

IT-99-36-A
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4 March 2005

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**UNITED
NATIONS**



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-99-36-A
Date: 11 March 2005
Original: English

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Mohamed Shahabuddeen
Registrar: Mr. Hans Holthuis
Decision: 11 March 2005

THE PROSECUTOR

v.

RADOSLAV BRĐANIN

**DECISION ON PROSECUTION'S REQUEST FOR AN EXTENSION OF TIME TO
RESPOND TO BRĐANIN'S MOTION TO DISMISS GROUND 1 OF THE
PROSECUTION'S APPEAL**

Counsel for the Prosecutor:

Mr. Mark J. McKeon

Counsel for the Accused:

Mr. John Ackerman

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”) and Pre-Appeal Judge in this case;¹

NOTING the “Prosecution’s Notice of Appeal” filed by the Prosecutor (“Prosecution”) on 30 September 2004;

NOTING the “Prosecution’s Brief on Appeal” filed by the Prosecution on 28 January 2005;

NOTING the “Motion to Dismiss Ground 1 of the Prosecutor’s Appeal”, filed by Radoslav Brđanin (“Appellant”) on 15 February 2005 (“Motion to Dismiss”);

BEING SEISED OF the “Prosecution’s Request for an Extension of Time to Respond to Brđanin’s Motion to Dismiss Ground 1 of the Prosecution’s Appeal” filed by the Prosecution on 4 March 2005 (“Request”), in which the Prosecution seeks an extension of time until 4 March 2005 to file the “Prosecution Response to Motion to Dismiss Ground 1 of the Prosecutor’s Appeal” (“Prosecution’s Response to Motion to Dismiss”) and a direction to the Registry to file the Prosecution’s Response to Motion to Dismiss, which appears as Annex A to the Request, as a Motion and serve it on the Appellant;

NOTING the “Response to Prosecutor’s Motion for Extension of Time to File Response to Motion to Dismiss Ground 1 of Appeal and Request for Extension of Time in Which to File Brief in Response to Prosecutor’s Brief on Appeal”, filed by the Appellant on 4 March 2005 (“Response”), in which the Appellant indicates that he has no objection to the Request;

NOTING that the Practice Direction IT/155/Rev.2 provides that, where a motion has been filed by a party wishing to move the Appeals Chamber for a specific ruling or relief, “[t]he opposite party shall file a response within ten days of the filing of the motion”;²

¹ Order Appointing a Pre-Appeal Judge, 22 October 2004.

² Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal, IT/155/Rev.2, 21 February 2005 (“Practice Direction IT/155/Rev.2”), para. 14.

NOTING that the Practice Direction IT/155/Rev.2 provides that “the Appeals Chamber [...] may vary any time-limit prescribed [...] or recognise as validly done any act done after the expiration of a time-limit so prescribed”;³

NOTING that pursuant to Rule 127(A) of the Rules of Procedure and Evidence of the International Tribunal, the Appeals Chamber may, on good cause being shown, vary any time-limit prescribed for the filing of written submissions;

NOTING that the Prosecution contends that good cause for such variation is to be found in the present case in that, although the “receipt slip shows that the document was signed for by someone from” the Prosecution on 15 February 2005, “neither the appeals case manager nor the lawyers in the appeals section had ever seen this Motion before, and that a copy of this Motion did not appear in the case file” of the Prosecution;⁴

CONSIDERING that the Prosecution’s explanation does not of itself constitute good cause, but that the circumstances of this case warrant an extension of time in the interests of justice;

NOTING that the Appellant requests a “modest extension” of time, until 21 March 2005, for the filing of his Brief in Response to the Prosecution’s Brief on Appeal;

NOTING an e-mail statement from Counsel for the Appellant, sent to a Senior Legal Officer of the Appeals Chamber on 7 March 2005, in which he states that it would be preferable to grant him five days after the Motion to Dismiss is decided to file his Brief in Response to the Prosecution’s Brief on Appeal;

NOTING that the Prosecution does “not object to a request for a reasonable extension of time for Mr. Brđanin to file his Response Brief”;⁵

³ Practice Direction IT/155/Rev.2, para. 19.

⁴ Request, paras 1, 4 and footnote 1.

⁵ Request, para. 7.

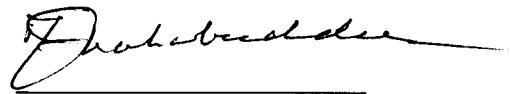
NOTING further an oral statement of the Prosecution, made to a Legal Officer of the Appeals Chamber on 8 March 2005, that it does not object to the Appellant's request for extra time to file its Brief in Response until 21 March 2005;

HEREBY ORDER the Registry to file the Prosecution's Response to Motion to Dismiss which appears as Annex A to the Request as a Motion and serve it on the Appellant, any appropriate extension of time for this purpose being also granted;

FURTHER ORDER the Appellant to file his Brief in Response to the Prosecution's Brief on Appeal no later than 5 days after the Motion to Dismiss is decided.

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

Dated this 11th day of March 2005,
At The Hague, The Netherlands.



Mohamed Shahabuddeen
Pre-Appeal Judge

[Seal of the Tribunal]