

**UNITED
NATIONS**



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-02-60-A
Date: 21 July 2005
Original: English

IN THE APPEALS CHAMBER

Before: Judge Mohamed Shahabuddeen
Registrar: Mr. Hans Holthuis
Decision: 21 July 2005

PROSECUTOR

v.

**VIDOJE BLAGOJEVIĆ
DRAGAN JOKIĆ**

**DECISION ON BLAGOJEVIĆ'S AND JOKIĆ'S MOTIONS FOR
EXTENSION OF TIME TO FILE THEIR APPEAL BRIEFS**

The Office of the Prosecutor:

Mr. Norman Farrell

Counsel for the Appellants:

Mr. Vladimir Domazet for Vidoje Blagojević
Ms. Cynthia Sinatra and Mr. Christopher Staker for Dragan Jokić

1. 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”) is seised of appeals from the Judgement of Trial Chamber I in the case of *Prosecutor v. Blagojević et al.*, Case No. IT-02-60, rendered orally on 17 January 2005 and in writing on 24 January 2005 (“Judgement”). Appeals have been filed by both Appellants, Vidoje Blagojević and Dragan Jokić, as well as by the Prosecution.

2. I, Judge Mohamed Shahabuddeen, was designated Pre-Appeal Judge in this case by an “Order Assigning Judges to a Case Before an Appeals Chamber,” filed on 14 February 2005.

3. As recounted in more detail in a prior decision,¹ “the appeals process in this case has been delayed by several necessary extensions of time.” The most recent such extension was granted in the Pre-Appeal Judge’s Decision of 14 April 2005, which provided a 35-day extension for Blagojević to file his Notice of Appeal by 31 May 2005, and extended the date for Jokić to file his Appeal Brief to 14 August 2005. These extensions had the effect of re-synchronizing the two Appellants’ appeal schedules, which had become out of step due to prior extensions. Both Appellants’ briefs are now due on 14 August 2005.²

4. The Appeals Chamber is now seised of new motions filed by both Blagojević and Jokić, who both seek identical relief—60-day further extensions of time to file their Appeal Briefs—but for different reasons.³ In a consolidated response, the Prosecution opposes Jokić’s motion and argues that Blagojević should receive an extension of no more than 40 days.⁴ Neither Appellant has filed a reply to this response. Each motion will be considered in turn.

A. Blagojević’s Motion.

5. Rule 127 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”) provides that “on good cause being shown by motion” the Appeals Chamber may “enlarge or

¹ Decision on Appellants’ Motions for Extensions of Time in Which to File their Responses to the Prosecutor’s Appeal Brief, 31 May 2005.

² Meanwhile, the Prosecution’s appeal continued on its own schedule. The Prosecution filed its Appeal Brief on 9 May 2005, Blagojević and Jokić filed their Response Briefs on 20 June 2005; and the Prosecution filed its Brief in Reply on 5 July 2005.

³ See Defence of Vidoje Blagojević Motion for Extension of Time in which to file his Appellant’s Brief, filed 30 June 2005 (“Blagojević’s Motion”); Dragan Jokić’s Motion for Extension of Time to File Appeal Brief, filed 2 July 2005 (“Jokić’s Motion”).

⁴ “Prosecution’s Consolidated Response to Blagojević and Jokić’s Motions for Extensions of Time to File an Appellant’s Brief,” filed on 11 July 2005 (“Prosecution’s Consolidated Response”),

reduce any time prescribed by or under these Rules”. Blagojević offers three reasons as to why this requirement is satisfied. First, he claims that counsel is unable to prepare his brief in time because he was required to file, on 20 June 2005, a Response to the Prosecution’s Appeal Brief in this case. The substance of this argument has already been rejected in the Decision on Appellants’ Motions for Extensions of Time in Which to File their Responses to the Prosecutor’s Appeal Brief, filed on 31 May 2005. The existence of cross-appeals by both parties is common in this Tribunal, and the filing times set forth by the Rules were created taking this fact into account. Parties are expected to be able to balance the requirements to file briefs supporting their own appeals and responding to their opponent’s appeals. Here, after filing his Response Brief on 20 June 2005, Blagojević still has nearly two months more to work on his own Appeal Brief according to the current deadline. The overlap in schedules for the appeals does not constitute good cause for an extension.

6. Second, Blagojević claims that his defence was hampered in its preparation by the fact that the Registry did not assign his counsel a legal assistant in a timely manner. Specifically, he claims counsel requested the assignment of an assistant on 21 March 2005, that one was assigned on 4 April 2005 but that the assignment was revoked on 7 April 2005, and that no new assistant was assigned as a replacement until 27 May 2005. The Prosecution concedes that this constitutes good cause for an extension, but argues that 60 days is excessive as a remedy. It suggests that the Appeals Chamber grant a 40-day extension, noting that the deprivation of an assistant (which it calculates as being from 7 April to 26 May) was less than 60 days long.

6. In the circumstances, the fact that counsel was forced to proceed without a legal assistant during this period constitutes good cause for an extension of reasonable length. Blagojević’s counsel, Mr. Domazet, is working without assigned co-counsel on a complicated case involving an extensive record and appeals from all parties, and—as discussed below—he faces certain language difficulties. It is reasonable for him to require some assistance, and he requested that assistance in a timely fashion but did not receive it for a considerable time. The relevant period of deprivation lasted from March 21 to April 4 and again from April 7 to May 27; this adds up to 65 days. However, as the Prosecution observes, this deprivation only slowed and did not stop progress on the preparation of Blagojević’s appeal, as counsel is the one who is principally responsible for this preparation and can be expected to continue working in the absence of an assistant. Indeed, during this period, counsel successfully prepared Blagojević’s notice of appeal, which he filed on 31 May 2001. A full 60-day extension is not merited on this basis alone.

7. Blagojević’s final argument for an extension is that, other than the B/C/S translation of the Judgement that he received on 8 June 2005, all the materials relating to the case had been available

only in English, including more than 12,000 pages of transcripts from trial. Blagojević's counsel, Mr. Domazet, states that he speaks French fluently, and implies that he is not sufficiently comfortable with English to work with these materials in the time allotted.

8. It should be noted that, although Mr. Domazet chose to speak in French at the Status Conference held in this case on 17 June 2005, he has filed his submissions to date in English. It should be noted that French is an official language of the Tribunal, as stated in Rule 3 of the Rules. Counsel is fully entitled to file his submissions in French; he should do so if this will enable him to better serve his client's interest in an effective defence.

9. As to the transcripts, the Registry has confirmed that no French transcripts have been produced. This was due to the common preferences of counsel and judges at the trial stage, all of whom worked in English. Blagojević's Motion implies that, if provided with extra time to account for language difficulties and/or the need to translate materials, counsel will be capable of working through the English transcripts of the trial in order to prepare Blagojević's Appeal Brief effectively.

10. In light of the Appellant's right to an effective defence and the importance thereto of counsel's ability to give careful scrutiny to the trial record, this issue constitutes good cause for an extension of time. Counsel is advised to seek solutions promptly in the event of any further language-related concerns that risk impairing the effectiveness of Blagojević's defence, including by bringing them to the attention of the Appeals Chamber or the Registry, as appropriate.

11. In light of the combination of factors discussed here, the 60-day extension sought by the Appellant is of reasonable length.

B. Jokić's Motion.

12. The Prosecution's Status Report filed on 16 June 2005, identifies certain materials that the Prosecution intends to disclose to the Appellants. These include a substantial collection of documents known as the Drina Corps Collection that, the Prosecution estimates, will be available through the Electronic Disclosure System (EDS) in late September 2005. At the Status Conference held on 17 June 2005, a lengthy discussion of these materials took place, and the Prosecution provided its assurance that it was endeavouring in good faith to make the materials available through the EDS as quickly as possible, and stated that the exact date could not be predicted exactly but that late September was its best estimate.

13. Jokić offers two reasons that there is “good cause” for an extension of time for his Appeal Brief: (1) he received the B/C/S translation of the Judgement on 8 June 2005 and needs more time to review the evidence in light of the Judgement in order to assist his counsel in preparing his case; and (2) the Drina Corps Collection consists of 300,000 pages of documents, which Jokić will need time to review.

14. The first of these reasons provides no justification for an extension. As the Prosecution points out, the extension of time granted to Jokić by the 14 April Decision already accounted for an anticipated delay in delivery of the B/C/S translation. Between having received the translation of the Judgement on 8 June 2005 and the deadline for his Appeal Brief of 14 August 2005, Jokić has 67 days to review the Judgement and assist his counsel in the preparation of his defence. And the Appeals Chamber has previously held that 50 days’ time, even in a complex case, during which the appellant has access to a translation of the Judgment which he sufficiently understands should be adequate to enable him to assist his counsel in the preparation of his appeal brief.⁵

15. Likewise, the impending disclosure of the Drina Corps Collection does not provide good cause for an extension. As the Prosecutor correctly observes, the Drina Corps Collection is not a part of the trial record, and it is relevant to this appeal only insofar as the parties are able to establish that materials included in it should be admitted at the appeal stage pursuant to Rule 115 of the Rules. Jokić has indicated that he intends to file a Rule 115 motion after the completion of the disclosure of The Drina Collection.⁶ But Appeals Chamber precedent makes clear that the intention to file a Rule 115 motion in the future does not constitute good cause for an extension of time in filing appeal pleadings.⁷

16. Nor can Jokić claim that the need to spend time reviewing the Drina Corps Collection will impair the efficiency of his counsel in her preparation of the Appeal Brief. That brief is due August 14, and the Collection will not be available until late September. Indeed, it is hard to see how the 60-day extension Jokić seeks could possibly enable counsel to review those materials and then prepare the Appeal Brief in light of them; rather, it would seem to make the timing problem worse, as that schedule would allow perhaps two to three weeks to review 300,000 pages and finish drafting the brief.

⁵ *Prosecutor v. Brdanin* Decision on Motions for Extension of Time, IT-99-36-A, 9 December 2004, pp. 4, 6 (citing other Appeals Chamber decisions holding that 30 to 40 days is sufficient, but holding that 50 days was justified in that case due to the complexity of the case).

⁶ Transcript of Status Conference of 17 June 2005, pp. 24-25

⁷ 14 April Decision, p. 5

C. Prosecution's Request for an Extension of Time

17. In its Consolidated Response, the Prosecution raises its own alleged need for an extension of time. Specifically, it suggests that if (as it urges) Blagojević is granted a 40-day extension while Jokić's Motion is denied, the Prosecution should be given a 40-day extension to respond to Jokić's motion. Under this proposal, the Prosecution would have the same deadline for both responses and could file a consolidated response brief as it plans. Presently, the expected due date for the Prosecution's brief is 40 days after 14 August 2005, or 23 September 2005.

18. In support of its request, the Prosecution contends first that the case is too complicated to enable it to prepare a consolidated brief in the 40 days allowed by Rule 112. But the sheer number of errors raised—which is the only evidence of complexity to which the Prosecution points—does not seem particularly unusual for the Tribunal's cases, and provides no basis in and of itself for an extension. To be sure, the complexity of the case has earlier been cited as providing good cause, when taken together with other factors, for an extension for Jokić's filing of his appeal brief.⁸ But there, in addition to the other factors that were present, appeal counsel was required to take the time to review the extensive trial record in sufficient detail to identify the proper grounds of appeal and defend her client effectively. Here, the Prosecution has had many months already to review the record, and has already prepared and filed its own appeal pleadings. This ground therefore does not support the lengthy extension the Prosecution seeks.

19. The Prosecution also maintains that it has allocated work resources and scheduled staff summer vacations to accommodate the various extensions already given in this case and that as a result it faces various competing demands, in particular in the *Stakić, Naletilić and Martinović, Brđanin, and Strugar* cases. It should be noted that the Prosecution just sought and received an extension in *Brđanin* on a similar basis.⁹ That decision, however, made clear that such factors as the Tribunal's summer recess and competing work pressures from other cases do not ordinarily provide "good cause" for extensions of time.¹⁰ Rather, the Prosecution is expected to plan for these factors and allocate resources accordingly. What made *Brđanin* different from this case was that a very recent order in that case—issued just a few days before the original deadline for the appeal brief and a few weeks before the recess—had substantially complicated the Prosecution's plans, making it unreasonable to expect the Prosecution to adapt so quickly to the sudden change in the schedule. Here, in contrast, the most recent decision granting an extension of time was issued on 14 April 2005. The Prosecution has had months to adapt to the present schedule and allocate its resources

⁸ See *id.* p. 4.

⁹ See *Prosecutor v. Brđanin*, Case No. IT-99-36-A, Decision on Motion for Extension of Time for the Filing of Prosecution Response Brief, 20 July 2005.

accordingly, and indeed it states that it has “reallocated resources” and “scheduled annual summer leave based upon the *existing* briefing schedules of these cases”.

20. In light of these facts, it is unclear why the Prosecution’s scheduling conflicts would provide a basis for moving the deadline for its response to Jokić’s brief, assuming the deadline for Jokić’s brief stays at 14 August 2005; the Prosecution has been planning on the basis of this deadline. Nor would granting a 60-day extension to Blagojević appear to create undue interference with the Prosecution’s plans; that would push the Prosecution’s deadline in that case to late November, well after the period (from now until early October) during which the Prosecution claims it is unusually burdened with work on other appeals.

21. However, it remains the case that, as the Prosecution points out, if Blagojević’s Motion is granted while Jokić’s Motion is denied, it will then be impossible for it to file a consolidated response brief because the schedules for the two appeals will no longer be synchronised. A prior Pre-Appeal decision in this case observed that the goal of synchronisation itself does not constitute good cause for an extension, but instead is a factor to be considered in determining the length of the extension once good cause is established by other means.¹¹ Nonetheless, the Appeals Chamber itself has a significant interest in having the Prosecution’s response to the two appeals be consolidated; a single brief will considerably simplify the process of reviewing the case by eliminating unnecessary overlap and clarifying the issues that are common to the two appeals. It thus determines this is an unusual circumstance in which granting an extension may in fact expedite consideration of the appeal, benefiting all parties as well as the Appeals Chamber, and that it is therefore in the interest of justice to arrange the deadlines to facilitate a consolidated response brief.

22. Blagojević will be granted a 60-day extension, creating a 60-day gap—if no extension is granted to Jokić—between the deadlines for the two response briefs. Given that the Prosecution has not established good cause for any more than, at best, a short extension of time, it would be inequitable to close this gap by denying Jokić any extension while giving a 60-day extension to the Prosecution in responding to Jokić’s brief, which would be longer even than the 40 days the Prosecution itself claims to need. The fairest way to accomplish the goal of resynchronisation is, in my view, to split the extra 60 days of time equally between the parties, granting both Jokić and the Prosecution 30-day extensions.

¹⁰ *Id.* at 3-4 (citing other Tribunal case law).

¹¹ *Prosecutor v. Blagojević and Jokić* Decision on Appellants’ Motions for Extension of Time in Which to File Their Responses to the Prosecutor’s Appeal Brief, IT-02-60-A, 1 June 2005, para. 12

23. I note that pursuant to this schedule, briefing in this case will be completed by early December 2005, permitting the Appeal Hearing to be scheduled sometime in the first half of 2006, depending on the Appeals Chamber's scheduling constraints.

Disposition

- 1) Blagojević's Motion for a 60-day extension of time is GRANTED. The new deadline for Blagojević's Appeal Brief is 13 October 2005 (60 days after 14 August 2005).
- 2) Jokić's Motion is GRANTED IN PART. The new deadline for Jokić's Appeal Brief is 13 September 2005 (30 days after 14 August 2005).
- 3) The Prosecution is GRANTED a 30-day extension of time to respond to Jokić's Appeal Brief and ORDERED to file a consolidated response brief in the two appeals within 40 days of the filing of Blagojević's Appeal Brief and 70 days of the filing of Jokić's Appeal Brief.

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



Mohamed Shahabuddeen
Pre-Appeal Judge

Dated 21 July 2005
At The Hague
The Netherlands

[Seal of the International Tribunal]