



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-02-65-AR11bis.1
Date: 30 August 2005
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar
Judge Florence Mumba
Judge Mehmet Güney
Judge Wolfgang Schomburg
Judge Andréia Vaz

Registrar: Mr. Hans Holthuis

Decision of: 30 August 2005

THE PROSECUTOR

v.

Željko MEJAKIĆ
Momčilo GRUBAN
Dušan FUŠTAR
Duško KNEŽEVIĆ

**DECISION ON JOINT DEFENSE MOTION FOR ENLARGEMENT OF TIME TO FILE
APPELLANTS' BRIEF**

Counsel for the Prosecutor:

Mr. Mark J. McKeon
Ms. Susan L. Somers
Ms. Ann Sutherland

Counsel for the Accused:

Mr. Jovan Simić and Mr. Zoran Živanović for Željko Mejakić
Mr. Brako Lukić for Momčilo Gruban
Mr. Theodore Scudder and Mr. Dragan Ivetić for Dušan Fuštar
Mr. Slobodanka Nedić for Duško Knežević

Case No.: IT-02-65-AR11bis.1

30 August 2005

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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”),

BEING SEISED of the “Joint Defense Motion for Enlargement of Time to File Appellants’ Brief” filed on 18 August 2005 (“Motion for Extension of Time”), by Željko Mejakić, Momčilo Gruban, Dušan Fuštar, and Duško Knežević (“Appellants”), in which they request an extension of time to file their consolidated Appellants’ Brief pursuant to Rule 127 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”) on the basis of several reasons;¹

NOTING the “Prosecution’s Response to the Joint Defense Motion for Enlargement of Time to File Appellants’ Brief” filed on 19 August 2005 (“Prosecution’s Response”), in which the Prosecution submits that none of the circumstances set forth in the Appellants’ Motion for Extension of Time constitute good cause under Rule 127 for an extension of the filing deadline of their Appellants’ Brief and that, based on the circumstances surrounding the timing of the filing of the Motion for Extension of Time, the request is without merit, is sought for the purposes of delay and should be denied²;

NOTING the “Joint Defense Appellants’ Brief in Support of Notice of Appeal” filed by the Appellants on 19 August 2005 (“Appellants’ Brief”);

NOTING the “Joint Defence Reply in Further Support of Motion for Enlargement of Time to File Appellants’ Brief in Support of Notice of Appeal” filed on 26 August 2005 (“Reply”), in which the Appellants submit that “the Defense still seeks an enlargement of time, to file its Corrigendum and Amended Appeals Brief, to supplement the brief filed on 19 August 2005” because the Appeals Brief is partial and “although mostly completed” is “not yet fully refined and complete”³ and requests the Appeals Chamber to allow them to supplement their Appellants’ Brief and file a corrigendum/ amendment to the Joint Defense Appellants’ Brief within seven days of the filing of the Reply, namely, on 2 September 2005;⁴

CONSIDERING that pursuant to the “Practice Direction on the Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal” (“Practice Direction”),⁵ the

¹ Motion, p. 1.

² Prosecution’s Response, para. 4.

³ Reply, para. 7,

⁴ Reply, p. 3.

⁵ IT/155 Rev. 2.

Appellants' Reply was due to be filed four days from the Prosecution's Response, or by 23 August 2005, and therefore, was not timely filed and that the Appellants' have failed to demonstrate good cause for the late filing;⁶

RECALLING that on 4 August 2005, the Appellants filed their "Joint Defence Notice of Appeal" against the "Decision on Prosecutor's Motion for Referral of Case Pursuant to Rule 11bis" rendered by the Referral Bench on 20 July 2005;

CONSIDERING that pursuant to precedent set in the Appeals Chamber's decision in *Prosecutor v. Stanković*,⁷ the Appellants were required to file their joint Appellants' Brief no later than 15 days from the filing of their joint Notice of Appeal, or on 19 August 2005, and that they have done so;

FINDING therefore, that the Appellants' Motion for Extension of Time is moot;

CONSIDERING however, that a party may, without requesting leave from the Appeals Chamber, file a corrigendum to their previously filed brief or motion whenever a minor or clerical error in said brief or motion is subsequently discovered and where correction of the error is necessary in order to provide clarification;

CONSIDERING further, that if the Appellants require a substantive amendment to supplement their Appellants' Brief, they may, pursuant to Rule 127(A)(ii) and (B) of the Rules, file said supplement with a request that the Appeals Chamber recognize the late filing of this part of the Appellants' Brief as validly filed on condition that the Appellants provide sufficient reasons constituting good cause for the Appeals Chamber to do so;

FOR THE FOREGOING REASONS:

DISMISSES the Appellants' Motion for Extension of Time;


ADVISES the Appellants that they may, nevertheless, file a corrigendum to their Appellants' Brief correcting any minor or clerical errors, if necessary, without leave from the Appeals Chamber; and

⁶ Practice Direction, para. 3.
⁷ Case No. IT-96-23/2-AR11bis.1, Decision on Defence Application for Extension of Time to File Notice of Appeal, 9 June 2005.

ADVISES the Appellants that they may, if necessary, file a substantive supplement to the Appellants' Brief with a request that the supplement be recognized as validly filed pursuant to Rule 127(A)(ii) and (B) of the Rules on condition that they provide the Appeals Chamber with sufficient reasons constituting good cause for it to do so.

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

Done this thirtieth day of August 2005,
At The Hague,
The Netherlands.



Judge Fausto Pocar
Presiding

[Seal of the Tribunal]