



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-96-23/2-AR11bis.1

Date: 9 June 2005

Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Fausto Pocar  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Wolfgang Schomburg

**Registrar:** Mr Hans Holthuis

**Decision:** 9 June 2005

**THE PROSECUTOR**

v.

**Radovan STANKOVIĆ**

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**DECISION ON DEFENCE APPLICATION FOR  
EXTENSION OF TIME TO FILE NOTICE OF APPEAL**

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**Counsel for the Accused:**

Mr. Victor Koppe

**The Office of the Prosecutor:**

Mr. Mark McKeon

1. 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 (“Tribunal”) is seised of the “Application for Extension of Time to File Notice of Appeal” (“Application”), filed by Counsel for Radovan Stanković (“Appellant”) on 25 May 2005.

### Background

2. At the center of this case is Rule 11*bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”). That rule, based on Security Council resolution 1534 (2004),<sup>1</sup> allows the Tribunal to transfer cases involving lower-level accused to competent national jurisdictions.

Rule 11*bis* provides in part:

- (A) After an indictment has been confirmed and prior to the commencement of trial, irrespective of whether or not the accused is in the custody of the Tribunal, the President may appoint a bench of three Permanent Judges selected from the Trial Chambers (hereinafter referred to as the “Referral Bench”), which solely and exclusively shall determine whether the case should be referred to the authorities of a State:
- (i) in whose territory the crime was committed; or
  - (ii) in which the accused was arrested; or
  - (iii) having jurisdiction and being willing and adequately prepared to accept such a case,
- so that those authorities should forthwith refer the case to the appropriate court for trial within that State.
- (B) The Referral Bench may order such referral *proprio motu* or at the request of the Prosecutor, after having given to the Prosecutor and, where applicable, the accused, the opportunity to be heard and after being satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out.
- (C) In determining whether to refer the case in accordance with paragraph (A), the Referral Bench shall, in accordance with Security Council resolution 1534 (2004),

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<sup>1</sup> U.N. Doc. S/RES/1534 (2004).

consider the gravity of the crimes charged and the level of responsibility of the accused.

3. On 21 September 2004, the Prosecutor filed a motion for referral of this case to Bosnia and Herzegovina,<sup>2</sup> and, on 5 October 2004, the President of the Tribunal filed an “Order Appointing a Trial Chamber for the Purposes of Determining Whether the Indictment Should Be Referred to Another Court Under Rule 11*bis*.” Defence Counsel for the Accused filed a response to the motion on 22 December 2004, objecting to the referral of the case to the State Court of Bosnia and Herzegovina.<sup>3</sup> Following briefing and an oral hearing on 4 March 2005 at which the parties and the Government of Bosnia and Herzegovina were represented,<sup>4</sup> the Referral Bench concluded in its decision of 17 May 2005 that referral was appropriate, and it accordingly ordered that the case be transferred to the authorities of Bosnia and Herzegovina.<sup>5</sup>

4. On 25 May 2005, the Appellant filed the present Application, indicating his intent to appeal the Referral Decision and requesting an extension of time in which to file his appeal. The Prosecutor filed her response on 30 May 2005, stating her opposition to the Appellant’s Application,<sup>6</sup> and, on the same day, she simultaneously filed a Notice of Appeal setting forth her objections to the Referral Decision.<sup>7</sup>

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<sup>2</sup> Request by the Prosecutor under Rule 11*bis* of the Rules of Procedure and Evidence (RPE) for Referral of Indictment to the State of Bosnia and Herzegovina, 21 September 2004.

<sup>3</sup> Defence’s Motion in Accordance Rule 11*bis*(B), 22 December 2004.

<sup>4</sup> Decision on Referral of Case Under Rule 11*bis* (“Referral Decision”), filed partially confidentially and *ex parte* on 17 May 2005, paras 7-8.

<sup>5</sup> Referral Decision, para. 96.

## Arguments of the Parties

5. Rule 11*bis*(I) sets forth the timeline during which a party may appeal from a decision by the Referral Bench. The Rule's text provides:

An appeal by the accused or the Prosecutor shall lie as of right from a decision of the Referral Bench whether or not to refer a case. Notice of appeal shall be filed within fifteen days of the decision unless the accused was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the accused is notified of the decision.

6. If the time limit prescribed by Rule 11*bis*(I) were followed strictly in this case, the Appellant's notice of appeal would have been due 15 days after the Referral Decision was rendered – in other words, on 1 June 2005. But the Appellant contends, for a variety of reasons, that he has good cause for receiving an extension beyond that date pursuant to Rule 127 of the Rules.

7. First, the Appellant notes that he was not “formally notified” of the Referral Decision until 24 May 2005, “when he received a copy in the language he understands.”<sup>8</sup> Thus, he asserts, his notice of appeal should not be due until 15 days from that date – that is, 8 June 2005.<sup>9</sup>

8. Moreover, the Appellant argues, the Referral Decision marks the first time that the Tribunal has referred an indictment to another court under Rule 11*bis*. He therefore contends that “this Decision will lay the basis for a whole raft of transfers planned by the Prosecutor in order to achieve her completion strategy,” and that “issues of the utmost importance are at stake, including, but not limited to, significant questions of jurisdiction as well as the right to

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<sup>6</sup> Prosecutor's Response to Defence Motion for Extension of Time to File Notice of Appeal, 30 May 2005 (“Response”).

<sup>7</sup> Prosecution's Notice of Appeal, 30 May 2005.

a fair trial.”<sup>10</sup> The Appellant also notes that his filing requires “a considerable amount of both factual and legal research,” including research related to a motion to adduce additional evidence that he is likely to file.<sup>11</sup> Finally, the Appellant observes that Defence Counsel “did not represent Mr. Stanković at first instance and received the assignment to do so in these proceedings only recently.” Thus, the Appellant seeks an additional six weeks within which to prepare his notice of appeal.<sup>12</sup>

9. The Appellant adds at the end of his Application that he would like “guidance from the Appeals Chamber on the procedure that will be followed in this case.”<sup>13</sup> He notes that Rule 11*bis*(I) provides for the filing of a notice of appeal but is silent on what happens next. He accordingly requests that the Appeals Chamber clarify the procedures to be followed on appeal.<sup>14</sup>

10. The Prosecutor, too, is uncertain of the procedures to be followed on appeal, and she joins the Appellant in requesting clarification from the Appeals Chamber.<sup>15</sup> The Prosecutor suggests that an appeal from a Rule 11*bis* decision should follow the expedited appeals procedure set forth in Rule 116*bis*, and that the Rules and Practice Directions applicable to interlocutory appeals should apply by analogy.<sup>16</sup> The Prosecutor then proposes a briefing schedule that she states is appropriate for an appeal of this nature and scope.<sup>17</sup>

11. Although the Prosecutor agrees with the Appellant that the parties would benefit from some clarification of the procedures on appeal, she does not agree that the Appellant deserves

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<sup>8</sup> Application, para. 3.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*, para. 5.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*, para. 4.

<sup>13</sup> *Ibid.*, para. 7.

<sup>14</sup> *Ibid.*

<sup>15</sup> Response, para. 10.

<sup>16</sup> *Ibid.*, paras 10-11.

an extension of his filing deadline.<sup>18</sup> First, the Prosecutor notes that the Appellant was represented by counsel on 17 May 2005, when the Referral Decision was announced. She therefore argues that under Rule 11*bis* of the Rules, the Appellant is not entitled to a postponement of the filing deadline for the five days that he spent waiting for a translation of the Decision in a language he understands.<sup>19</sup> The Prosecutor also opposes any additional extension of the filing deadline, because she asserts that the Appellant has not shown good cause for an exception to the 15-day time limit.<sup>20</sup> Finally, the Prosecutor asserts that even if the Appeals Chamber determines that the Appellant has shown good cause for an extension, he is not entitled to one as long as six weeks.<sup>21</sup>

### Discussion

12. Because this is the first appeal from a decision by the Referral Bench, it necessarily involves some novel procedural issues with regard to the appropriate briefing schedule to be followed. The Appeals Chamber is therefore sensitive to the problems addressed by the parties, and it will endeavor to provide some guidance for this case.

13. Rule 11*bis*(I) is clear in at least one respect: in the ordinary case, when the accused was either present for the decision or was represented by counsel, the notice of appeal “shall be filed within fifteen days of the decision.”<sup>22</sup> But it does not follow that the party who files a notice of appeal then gets the full amount of time allotted for appeals from judgement to file his or her appeal brief. This is true because of both the operation of the Rules of Procedure and Evidence and the general nature of Rule 11*bis* appeals.

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<sup>17</sup> *Ibid.*, para. 13.

<sup>18</sup> *Ibid.*, para. 2.

<sup>19</sup> *Ibid.*, paras 4-5.

<sup>20</sup> *Ibid.*, paras 6-8.

<sup>21</sup> *Ibid.*, para. 9.

<sup>22</sup> Rule 11*bis*(I).

14. The Appeals Chamber first notes that it would be incongruous to treat this appeal like a run-of-the-mill appeal from a final judgement. Under the Tribunal's Rules, Rule 11*bis* appeals are most analogous to interlocutory appeals, especially those filed under Rule 72 of the Rules. In particular, the Appeals Chamber finds that appeals from Rule 11*bis* decisions are closely related to interlocutory appeals from decisions on preliminary motions challenging jurisdiction under Rule 72(B)(i). Both types of appeals are filed on decisions made prior to the commencement of a trial; lie as of right; and must be filed within 15 days of the date the Trial Chamber decision is rendered orally unless the party challenging the decision was not present or represented when the decision was pronounced, in which case the time limit shall run from the date on which the challenging party is notified of the oral decision.<sup>23</sup> Most important, both types of appeals address the fundamental question of whether this Tribunal will exercise jurisdiction over the case. By contrast, the Appeals Chamber notes that the Rules reflect less similarity between Rule 11*bis* appeals and appeals from final judgements. Although Rule 11*bis* appeals involve a notice of appeal, they do not trigger operation of Rules 109 to 114 pertaining to the filing schedule for the parties' briefs on appeal from a trial judgement. Furthermore, appeals from trial judgements are filed after the trial proceedings have run their course.

15. In addition to the clear similarity between Rule 11*bis* appeals and preliminary interlocutory appeals challenging jurisdiction under the Tribunal's Rules, the Appeals Chamber notes that in this case and in most cases, in terms of length and complexity, a Rule 11*bis* appeal is likely to be more akin to an interlocutory appeal than to an appeal from a final judgement. The latter is ordinarily quite hefty, involving many grounds of appeal on factual and legal issues arising from a Trial Chamber judgement. This case is different. The briefing

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<sup>23</sup> Cf. Rule 11*bis*(I) and Rule 72(C)(i).

and oral hearing were conducted while the case was in its pre-trial stage. The Referral Decision is not prolix; on the contrary, it is short and straightforward. And the scope of the appeal is limited in nature. The issues to be raised on appeal relate principally, but not necessarily exclusively, to the question whether the case should be referred to the authorities and Bosnia and Herzegovina; the appeal will not involve a wide-ranging inquiry into lengthy Trial Chamber proceedings.

16. The Appeals Chamber finally notes that an appeal from a Rule 11*bis* decision is also more akin to an interlocutory appeal in one other sense: the case is still in the pre-trial stage, and trial proceedings will later commence either in The Hague or in Bosnia and Herzegovina. Notably, under Rule 11*bis*(F) and (G), the Referral Bench retains the authority, “after an order has been issued . . . and before the accused is found guilty or acquitted by a national court,” to “revoke the order.”<sup>24</sup>

17. The Appeals Chamber accordingly determines that the procedure in this case shall be as follows. Setting aside for the moment the Appellant’s request for an extension of time, the Appellant must file his notice of appeal, according to Rule 11*bis*, “within fifteen days of the decision unless the accused was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the accused is notified of the decision.” Fifteen days after filing his notice of appeal, the Appellant must then file his appeal brief.

18. If that timeline were applied strictly to this case, the parties’ notices of appeal would have been due on 1 June 2005. The Appeals Chamber recognizes, however, that the appeal procedures were not clear to the parties, and that the filing deadlines were accordingly

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<sup>24</sup> Rule 11*bis*(F).



difficult to meet. Under Rule 127 of the Rules, an enlargement of time for filing may be granted by the Appeals Chamber on the basis of “good cause being shown by motion.” The Appeals Chamber concludes that these unusual circumstances constitute good cause for an extension of the filing deadline set by Rule 11bis(I). As a result, the Appeals Chamber concludes that the Appellant shall have one week, or seven days, from the issuance of this decision to file his notice of appeal. The Appellant’s appeal brief must be filed 15 days after the date on which he files his notice of appeal. Each party will have 10 days to respond to the appeal briefs, and four days in which to reply to the response briefs. Finally, recognizing that the Prosecutor filed her notice of appeal on 30 May 2005, the Appeals Chamber determines that the Prosecutor’s appeal brief shall be due 15 days from the filing of this decision. As always, for guidance on the filing of written submissions, the parties are directed to the Practice Direction for Appeal Proceedings.<sup>25</sup>

19. The Appeals Chamber finds, however, that the Appellant has not established “good cause” within the meaning of Rule 127 for a further extension of the deadline.

20. As discussed above, the Appellant’s first contention is that his deadline should be calculated based on the time he was “notified” of the Referral Decision, which he interprets to mean the time at which he received a copy of the Decision in a language he understands. But this argument is contrary to the Rule’s plain text. The Rule states that the notice of appeal “shall be filed within fifteen days of the decision unless the accused was not present or represented when the decision was announced, in which case the time-limit shall run from the date on which the accused is notified of the decision.” Because the Appellant was represented by counsel at the time of the Referral Decision, the exception does not apply to

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<sup>25</sup> Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal (IT/155/Rev. 2), 21 February 2005. For guidelines concerning the page and word

him. Moreover, in the context of appeals from judgements, the Appeals Chamber has rejected arguments parallel to that of the Appellant, holding that it is sufficient, for the purpose of preparing a notice of appeal, that Appellant's counsel be able to read and understand the judgement.<sup>26</sup>

21. Nor has the Appellant shown good cause for a six-week extension of the filing deadline. As explained above, a Rule 11*bis* appeal is more like a preliminary interlocutory appeal challenging jurisdiction than an appeal from a judgement under the Tribunal's Rules and in terms of the probable range of issues to be raised. While the legal issues involved may prove to be difficult, they are likely to be discrete. The Appeals Chamber is not persuaded that the Appellant needs an extra six weeks to prepare his notice of appeal. In any event, the Appellant has already received an extension: rather than a due date of 1 June, he will have one week (seven days) from the date this decision is filed to submit his notice of appeal, with additional time thereafter to file his appeal brief. That is ample time.

22. To summarize: From the date of this decision, the Appellant shall have one week (seven days) to file his notice of appeal, and the Prosecutor will have 15 days to file her appeal brief. The Appellant shall file his appeal brief 15 days after filing his notice of appeal. Each party's response brief is due 10 days after the filing of the appeal brief that he or she is opposing, and the replies are due four days after the response briefs. The Appellant's request for further extensions is denied.

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limitations of the briefs, the parties are directed to paragraph (C)(2) of the Practice Direction on the Length of Briefs and Motions (IT/184/Rev. 1), 5 March 2002..

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

Dated this ninth day of June 2005,  
At The Hague,  
The Netherlands.



Judge Theodor Meron  
Presiding Judge

[Seal of the International Tribunal]

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<sup>26</sup> See, e.g., *Prosecutor v. Blagojević et al.*, Case No. IT-02-60-A, Decision on Defence Motion for Extension of Time in Which to File the Defence Notice of Appeal, 15 February 2005, p. 2.