

UNITED
NATIONS

IT-98-32-A
A 36 - A 32
29 January 2003

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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 No.: IT-98-32-A

Date: 29 January 2003

Original: English

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Mohamed Shahabuddeen, Pre-Appeal Judge

Registrar: Mr. Hans Holthuis

Decision: 29 January 2003

PROSECUTOR

v.

MITAR VASILJEVIĆ

**DECISION ON PROSECUTION MOTION CONCERNING DEFECTS IN THE DEFENCE
NOTICE OF APPEAL AND ON DEFENCE MOTION FOR EXTENSION OF TIME**

Counsel for the Prosecutor:

M. Christopher Staker

Counsel for the Appellant:

**M. Vladimir Domazet
M. Radomir Tanasković**

I, MOHAMED SHAHABUDEEN, Judge of the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“International Tribunal”),

NOTING the “Order designating a Pre-Appeal Judge” issued on 28 January 2003, which designated me as the Pre-Appeal Judge in the case of *Prosecutor v. Mitar Vasiljević*;

NOTING that, by virtue of Rules 65*ter* and 107 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), a pre-appeal judge has the power “to take any measure necessary to prepare the case for a fair and expeditious” hearing;

NOTING that the Appeals Chamber is seised of a notice of appeal filed by Mitar VASILJEVIĆ on 30 December 2002 from the Judgement of Trial Chamber II, dated 29 November 2002, in the case of *Prosecutor v. Mitar Vasiljević* (respectively “Notice of Appeal” and “Appellant”);

BEING SEISED of a request by the Appellant, contained in his Notice of Appeal, that the time limit of 75 days for filing the Appellant’s Brief should run from the day when the Appellant receives the translation into B/C/S of the Trial Chamber’s Judgement, as well as a “Prosecution Motion Concerning Defects in the Defence Notice of Appeal and Response to Defence Motion for Extension of Time” filed on 3 January 2003 (“Motion”);

NOTING the “Defence Reply to the Prosecution Motion Concerning Defect in the Defence Notice of Appeal and Defence Reply to the Prosecution Motion Concerning Defence Motion for Extension of Time Limited” (“Defence Response”) filed on 21 January 2003, which is eight days out of the time stipulated by paragraph 11 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal (IT/155 Rev.1);

NOTING the “Prosecution Reply to ‘Defence Reply to the Prosecution Motion Concerning Defect in the Defence Notice of Appeal and Defence Reply to the Prosecution Motion Concerning Defence Motion for Extension of Time Limited’” filed on 23 January 2003, in which the Prosecution does not object to the Appellant’s request for an extension of time in which to file his Defence Response;

NOTING the Appellant's explanation that, due to the Orthodox Christmas Holidays, the lead counsel missed the time limit for responding to the Motion but respectfully asks the Appeals Chamber to recognise the Defence Response as validly filed pursuant to Rule 127 of the Rules;

CONSIDERING that the delay in the filing of the Defence Response did not prejudice the proceedings in this appeal;

FINDING that there is good cause in the terms of Rule 127 of the Rules and therefore **RECOGNISING** the filing of the Defence Response as validly done;

CONSIDERING that in its Motion the Prosecution submits that:

- 1) the Notice of Appeal does not comply with the requirements of Rule 108 of the Rules as well as paragraph 1 of the Practice Direction on Formal Requirements for Appeals from Judgement (IT/201) ("Practice Direction on formal requirements"),
- 2) and suggests that the Defence motion for an extension of time to file its Appellant's Brief within 75 days of receiving a translation into B/C/S of the Trial Chamber's Judgement should be rejected as premature, without prejudice to the right of the Defence to apply again for an extension at the appropriate time;

CONSIDERING that in the Defence Response, the Appellant contends that:

- 1) he did not have in his possession the Practice Direction on formal requirements but states that, in case the Appeals Chamber decides that he should re-file his Notice of Appeal, he would like to do so within 14 days from the filing of the Appeals Chamber's decision;
- 2) the time limit of 75 days to file the Appellant's Brief should begin to run only from the day on which the Appellant receives a translation into B/C/S of the Trial Chamber's Judgement on the ground that such time is needed for the Appellant to read the judgement in his own language and consult with his counsel;

CONSIDERING that the Practice Direction on formal requirements was issued to address detailed aspects of the conduct of proceedings before the International Tribunal and to regulate the form and content of written submissions before the Appeals Chamber;

CONSIDERING that the Notice of Appeal filed by the Appellant does not conform with the requirements of Rule 108 of the Rules and, in particular, of Article 1 of the Practice Direction on formal requirements as it does not specify the substance of the alleged errors and the relief sought and in general lacks the details prescribed by the above-mentioned practice direction;

FINDING that it is necessary in the circumstances of this case for the Appellant to re-file his Notice of Appeal;

NOTING Rule 111 of the Rules which provides that “an Appellant’s brief setting out all the arguments and authorities shall be filed within seventy-five days of filing of the notice of appeal pursuant to Rule 108”;

NOTING that Rule 127 of the Rules, read with Rule 107, provides that “on good cause being shown by motion” the Appeals Chamber may “enlarge or reduce any time prescribed by or under these Rules”;

RECALLING that one of the Defence Counsel understands the language in which the Trial Chamber’s Judgement was delivered;

CONSIDERING that the Conference and Language Services Section has advised the Appeals Chamber that a B/C/S translation of the Trial Chamber’s Judgement will be available around 10th March 2003;

CONSIDERING that it is in the interests of justice to allow the Appellant adequate time to read the judgement in a language he understands and consult with his counsel before filing his Appellant’s Brief;

FINDING that this circumstance constitutes good cause for granting an extension of time for filing the Appellant’s Brief;

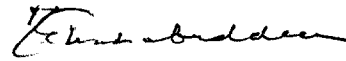
PURSUANT TO Rules 65^{ter}, 107 and 127 of the Rules and Article 17 of the Practice Direction on formal requirements,

HEREBY ORDER the Appellant

1. to re-file his Notice of Appeal in accordance with the requirements of Rule 108 of the Rules and of Article 1 of the Practice Direction on formal requirements, within 14 days of the filing of this decision;

2. to file his Appellant's Brief not later than 40 days after the date of filing of the B/C/S translation of the Trial Chamber's Judgement.

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



Mohamed Shahabuddeen
Pre-Appeal Judge

Dated this twenty ninth of January 2003
At The Hague,
The Netherlands.

[Seal of the Tribunal]