

UNITED
NATIONS

IT-98-33-A
D 2280 - D 2277
16 May 2002

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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: IT-98-33-A
Date: 16 May 2002
Original: English

IN THE APPEALS CHAMBER

Before: Judge David Hunt, Pre-Appeal Judge

Registrar: Mr Hans Holthuis

Decision of: 16 May 2002

PROSECUTOR

v

Radislav KRSTIĆ

DECISION GRANTING EXTENSION OF TIME FOR SUPPLEMENTARY REPLY

Counsel for the Prosecutor:

Mr Norman Farrell

Counsel for the Defence:

**Mr Nenad Petrušić
Mr Norman Sepenuk**

1. Radislav Krstić (“Krstić”) filed his Appellant’s Brief on 10 January 2002,¹ and the prosecution filed its Respondent’s Brief on 19 February.² Both filings were filed confidentially, and on 10 April the parties were ordered to file, after suitable redactions, a public version of their filings.³

2. In its Respondent’s Brief, the prosecution stated that it could not adequately respond to certain of the allegations made by Krstić as it was not at that time in a position to provide the information it had on the issue.

3. On 22 March, the prosecution filed a confidential request for leave to file a supplementary response.⁴ That leave was granted on 4 April, and the Supplementary Response was recognised as having been validly filed on 22 March.⁵ Krstić was ordered to file any reply to that Supplementary Response within seven days of the grant of leave.⁶

4. On the following day, a status conference was convened. At that status conference, the prosecution stated that they were still disclosing material to Krstić under Rule 68 of the Rules of Procedure and Evidence (“Rules”). Both parties agreed that they would require further time to continue discussions between them as to what material was still to be disclosed to Krstić pursuant to that obligation.⁷ The parties were ordered to file within 60 days a status report informing the Appeals Chamber of the progress of that disclosure.⁸

¹ Defence Appeal Brief (“Appellant’s Brief”), 10 Jan 2002. Krstić filed his Written Notice of Appeal on 14 August 2001. On 22 October, Krstić filed a Motion to Extend Time for Filing Appellant’s Brief, and he was granted an extension of 50 days after the filing of the Judgment in B/C/S: Order Granting Extension of Time, 5 Nov 2002. On 30 November, Krstić filed a Motion to Suspend the Briefing Schedule or, Alternatively for a Extension of Time to File Appellant’s Brief and Respondent’s Brief. He sought an extension of 90 days from 10 January 2002, the date upon which his Appellant’s Brief was due to be filed. This extension was refused by the Appeals Chamber: Decision on Application by Appellant to Suspend Briefing Schedule or for Extension of Time, 17 Dec 2001 [filed on 18 Dec 2001]

² Prosecution Response to the Defence Appeal Brief (“Respondent’s Brief”), 19 Feb 2002.

³ Order, 10 Apr 2002.

⁴ Prosecution’s Request to File a Supplementary Response to the Defence Appeal Brief and Prosecution’s Supplementary Response, 22 Mar 2002.

⁵ Decision on Prosecution Request to File a Supplementary Respondent’s Brief, 4 Apr 2002 (“Decision”).

⁶ Decision, Order (2), p 3.

⁷ Status Conference, 5 Apr 2002, T 28-32, T 36-38.

⁸ *Ibid*, T 37.

5. On 10 April, Krstić filed a motion requesting an extension of time in which to file his supplementary reply.⁹ In that Motion he claimed that he would not be in a position to make his reply to the prosecution's Supplementary Response until he had received further information from the prosecution which he had requested from it on 5 April, and again on 8 April. After this filing, both parties were informed by Chambers on 12 April that they would not be required to make any further filings until further order, which would not be made until the Rule 68 discussions were completed.

6. On 13 May, Krstić filed confidentially a motion for leave to file a supplementary reply, and attached that reply to the motion.¹⁰ He claims that, despite efforts he has made to clarify the position of the prosecution on matters relevant to the issues he wishes to address in his supplementary reply, that clarity has not been forthcoming.¹¹ He has therefore decided to file his Supplementary Reply at this time, notwithstanding the information given to him, although he seeks an opportunity to file a further supplementary reply should that need arise from his further discussions with the prosecution.¹²

6. In these circumstances, I am satisfied that Krstić has shown good cause for an order recognising that filing as validly done pursuant to Rule 127 of the Rules. However, as that filing was made confidentially, Krstić is to file within seven days of this decision a public version of that filing in accordance with the Order of 10 April 2002. If, after further discussions with the prosecution, Krstić wishes to file a further supplementary reply, leave should be sought to do so at that time.

7. There is presently outstanding another motion filed confidentially by Krstić on 8 March, concerning access to *ex parte* communications.¹³ The response of the prosecution was filed on 22 March.¹⁴ If Krstić wishes to file a reply to that response, he should do so within seven days of this decision.

⁹ Request for Extension for Filing the Reply to the Prosecutor's 22 March 2002 Supplementary Respondent's Brief, 10 Apr 2002.

¹⁰ Appellant's Supplementary Reply to Prosecution's Supplementary Response to the Defence Appeal Brief With Motion for Extension of Time, 13 May 2002 ("Motion").

¹¹ Motion, pars 3-4.

¹² Motion, par 4.

¹³ Motion for Disclosure of *Ex Parte* Communications, 8 Mar 2002.

¹⁴ Prosecution Response to Appellant's Motion for Disclosure of *Ex parte* Communications, 8 Mar 2002.

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

Dated this 16th day of May 2002,

At The Hague,
The Netherlands.



Judge David Hunt
Pre-Appeal Judge

[Seal of the Tribunal]