

IT-01-47-A
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27 June 2006

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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
Former Yugoslavia since 1991

Case No. IT-01-47-A
Date: 27 June 2006
Original: English

IN THE APPEALS CHAMBER

Before: Judge Mohamed Shahabuddeen, Pre-Appeal Judge
Registrar: Mr. Hans Holthuis
Decision: 27 June 2006

PROSECUTOR

v.

**ENVER HADŽIHASANOVIĆ
AMIR KUBURA**

**DECISION ON MOTIONS FOR EXTENSION OF TIME,
REQUEST TO EXCEED PAGE LIMIT, AND MOTION TO FILE
A CONSOLIDATED RESPONSE TO APPEAL BRIEFS**

The Office of the Prosecutor:

Mr. Peter Kremer, QC

Counsel for the Appellants:

Ms Edina Redišović and Mr. Stéphane Borgon for Mr. Hadžihasanović
Mr. Fahrudin Ibrišimović and Mr. Rodney Dixon for Mr. Kubura

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 II in the case of *Prosecutor v. Hadžihasanović and Kubura*, Case No. IT-01-47, rendered on 15 March 2006 (“Judgement”).

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 and Appointing a Pre-Appeal Judge,” filed on 26 April 2006.

3. Amir Kubura filed his “Notice of Appeal From Judgement on Behalf of Amir Kubura Filed Pursuant to Rule 108” in this case on 13 April 2006. Enver Hadžihasanović filed his “Notice of Appeal From Judgement on Behalf of Enver Hadžihasanović and Request to Exceed the Page Limit” on 18 April 2006. In the latter, Mr. Hadžihasanović notes that neither the Rules of Procedure and Evidence of the International Tribunal (“Rules”) nor any applicable Practice Direction sets a page limit for notices of appeal, but that the Practice Direction on the Length of Briefs and Motions applies a ten-page limit to “other motions, replies, and responses”; he seeks to exceed that limit by four pages. Paragraph 5 of the current version of that Practice Direction (IT/184/Rev.2), issued on 16 September 2005 (“Practice Direction”), actually sets a limit of 3,000 words. However, a notice of appeal is not a “motion” within the meaning of the Practice Direction, and thus it is unnecessary for Mr. Hadžihasanović to seek permission to exceed this limit. The length of his notice of appeal is moreover reasonable under the circumstances of the case.

4. Subsequently, both appellants filed motions requesting extensions of time for the filing of their appeal briefs pending the completion of translations of the Judgement. The Judgement, which is 789 pages long, was filed in French. In his “Appellant’s Motion for Variation of Time Limits Pursuant to Rule 127”, filed on 8 May 2006 (“Hadžihasanović Motion”), Mr. Hadžihasanović argues that although his counsel speak French, he himself needs access to at least part of the Judgement in B/C/S so that he can assist his counsel in the preparation of his appeal brief. In view of the length of the Judgement, he “waives his right to obtain a full translation of the Judgement in his language at this time”, seeking only a total of 297 pages covering certain sections of the Judgement that are of particular importance to his appeal.¹ He seeks a 45-day extension beyond the date on which he receives those translations. In his “Motion on Behalf of Mr. Amir Kubura for Extension of Time to File Appeal Brief”, filed on 22 May 2006 (“Kubura Motion”), Mr. Kubura

¹ Hadžihasanović Motion, paras 15-16 (specifically seeking pages 133-277, 383-421, 466-508, 538-602, and 707-718).

states that his counsel need an English translation of the Judgement in order to prepare his Appeal Brief, and requests a 75-day extension from the date such a translation is provided to him.²

5. The Prosecution takes no position on the Hadžihasanović Motion.³ As to the Kubura Motion, it does not oppose an extension of time until after the translation is completed, but argues that 75 days is excessive as counsel can begin to work on the brief before receiving the translation.⁴ In combination with its response to the Kubura Motion, which was filed on 26 May 2006, it files a “Motion to File a Consolidated Response to Appeal Briefs”, in which it argues that the two appellants’ cases are interconnected and states that it wishes to file a consolidated response brief. It requests that it be granted 40 days following the filing of the second of the two appellants’ appeal briefs in order to file its consolidated response brief. The appellants have filed no response to the Prosecution’s motion, nor have they filed any replies in support of their own motions.

6. According to Rule 127 of the Rules, extensions of time may be granted for “good cause”. As to the Hadžihasanović Motion, the Appeals Chamber has consistently held that there is good cause to grant an extension for an appeal brief in order to permit an appellant to review the judgement in a language he understands and to help his counsel to prepare the brief.⁵ Mr. Hadžihasanović’s request, which is limited to a 45-day extension after receipt of translations of the portions of the Judgement most relevant to his appeal, is reasonable, and there is good cause for it. It bears noting that the Registry does not generally certify a translation as official until it is completed in full. However, in order to expedite this appeal, I will request the Registry to prioritize the requested sections of the Judgement, including doing the revisions normally completed before a translation is finally certified, and to transmit these sections to the parties before completing the process for the entirety of the Judgement and certifying the translation.

7. As to the Kubura Motion, it is plain that counsel’s need for access to the judgement in a language they understand—without which they cannot reasonably be expected to prepare an appeal

² Kubura Motion, paras 4-5.

³ Prosecution Response to Appellant Hadžihasanović’s Motion for Variation of Time Limits Pursuant to Rule 127, 12 May 2006, para 5.

⁴ Prosecution’s Response to Appellant Kubura’s Motion for Extension of Time to File Appeal Brief and Prosecution’s Motion to File a Consolidated Response to Appeal Briefs, 26 May 2006 (“Response to Kubura and Prosecution Motion”), para. 12.

⁵ See, e.g., *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Decision on Defence Request for Extension of Time, 9 May 2005 (“*Strugar Decision*”); *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Decision on Vidoje Blagojević’s Motion for Extension of Time in Which to File His Notice of Appeal and on Dragan Jokić’s Motion for Extension of Time in Which to File His Appeal Brief, 14 April 2005 (“*Blagojević Decision*”); *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Order Granting Extension of Time, 5 November 2001.

brief—also constitutes good cause for an extension of time.⁶ The Prosecution maintains that an extension of 75 days—the full period normally allotted by Rule 111 for the preparation of an appeal brief—is excessive because counsel can at least get started on the appeal brief while awaiting the translation. Whether this is a reasonable expectation depends on the circumstances of the case.⁷ In this case many of the trial materials, including the transcripts, are available in English, and moreover counsel in this case were evidently able to prepare a Notice of Appeal, suggesting that they are able to make at least some progress in the absence of an English translation of the Judgement. However, particularly in light of the unusual length of the Judgement, it is reasonable for counsel to request a fairly long period to review the Judgement in a language they understand. Under the circumstances, sixty days past the completion of the official translation is appropriate. In order to prevent further delays in the appeal, the Registry will be requested to expedite the translation process.

8. As to the Prosecution's motion to file a consolidated response brief, it is entitled to do so, and to wait until 40 days after the filing of the second of the two appellants' appeal briefs, under paragraph C(1)(b) of the Practice Direction. It is therefore unnecessary for the Prosecution to file a motion requesting permission to do so.

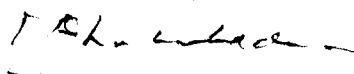
DISPOSITION

The Hadžihasanović Motion is granted and the Kubura Motion is granted in part. The Registry is requested to complete and communicate to the parties the English translation of the full Judgement, as well as the B/C/S translation of the pages requested by Mr. Hadžihasanović, on an urgent basis, and to complete and certify the B/C/S translation of the full Judgement thereafter. Mr. Hadžihasanović's Appellant's Brief will be due 45 days after transmission of the partial B/C/S translation to him. Mr. Kubura's Appellant's Brief will be due 60 days after transmission of the certified English translation to his counsel.

⁶ See *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR116, Decision on Request for Extension of Time, 27 January 2006, para. 4.

⁷ The Prosecution cites no cases in support of its claim that the Appeals Chamber has "consistently" imposed such an expectation on counsel. See Response to Kubura and Prosecution's Motion para. 12. If anything, the Appeals Chamber has consistently required counsel to begin working on an appeal brief while awaiting translation of a judgement into a

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



Mohamed Shahabuddeen
Pre-Appeal Judge

Dated 27 June 2006
At The Hague
The Netherlands

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language her *client* understands. See *Strugar Decision* and *Blagojević Decision*, *supra*. For counsel to begin work without a copy of the judgement in a language she *herself* understands is a different matter entirely.