

ICTR-98-44A-R
01-02-2012
(661/A - 658/A)

661/A
AM



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

APPEALS CHAMBER I

Before: Judge Patrick Robinson, Presiding
Judge Fausto Pocar
Judge Liu Daqun
Judge Andréia Vaz
Judge Carmel Agius

Registrar: Mr. Adama Dieng

Date: 31 January 2012

JUVÉNAL KAJELIJELI

v.

THE PROSECUTOR

Case No. ICTR-98-44A-R

JUDICIAL RECORDS/ARCHIVES
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MOTION FOR LEAVE TO EXCEED WORD LIMIT ON REPLY BRIEF

Counsel for the Applicant:

Professor Lennox Hinds

Office of the Prosecutor:

Hassan Bubucar Jallow
James J. Arquin
George W. Mugwanya
Evelyn Kamau
Aisha Kagabo
Leo Nwoye

1. The Applicant Juvénal Kajelijeli files this motion to request leave to exceed the word limit for his brief-in-reply in the matter of *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-R.
2. The Applicant's reply brief is 28 pages long, or approximately 9,000 words.
3. On 11 January 2012, the Applicant requested leave to amend his reply brief, which would add an additional 1,746 words to the brief. The Appeals Chamber has yet to rule on his request.
4. There is some authority to suggest that the maximum number of words allowed in a reply brief in review proceedings is 9,000 words.¹ In anticipation of the fact that the amended reply will exceed 9,000 words, the Applicant respectfully requests an increase in the word limit to 10,746 words, in accordance with Practice Direction C(5).²
5. This motion is timely filed in advance of the Applicant's potential filing.
6. The Rules of Procedure and Evidence as well as the Practice Direction on the Length of Briefs and Motions do not assign word limits for requests for review or subsequent briefs. However, the Appeals Chamber in *The Prosecutor v. Blaškić* ("*Blaškić*") signaled that it would consider the upper word limits in appeal proceedings to apply to review proceedings. It also articulated a general practice that applies to word limits which is that "the word limits for briefs and responses to those briefs shall be the same while the word limit for a reply is approximately one-third the word limit of the original brief."³
7. The Appeals Chamber in *Blaškić* was therefore concerned both with maximum word limits and the proportionality of word counts between original brief, response brief, and reply brief. In making its decision in *Blaškić*, the Appeals Chamber engaged in a comparative exercise to determine whether the ratio of word counts in each brief was reasonable. It found that the response brief in that case was a reasonable length because it contained fewer words than the original brief.⁴
8. It agreed to accord the Prosecution's request to exceed the word limit in a review proceeding by allowing it 9,000 words for its reply brief, despite the fact that 9,000 words was more than one-third the word count of the original brief, because of the "lack of specificity in the law of

¹ *The Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Decision on Word Limits in Review Proceedings, 1 February 2006, p. 5.

² Practice Direction on the Length of Briefs and Motions on Appeal.

³ *Blaškić*, p. 4.

⁴ *Blaškić*, p. 4.

- the International Tribunal with regard to the word limits for briefs filed in review proceedings,” and the complexity of the response brief, which introduced new documents.⁵
9. In the instant case, faced with what he perceived to be an absence of statutory word limits in review proceedings, the Applicant chose to prepare a clear, cogent, and concise request for review that contained 11,850 words. The Prosecutor responded with a brief that contained 26,865 words, which was more than double the length of the Applicant’s petition, and therefore disproportionate to it.
 10. The Prosecutor’s response, in addition to length, contained a number of complex fact-based arguments, in addition to new documents,⁶ that the Applicant needed to reply to which explains the length of his reply brief of approximately 9,000 words. The proposed amended portions of the reply brief would add 1,746 words to the brief, which is not excessive given the scope of the Prosecutor’s response.
 11. The Applicant recalls that in *Blaškić*, the Appeals Chamber found that the complexity of the Defense’s response brief was part of the reason why the Prosecution’s request to exceed the word limit for its reply brief should be granted.⁷ Similar circumstances apply in the Applicant’s case in that the length and complexity of the Prosecution’s response brief are what precipitated the Applicant’s lengthy reply brief, which is now in danger of exceeding maximum word limits if the Applicant’s short amendment is granted.
 12. Applying the concept of ratios of word counts elaborated in *Blaškić* to the present case, it is clear that the Prosecution’s response to the Applicant’s original request was not proportionate or reasonable in accordance with the general practice of the Tribunal because it contained over twice as many words as the Applicant’s request. The Applicant in his turn submitted a reply to the Prosecutor’s response that was greater than one-third the length of his original application, in order to make an adequate reply to the lengthy and complex response.
 13. The Applicant respectfully submits that neither party followed the customary word count ratios in this case, and given the absence of clear rules on word limits in review proceedings, it would be unfairly prejudicial to enforce word limit practices against only the Applicant in these proceedings and not the Prosecution.

⁵ *Blaškić*, p. 5.

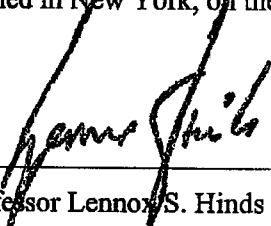
⁶ See for example Prosecutor’s Response Brief, para. 85.

⁷ *Blaškić*, p. 5.

14. Furthermore, given that the overall total word count of the submissions by parties in these proceedings has been significantly lower than the maximum word count allowed in appeal proceedings, it would not be unduly burdensome on the efficient administration of justice to allow an additional 1,746 words of pleadings in this case. Neither would it be prejudicial to the Prosecution, which took ample opportunity to present their arguments in their response brief, and which has had an opportunity to reply to the Applicant's request to amend his reply brief.
15. The length and complexity of the Prosecutor's response brief, the lack of specificity in the Tribunal rules regarding word limits in review proceedings, and the importance of affording the Applicant an opportunity to be heard on his additional proposed amendments, should leave be granted for them to be filed, provide exceptional circumstances in this case which necessitate an increase to the word limit.

Word Count: 914

Signed in New York, on the 31st day of January, 2012.



Professor Lennox S. Hinds
Lead Counsel



**TRANSMISSION SHEET
FOR FILING OF DOCUMENTS WITH CMS**

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

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From:	<input type="checkbox"/> Chamber (names)	<input checked="" type="checkbox"/> Defence Prof. Lennox S. Hinds (names)	<input type="checkbox"/> Prosecutor's Office (names) <input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. JUVENAL KAJELIJELI		Case Number: ICTR-98-44A-R
Dates:	Transmitted: 31 JANUARY 2012		Document's date: 31 JANUARY 2012
No. of Pages:	4	Original Language:	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
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