



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No. IT-99-36-A  
Date: 9 December 2004  
Original: English

**BEFORE THE PRE-APPEAL JUDGE**

**Before:** Judge Mohamed Shahabuddeen

**Registrar:** Mr. Hans Holthuis

**Decision:** 9 December 2004

**THE PROSECUTOR**

**v.**

**RADOSLAV BRĐANIN**

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**DECISION ON MOTIONS FOR EXTENSION OF TIME**

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**Counsel for the Appellant:**

**Mr. John Ackerman**

**Counsel for the Prosecutor:**

**Mr. Mark J. McKeon**

**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 Judgement rendered in this case by Trial Chamber II on 1 September 2004 (“Judgement”);

**NOTING** the most current estimate from the Registry according to which the translation of the Judgement into B/C/S will not be completed until 15 February 2005;

**NOTING** the “Prosecution’s Notice of Appeal” filed on 30 September 2004;

**NOTING** Radoslav Brđanin’s “Notice of Appeal” filed on 1 October 2004 (“Appellant” and “Appellant’s Notice of Appeal” respectively);

**NOTING** the “Order Appointing a Pre-Appeal Judge” issued on 22 October 2004 in which the President has designated me as the Pre-Appeal Judge in this case;

**BEING SEISED OF** the “Motion to Extend Time for Filing Appellant’s Brief” filed on 18 November 2004 by Counsel for the Appellant (“Motion”), in which the Appellant requests an extension of time of approximately 75 days from 15 February 2005, or until 1 May 2005, to file the Brief of the Appellant;

**NOTING** the “Prosecution’s Response to Motion to Extend Time for Filing Appellant’s Brief” filed on 29 November 2004 (“Response”), in which the Prosecution submits that the Appellant’s Motion should be granted in whole or in part but that, if granted, extension should apply to the Prosecution as well;<sup>1</sup>

**NOTING** that the Appellant did not file a reply to the Prosecution’s Response;

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<sup>1</sup> Response, paras 19, 24 and 25.

**BEING FURTHER SEISED OF** the “Prosecution’s Motion for Extension of Time for Filing its Appeal Brief and Request for Order Shortening Time” filed on 7 December 2004 (“Prosecution’s Motion”) in which the Prosecution requests the same extension of time as the Appellant to file its Appeal Brief as it is currently conducting time-consuming research on legal issues raised in its appeal, and in which the Prosecution further requests an order shortening the time for the filing of a response to the Prosecution’s Motion;

**NOTING** Rule 111 of the Rules of Procedure and Evidence (“Rules”) according to which “[a]n 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 the present deadline for the Appellant to file his Appeal Brief is 15 December 2004 and that the deadline for the Prosecution to file its Appeal Brief is 14 December 2004;

**CONSIDERING** that pursuant to Rule 127 (A) and (B) the Appeals Chamber may, on good cause being shown, enlarge or reduce any time prescribed by or under the Rules;

**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 to consult with counsel before filing his Appeal Brief pursuant to Rule 111 and that this constitutes good cause within the meaning of Rule 127 (A) of the Rules;<sup>2</sup>

**CONSIDERING**, however, that, on appeal, the main burden lies on counsel in preparing the submissions as he has the legal expertise to advise the Appellant whether there exist any potential errors of law and fact;

**CONSIDERING** further that counsel for the Appellant speaks English as his first language and is as such in a position to commence the preparation of the appeal in consultation with the Appellant

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<sup>2</sup> *Prosecutor v. Mladen Naletilić aka “Tuta” and Vinko Martinović aka “Stela”*, Case No. IT-98-34-A, Decision on Motions for Extension of Time, 12 June 2003, p. 4, and Decision on Mladen Naletilić’s Motions for Extension of Time, 25 June 2003, p. 3; *Prosecutor v. Juvénal Kajelijeli*, ICTR-98-44A-A, Decision on Motion for an Extension of Time to File Appellant’s Notice of Appeal and Brief, 17 December 2003, p. 3.

before the translation of the Judgement is rendered and that, therefore, a complete suspension of time until the translated Judgement is available would not be appropriate;<sup>3</sup>

**NOTING** the jurisprudence of the Tribunal according to which, in similar cases, an extension of 30 to 40 days from the date on which the Judgement was made available to the Appellant in a language he understands has been considered appropriate;<sup>4</sup>

**CONSIDERING** that the complexity of the case and the length of the Judgement constitute good cause in the sense of Rule 127 (A) and justify, in the present case, a deviation from that practice;

**NOTING** the intention of counsel for the Appellant to review trial records from related cases as well as newly discovered evidence with a view to determining whether to file a motion according to Rule 115 to present additional evidence;<sup>5</sup>

**CONSIDERING**, however, that the intention to file a motion under Rule 115 does not constitute good cause within the meaning of Rule 127 (A);

**CONSIDERING** that the argument of the Prosecution, that the Appellant will be occupied with other tasks until the translation of the Judgement is filed in February 2005 and that he therefore would not have the time to reply to the Prosecution's Appeal Brief within the prescribed limit of 40 days,<sup>6</sup> does not constitute good cause within the meaning of Rule 127 (A);

**CONSIDERING** that the Prosecution's argument, that it should be entitled to an extension of time on the ground that such an extension would be granted to the Appellant, is misconceived as the

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<sup>3</sup> See *Prosecutor v. Milomir Stakić*, IT-97-24-A, Decision on Motion for Extension of Time, 30 October 2003, p. 3; *Prosecutor v. Dario Kordić and Mario Čerkez*, Decision on Motions to Extend Time for Filing Appellant's Briefs, 11 May 2001, para. 18: "Where the judgment is already available in a language which counsel for the accused speaks, it is not in the interests of justice that nothing should be done [sic] until the accused is able to read the judgment. (...) A complete suspension until the judgment is available in a language which the accused understands would not be appropriate, as counsel would be able to commence the preparation of the appeal, although some allowance must be made for the fact that the appellant has not had the same time to read and consider the judgment."

<sup>4</sup> *Prosecutor v. Dragan Nikolić*, IT-94-2-A, Decision on Motion for Variation of Time-Limit, 25 March 2004, p. 3; *Prosecutor v. Momir Nikolić*, IT-02-60/1-A, Decision on Motion for Variation of Time-Limit, 22 January 2004, p. 5.

<sup>5</sup> Motion, paras 4 and 5.

<sup>6</sup> See Rule 112.

Prosecution does not need to have the Judgement translated in B/C/S to prepare its Appellant's Brief, and that each application for an extension of time has to be evaluated on its own merits;<sup>7</sup>

**CONSIDERING** further that the Prosecution's argument that a synchronized filing of the appeal briefs of both parties will ensure that matters are dealt with at one time and that the briefing schedule will remain consistent<sup>8</sup> does not constitute good cause within the meaning of Rule 127 (A);

**CONSIDERING** that the importance and complexity of the research the Prosecution is currently conducting constitute good cause within the meaning of Rule 127 (A) and, therefore, justify an extension of time to file its Appeal Brief;

**CONSIDERING**, however, that the extension requested by the Prosecution appears too long since the Prosecution, unlike the Appellant, is not dependant on the translation of the Judgement in B/C/S language and since it did not submit any substantial reasons as to why it should be allowed to file its Appeal Brief on the same day as the filing of the Appellant's Brief;

**CONSIDERING** that counsel for the Appellant advised the Prosecution that he did not have any objection to the Prosecution's request for an extension of time;<sup>9</sup>

**CONSIDERING**, therefore, that the Appellant is not prejudiced by the Appeals Chamber rendering its decision without giving him the opportunity to respond to the Prosecution's Motion;

**CONSIDERING** further that, in the light of the above, an order shortening the time for the filing of a response to the Prosecution's Motion, has become obsolete;

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<sup>7</sup> *Prosecutor v. Milorad Krnojelac*, IT-97-25-A, Decision on Requests for Extension of Time, 20 June 2002, p. 3; *Prosecutor v. Dario Kordić & Mario Čerkez*, IT-95-14-2-A, Decision on Application by Mario Čerkez for Extension of Time to File his Respondent's Brief, 11 September 2001, paras 4-9.

<sup>8</sup> Response, para. 23.

**FOR THE FOREGOING REASONS,**

**HEREBY GRANT**, in part, the Appellant's Motion and the Prosecution's Motion;

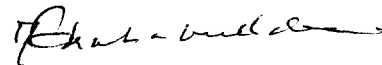
**ORDER** the Appellant to file his Appellant's Brief not later than 50 days after the filing of the B/C/S translation of the Judgement;

**ORDER** the Prosecution to file its Appeal Brief not later than 28 January 2005;

**REQUEST** the Registrar to inform the Appeals Chamber and the parties to this case when the translation of the Judgement in B/C/S is filed.

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

Dated this 9<sup>th</sup> day of December 2004,  
At The Hague,  
The Netherlands.



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Mohamed Shahabuddeen  
Pre-Appeal Judge

**[Seal of the Tribunal]**

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<sup>9</sup> Prosecution's Motion, para. 12.