

UNITED
NATIONS

IT-02-60/1-A
A 2745 - A 2742
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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-02-60/1-A

Date: 1 April 2005

Original: English

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Mehmet Güney

Registrar: Mr. Hans Holthuis

Decision: 1 April 2005

Momir NIKOLIĆ

v.

PROSECUTOR

**DECISION ON SECOND DEFENCE MOTION
TO ENLARGE TIME FOR FILING OF REPLIES**

Counsel for the Appellant:

Mr. Rock Tansey

Counsel for the Prosecutor:

Mr. Norman Farrell

A handwritten signature in black ink, appearing to be 'Rock' or similar.

I, MEHMET GÜNEY, Judge of the Appeals Chamber of the International Criminal 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,

NOTING the “Appellant’s Motion for Leave to File Second Amended Notice of Appeal” and the confidential “Appellant’s Second Motion to Admit Additional Evidence” filed by Momir Nikolić (“Appellant”) on 23 December 2004 (“Appellant’s Motions”);

NOTING my confidential Decision of 7 February 2005 authorizing the Prosecution to file its responses to the Appellant’s Motions by 21 February 2005 and instructing the Appellant to file his replies to the Prosecution’s responses within twenty days of the filing of the Prosecution’s response, namely, by 14 March 2005;¹

NOTING my Decision of 8 March 2005 granting the Appellant a further extension of time, until Monday 11 April 2005,² to file his replies to the Prosecution’s Responses;³

BEING SEISED OF the “Second Motion to Enlarge Time for Filing of Replies Relating to Appellant’s Second Motion to Admit Additional Evidence and Motion for Leave to File a Second Amended Notice of Appeal” filed on 31 March 2005 by the Appellant (“Second Motion for Extension of Time”), whereby he seeks a further extension of eight weeks to file his replies to the Prosecution’s Responses;

NOTING that, in support of his request, the Appellant submits, *inter alia*, that:

- (i) Counsel for the Appellant was not assigned until 16 February 2005 and was unable to begin reviewing the record until 28 February 2005;⁴
- (ii) the amount of materials that required the Counsel’s review was significantly greater than “originally understood” and, as a result, his ability to consult with Appellant was delayed to 30 March 2005;⁵

¹ Decision on Prosecution Urgent Request for Extension of Time and Motion for Access, Confidential, 7 February 2005.

² Decision on Motion to Enlarge Time for Filing of Replies Relating to Appellant’s Second Motion to Admit Additional Evidence and Motion for Leave to File a Second Amended Notice of Appeal, 8 March 2005.

³ Prosecution’s Response to Appellant’s Motion for Leave to File Second Amended Notice of Appeal and Prosecution’s Response to Appellant’s Second Motion to Admit Additional Evidence, both filed confidentially on 21 February 2005 (together “Prosecution’s Responses”).

⁴ Second Motion for Extension of Time, para. 6.

⁵ Second Motion for Extension of Time, para. 7.

- (iii) because of the complex nature of the issues presented in the two pending motions, Counsel must now undertake a further review of some of the evidence presented in the *Blagojević and Jokić* trial proceedings;⁶
- (iv) before being able to proceed with drafting the replies, Counsel needs time to familiarize himself with the record on appeal, the appellate pleadings, and the legal authorities cited, and to properly and fully consult with the Appellant, which will not result in prejudice to either the Appellant or the Prosecution;⁷
- (v) in addition, “Counsel has a previous commitment for a major terrorism trial scheduled to begin 11 April 2005 and lasting six to eight weeks” (“terrorism trial”);⁸

NOTING the “Prosecution Response to Second Motion to Enlarge Time for Filing of Replies Relating to Appellant’s Second Motion to Admit Additional Evidence and Motion for Leave to File a Second Amended Notice of Appeal” filed on 1 April 2005, in which the Prosecution indicates that it does not oppose the Second Motion for Extension of Time on the sole basis that the Appellant’s Counsel needs two additional weeks after the end of the terrorism trial to acquaint himself with the case, consult further with his client and file the replies;

NOTING that pursuant to paragraph 12, Section IV, of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the International Tribunal⁹ (“Practice Direction”), an appellant may file a reply within four days of the filing of the response;

NOTING that, pursuant to Rule 127 of the Rules of Procedure and Evidence of the International Tribunal and paragraph 19, Section VIII, of the Practice Direction, the Appeals Chamber may vary any time-limit prescribed for the filing of written submissions;

NOTING that the Appellant was granted two extensions amounting to a further 45 days for the filing of his replies;

CONSIDERING that it is in the interests of justice to allow newly appointed Counsel to familiarise himself with the case and that it was on this specific ground that the second extension of time was granted;

CONSIDERING nevertheless that former Counsel for the Appellant is currently part of the legal team of the newly appointed Counsel and is therefore able to significantly assist the new Counsel in preparing the replies;

⁶ Second Motion for Extension of Time, para. 8.

⁷ Second Motion for Extension of Time, para. 9.

⁸ Second Motion for Extension of Time, para. 11.

⁹ IT/155/Rev.2, 21 February 2005.

CONSIDERING moreover that the time required to prepare a reply should not be significant since a reply is restricted to dealing with issues raised in the opposite party's response and cannot be used to supplement the initial motion with new arguments;

STRESSING that other professional commitments of counsel should not have any bearing on the responsibilities of counsel towards their client and the International Tribunal;

FINDING that good cause has not been shown to grant a further extension of time to the Appellant for the filing of his replies to the Prosecution's Responses;

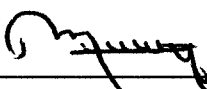
FOR THE FOREGOING REASONS,

DENY the Second Motion for Extension of Time; and

REMIND the Appellant that the filing of his replies is due no later than Monday, 11 April 2005.

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

Done this first day of April 2005,
At The Hague, The Netherlands.



Mehmet Güney
Pre-Appeal Judge

[Seal of the International Tribunal]