



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-95-14/2-A
Date: 19 July 2002
Original: English

IN THE APPEALS CHAMBER

Before: Judge David Hunt, Pre-Appeal Judge
Registrar: Mr Hans Holthuis
Decision of: 19 July 2002

PROSECUTOR
v.
DARIO KORDIĆ
MARIO ČERKEZ

DECISION ON REQUEST FOR EXTENSION OF TIME

Prosecutor v. Hadžihasanović et al
Counsel for the Prosecutor
Mr Ekkehard Withopf

Counsel for the Defence
Ms Edina Rešidović and Mr Stéphane Bourgon for Enver Hadžihasanović
Ms Vasvija Vidović and Mr John Jones for Mehmed Alagić
Mr Fahrudin Ibrišimović and Mr Rodney Dixon for Amir Kubura

Prosecutor v. Kordić and Čerkez
Counsel for the Prosecutor
Mr Norman Farrell

Counsel for the Appellants
Mr Božidar Kovačić for Dario Kordić
Mr Mitko Naumovski for Mario Čerkez

I, Judge Hunt, Pre-Appeal Judge in this case,

NOTING the “Joint Motion of Enver Hadžihasanović, Mehmed Alagić and Amir Kubura for Access to All Confidential Material—Transcripts and Exhibits from the Prosecutor v Dario Kordić and Mario Čerkez (Case No IT-95-14/2-T)”, dated 5 September 2001 but filed on 6 September 2001 (the “Motion”);

NOTING the “Prosecution’s Consolidated Response to the Motions of Enver Hadžihasanović, Mehmed Alagić and Amir Kubura for Access to All Confidential Material—Transcripts and Exhibits from: *Prosecutor v Zoran Kupreškić and Others* (Case No IT-95-16A); *Prosecutor v Tihomir Blaškić* (case No IT-95-14-T); and *Prosecutor v Dario Kordić and Mario Čerkez* (Case No IT-95-14/2-T)”, filed on 20 September 2001 (“Prosecution’s Original Response”);

NOTING the “Order of the President on the Defence Motion for Access to Confidential Material in the Case *The Prosecutor v. Dario Kordić and Mario Čerkez*”, filed on 28 May 2002 (“President’s Order”), whereby the President invited the Registrar to transmit the Motion to the Appeals Chamber in the *Kordić and Čerkez* case;

NOTING that, pursuant to the President’s Order, only the Motion from the Defence, not the Prosecution’s Original Response, was forwarded to the Appeals Chamber;

BEING SEISED of the “Prosecution’s Response to the Motion of Enver Hadžihasanović, Mehmed Alagić and Amir Kubura for Access to All Confidential Material—Transcripts and Exhibits from the Prosecutor v Dario Kordić and Mario Čerkez (Case No IT-95-14/2-T) and Request for Extension of Time Limit”, filed confidentially on 12 July 2002 (“Prosecution’s Response”), whereby the Prosecution requests that the Appeals Chamber recognise the present Response as validly filed pursuant to Paragraph 16 of the Practice Direction on Procedure for Filing of Written Submissions in Appeal Proceedings (IT/155 Rev. 1) (“Practice Direction”);

NOTING that the Order of the President was filed on 28 May 2002 and that the Prosecution’s Response should therefore have been filed no later than 7 June 2002 so that the Prosecution’s Response was filed out of time;

NOTING the “Defence Response to Prosecution Filing of 12 July 2002”, filed confidentially 18 July 2002 (“Defence’s Response”), whereby the Defence submits that the Prosecution’s

Response is unjustified and should be rejected since the Prosecution failed to explain how the Appeals Chamber's decision in *Kupreškić* created a "new standard" for access to material which would significantly differ from the existing one and would justify its being able to bring its response up to date;¹

NOTING that the Defence further requests that, should the Appeals Chamber regard the Prosecution's Response as having been validly filed, the Defence should be granted leave to submit a full reply on the merits of the Prosecution's Response;

CONSIDERING that it was reasonable for the Prosecution to assume that its original Response had been forwarded to the Appeals Chamber;

CONSIDERING, further, that, even if the Prosecution's Original Response had been forwarded to the Appeals Chamber, the Prosecution could have sought leave to bring it up to date, because the jurisprudence on the issue of access to material from another case has substantially evolved at an appellate level since the Motion was originally filed;

CONSIDERING that paragraph 16 of the Practice Direction provides that the Appeals Chamber may recognise as validly done any act done after the expiration of a time-limit so prescribed;

HEREBY GRANT the Prosecution's request for extension of time and consider the Prosecution's Response as having been validly filed.

GRANT, furthermore, the Defence's request for leave to file a reply to the Prosecution's Response and **ORDER** that the Defence should do so no later than 29 July 2002.

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



David Hunt
Pre-Appeal Judge

Done this 19th day of July 2002
At The Hague,
The Netherlands.

[Seal of the Tribunal]

¹ *Prosecutor v. Kupreškić et al.*, Decision on Appeal from Refusal to Grant Access to Confidential Material in Another Case, 23 April 2002.