of, *inter alia*, the Appeals Chamber's first, second and fourth factual findings above.

66. Second, the Prosecution claims that the 20-page filed MUP report was primarily relied upon by the Appeals Chamber to find that Blaškić took measures to punish crimes that were committed at Ahmići on 16 April 1993. The Prosecution contends that in paragraph 418 of the Appeals Judgement, the Appeals Chamber refers to the filed MUP report as the only evidence for its finding that, as a commander, Blaškić made an attempt to investigate the crimes in Ahmići upon becoming aware of them, but was provided with a report which mentioned no crimes.[135] The Prosecution notes that, as a result, the Appeals Chamber concluded that Blaškić lacked effective control over the military units responsible for the commission of crimes in Ahmići, in the sense of a material ability to prevent or punish criminal conduct, and reversed the Trial Chamber's finding that he was responsible under Article 7(3) of the Statute.[136] Furthermore, the Prosecution argues that the fact that the Appeals Chamber also relied on an HIS Report for the finding that Blaškić did not bear command responsibility does not assist because this report does not suggest that Blaškić took any steps to punish the perpetrators but merely that persons other than Blaškić were responsible for Ahmići.[137] Thus, if the filed MUP report is removed from the evidence, no basis remains upon which to disturb the Trial Chamber's finding that Blaškić did not take reasonable measures to punish the perpetrators of Ahmići.[138]

67. Again, the Appeals Chamber does not agree. The basis for the finding in the Appeals Judgement that Blaškić took reasonable measures to punish as a commander was not only the filed 20-page MUP report. The Appeals Chamber looked, *inter alia*, to evidence submitted at trial and on appeal with respect to his requests for investigations into the crimes committed in Ahmići upon becoming aware of them including from international organizations such as ECMM and UNPROFOR[139] as well as to the filed MUP report in paragraph 418 of the Appeals Judgement.[140] While the filed MUP report is explicitly noted in the Appeals Judgement as evidencing that Blaškić

[135] Request, para. 98; Reply, paras. 106-107.
[136] Request, para. 98; Reply, paras. 105-107; *see also* Appeals Judgement, para. 421.
[137] Reply, fn. 136; *see also* Appeals Judgement, para. 419.
[138] Reply, para. 107
[139] Appeals Judgement, para. 415.
[140] *Id.*, paras. 412-420 and fn. 830.

asked Slišković, Chief of the SIS, to carry out an investigation of events which occurred, that the requested investigation was eventually taken over by SIS Mostar and was obstructed, and that the results of the investigation were never communicated back to Blaškić thereby preventing him from punishing the perpetrators, the Appeals Chamber also relied upon Exhibit 1 from the First Rule 115 Motion in support of that finding.[141] As noted previously, Exhibit 1 is an SIS investigative report dated 26 November 1993, and was considered by the Trial Chamber to be the one piece of evidence most likely to exonerate Blaškić.[142] During the Appeals Chamber's assessment of the admissibility of this exhibit as additional evidence, it considered that the exhibit corroborated Blaškić's testimony with regard to his repeated requests for an SIS investigation, that the investigation was taken over by SIS Mostar, that he was not informed of the results of the investigation, and that the names of the perpetrators were not disclosed to him and consequently, admitted and relied upon that evidence.[143]

b. Conclusion

68. In light of the foregoing, the Appeals Chamber finds that the Prosecution's alleged fifth new fact is not a "new fact" within the meaning of Rules 119 and 120 of the Rules and, even if it were a new fact, the Prosecution fails to demonstrate that it could have affected the verdict reached in the Appeals Judgement that the evidence submitted at trial and on appeal did not support a finding, beyond reasonable doubt, that Blaškić was responsible either individually or as a superior for crimes committed at Ahmići on 16 April 1993.

4. On the order of Blaškić, the Vitezovi were involved in the attack on Grbavica in September 2003

69. In support of its sixth and final alleged new fact, the Prosecution provides two documents as new evidentiary information demonstrating that, on order of Blaškić on 6 September 1993, the Vitezovi were involved in the attack on Grbavica on 7 September 1993. The first is Combat Order No. 59, dated 6 September 1993, from the CBOZ Command and signed by Blaškić.[144] The Prosecution submits that it is directed to the Vitezovi, among other independent units, and is an order for the main forces to mount offensive operations on the axis Kremenik-Đekića Kuće-Grbavica while the auxiliary forces would mount an attack on the axis Mali Mošunj-Bosna GP-

[141] *See* Appeals Judgement, fn. 831.
[142] *See* Trial Judgement, para. 493.
[143] *See* First Rule 115 Motion, pp. 16-18 and Decision of 31 October 2003, pp. 3-4.
[144] *See* Request, Annex 9, Ex. BR 9.

Grbavica, in order to take the settlements on the southern slopes of Grbavica and establish a new defensive line. The Prosecution states that the Vitezovi were a part of the main assault forces ordered to attack from "their initial position along the line between elevation point 458 and the old railway line, along the axis Kremenik-Đekića Kuće-Grbavica, with the task of capturing the Varupa and Đjekića Kuće settlements and continuing their attack up to elevation point 523, the summit of Grabovica hill north-east of the Grbavica settlement."[145]

70. The second document, dated 9 September 1993, originates from the HVO, is signed by Dario Kordić and Ignac Koštroman, and is addressed to Blaškić, the Vitezovi and other participating units in the Grbavica operation. It commends them publicly for their success.[146]

71. The Prosecution contends that, taken together, these two documents with the trial evidence demonstrate that, contrary to the findings of the Appeals Chamber in the Appeals Judgement, on direct order from Blaškić, the Vitezovi actually operated in areas where crimes occurred during the attack on Grbavica.[147] The Trial Chamber had found that in the course of the attack, acts of destruction not justified by military necessity and systematic pillage occurred and, on appeal, these findings were not challenged. However, the Appeals Chamber found that the trial evidence did not show that Blaškić was criminally responsible because it did not demonstrate that he ordered the attack with the awareness of a substantial likelihood that these crimes would be committed. The Appeals Chamber specifically noted, in support of its finding, that the Vitezovi, who were known to be difficult to control, were not involved in the attack.[148] According to the Prosecution, "[t]his finding by the Appeals Chamber's [*sic*] leads to the conclusion that if there had been involvement of the Vitezovi in the attack, the decision would have been different, because Blaškić knew that this unit was difficult to control and that there was a substantial likelihood that crimes would be committed in the course of the attack."[149]

a. Whether the Alleged Fact is "New"

72. The Prosecution argues that its sixth alleged fact is "distinctively new" because the Appeals Chamber noted that the Vitezovi were not involved in the attack on Grbavica indicating that the fact

[145] *Id.*, para. 119; *see also* paras. 117-118.
[146] Request, Annex 10, Ex. BR 10.
[147] *Id.*, paras. 126, 130.
[148] *Id.*, para. 128.
[149] *Ibid.*

that the Vitezovi were actually involved in the attack pursuant to Blaškić's direct order was not at issue in the original proceedings.[150]

73. In response, the Defence contends that the alleged involvement of the Vitezovi in the Grbavica attack is not a "new fact" because although the Trial Chamber did not base its decision as to Blaškić's responsibility for the attack on any involvement of the Vitezovi, there was significant testimony at trial concerning the unit and its role in the attack. Indeed, Blaškić himself testified that a part of the unit was involved, which consisted of soldiers who could be controlled.[151]

74. In reply, the Prosecution responds that the confusion over the involvement of the Vitezovi in the attack on Grbavica on appeal arose because the Trial Chamber, in mentioning the units participating in the attack, did not refer to the Vitezovi. Furthermore, Defence Counsel at the Appeals Hearing stated that the Vitezovi did not participate in the attack on Grbavica. On this basis, the Appeals Chamber concluded that the Vitezovi were not involved in the attack.[152]

75. The Appeals Chamber finds that it is clear that the alleged new fact concerning the involvement of the Vitezovi in the attack on Grbavica was at issue in the original proceedings in addition to the question of their non-involvement. The Trial Chamber heard testimony from Blaškić that parts of certain units were under his control, particularly the Vitezovi unit, for the specific purpose of assisting in the attack on Grbavica.[153] After considering all of the evidence, the Trial Chamber stated in the Trial Judgement that the "Grbavica operation was carried out by HVO men Blaškić had chosen and who were under his command. Members of the Dzokeri, of the 'Nikola Subic Zrinski' Brigade, of the 'Tvrtko II' unit and of the Military Police took part in the attack."[154] On appeal, the Appeals Chamber heard testimony that the Vitezovi unit was not involved in the attack on Grbavica[155] and, in reference to the Trial Judgement's listing of the units involved, noted that the Vitezovi was not involved in the attack.[156] Therefore, the new evidentiary information offered in support of the Prosecution's sixth alleged new fact merely constitutes additional evidence of a fact already considered or at issue in the original proceedings.

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[150] *Id.*, paras. 113-114, 126.
[151] Response, para. 126 and Exhibits 19 and 20, which are copies of the transcripts of Blaškić's testimony at trial.
[152] Reply, para. 108.
[153] *Prosecutor v. Blaškić*, Case No. IT-95-14-T, T. 60, 25 March 1999; T. 104-105, 25 May 1999.
[154] Trial Judgement, para. 554.
[155] *Prosecutor v. Blaškić*, Case No. IT-95-14-A, AT. 636, 16 December 2003.
[156] Appeals Judgement, para. 480.

b. Conclusion

76. On the basis of the foregoing, the Appeals Chamber finds that the Prosecution's sixth alleged fact does not constitute a new fact within the meaning of Rules 119 and 120 of the Rules and therefore, review of the Appeals Judgement is not warranted on this basis.

III. THE REQUEST FOR RECONSIDERATION

77. As a final matter, alternative to its request for review of the Appeals Chamber's finding in the Appeals Judgement that Blaškić was not responsible for ordering the crimes committed in Ahmići on 16 April 1993 on the basis of alleged new facts, the Prosecution submits a request for reconsideration of that decision. The Prosecution contends that under the jurisprudence of the International Tribunal, the Appeals Chamber has inherent power to reconsider its previous judgement in an appropriate case so as to prevent an injustice.[157]

78. The Prosecution argues that reconsideration is warranted here because the *Blaškić* Appeals Judgement was rendered without considering the testimony of Witness AT, which was rejected by the Appeals Chamber when submitted by the Prosecution as rebuttal material. However, in the subsequent *Kordić and Čerkez* Appeals Judgement,[158] the finding of the Trial Chamber in that case on the admissibility of the testimony of Witness AT and certain findings based upon that evidence were affirmed. The Prosecution argues that the *Kordić and Čerkez* Appeals Judgement demonstrates that the *Blaškić* Appeals Chamber made a clear error of reasoning in rejecting the testimony of Witness AT and that an injustice resulted because "the Appeals Chamber was not properly apprised of the true nature of Blaškić's criminal involvement in Ahmići, despite clear evidence of this having been put forward by the Prosecution."[159]

79. The Appeals Chamber recalls that it has recently been held that "cogent reasons in the interests of justice" demand a departure from the holding in the *Čelebići* Judgement on Sentence Appeal[160] that the Appeals Chamber has inherent power to reconsider its final judgement.[161] In the

[157] Request, paras. 145, 146.
[158] *Prosecutor v. Kordić and Čerkez,* Case No. IT-95-14/2-A, Judgement, 17 December 2004.
[159] Request, para. 146.
[160] *Prosecutor v. Zdravko Mucić, Hazim Delić and Esad Landzo,* Case No. IT-96-21-A*bis*, Judgement on Sentence Appeal, 8 April 2003.

Žigić case, the Appeals Chamber considered that reconsideration of a final judgement is not consistent with the Statute of the International Tribunal, which provides for the right of appeal and the right of review, but not for a second right of appeal through reconsideration. Furthermore, it was reasoned that to allow for findings underlying a conviction, which have been affirmed on appeal, to be contested "on the basis of mere assertions of errors of fact or law is not in the interests of justice to the victims of crimes or the convicted persons, who are both entitled to certainty and finality of legal judgements."[162] Finally, the Appeals Chamber found that the existing appeal and review proceedings under the Statute provide for sufficient guarantees of due process for the parties in a case before the International Tribunal.[163]

80. On the basis of this precedent and for the reasons stated therein, the Appeals Chamber holds that it does not have inherent power to reconsider the Appeals Judgement.

IV. DISPOSITION

81. On the basis of the foregoing, the Appeals Chamber **DISMISSES** the Prosecution's Request in its entirety.

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

Judge Fausto Pocar
Presiding Judge

Done this 23rd day of November 2006,
The Hague,
The Netherlands.

[Seal of the International Tribunal]

[161] *Prosecutor v. Zoran Žigić a/k/a "Ziga"*, Case No. IT-98-30/1-A, Decision on Zoran Žigić's "Motion for Reconsideration of Appeals Chamber Judgement IT-98-30/1-A Delivered on 28 February 2006", 26 June 2006, para. 9.
[162] *Ibid.*
[163] *Ibid.*