

**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: 30 January 2007
Original: English

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Mohamed Shahabuddeen, Pre-Appeal Judge
Registrar: Mr. Hans Holthius
Decision: 30 January 2007

PROSECUTOR

v.

**ENVER HADŽIHASANOVIĆ
AMIR KUBURA**

**DECISION ON APPELLANT'S MOTION FOR
RECONSIDERATION AND EXTENSION OF TIME LIMITS**

The Office of the Prosecutor:

Mr. Peter Kremer, QC

Counsel for the Appellants:

Ms. Edina Rešidović and Mr. Stéphane Bourgon for Mr. Hadžihasanović
Mr. Fahrudin Ibrišimović and Mr. Rodney Dixon for Mr. Kubura

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 (“Appeals Chamber” and “International Tribunal”, respectively), is seized of appeals from all parties from the Judgement of Trial Chamber II in the case of *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47, rendered on 15 March 2006 (“Judgement”). The Appeals Chamber is also presently seized of the “Appellant Motion for Reconsideration and Extention [sic.] of Time Limits” (“Motion”), filed by Counsel for Appellant Enver Hadžihasanović (“Defence”) on 23 January 2007.

2. I, Judge Mohamed Shahabuddeen, was designated Pre-Appeal Judge in this case by an “Order Assigning Judges to a Case Before the Appeals Chamber and Appointing a Pre-Appeal Judge”, filed on 26 April 2006.

I. INTRODUCTION

3. Mr. Hadžihasanović filed his Notice of Appeal in this case on 18 April 2006.¹ On 27 June 2006, he was granted an extension of time for the completion of his Appeal Brief until 45 days after the transmission to him of a partial translation in B/C/S of the Trial Judgement.² A B/C/S version of the full Trial Judgement was transmitted to the parties on 1 December 2006. At a Status Conference held on 8 December 2006, I granted Mr. Hadžihasanović and Mr. Kubura a further extension of time for the filing of their Appeal Briefs until 22 January 2007.³

4. On 18 January 2007, Counsel for Mr. Hadžihasanović (“Defence”) filed its “Defence Motion on Behalf of Enver Hadžihasanović Seeking Leave to Exceed Words Limit for the Appeal Brief” (“Motion for Extension of Word Limits”), in which the Defence requested an extension of the word limit for its Appeal Brief from 30,000 to 39,000 words. The Defence submitted that its request was justified by the length of the Trial Judgement, the number of exhibits entered into evidence in this case, the number of grounds of appeal, and the need to address numerous exhibits and testimonies including those not mentioned in the Trial Judgement.⁴

5. On 22 January 2007, I rendered the “Decision on Defence Motion on Behalf of Enver Hadžihasanović Seeking Leave to Exceed Words Limit for the Appeal Brief” (“Decision of 22 January 2007”), which denied the Motion for Extension of Word Limits. The Decision held that the

¹ Notice of Appeal from Judgement on Behalf of Enver Hadžihasanović and Request for Leave to Exceed the Page Limit, 18 April 2006.

² Decision on Motions for Extensions of Time, Request to Exceed Page Limit, and Motion to File a Consolidated Response to Appeal Briefs, 27 June 2006, p. 4.

³ Transcript of Status Conference, 11 December 2006, p. 14.

⁴ Motion for Extension of Word Limits, para. 3.

factors raised by the Defence did not constitute exceptional circumstances that distinguished the case and necessitated an extension of the word limits prescribed in the Practice Direction on the Length of Briefs and Motions (“Practice Direction on Length”).⁵

6. On the same day, the Defence sought to file a 45,000-word Appeal Brief, which included a request for a further extension of word limits.⁶ The Registry refused to file the document in view of its non-compliance with the Practice Direction on Length and the Decision of 22 January 2007. It informed the Defence that it should resubmit its Appeal Brief in accordance with that Decision.⁷ To date, the Defence has not re-submitted its Appeal Brief.

7. In its Motion, the Defence submits that the Decision of 22 January 2007 should be reconsidered because there has been a change of circumstances since the filing of the Motion to Exceed Word Limit, in that the Appellant “has applied for a further extension of word limits (up to 45,000 words)” and has in that application “provided additional justification for producing an oversized filing”.⁸ Further, it argues that the Appellant is prejudiced by the Decision of 22 January 2007 in that he either will be required to withdraw additional grounds of appeal or will not have the opportunity to brief sufficiently the grounds of appeal raised.⁹ Alternatively, if leave to exceed the word limit is not granted, the Defence requests an extension of time of five days from the date of the decision on its Motion in which to file a shorter, edited Appeal Brief.¹⁰

8. The Prosecution filed a response to the Motion on 25 January 2007, in which it argues that the request for reconsideration is without merit and should be dismissed.¹¹ It does not oppose the request for a five-day extension of time for the filing of the Appellant’s Appeal Brief and requests leave to file its Consolidated Response Brief 40 days from the filing of the Appeal Brief.¹² The Defence has not replied to the Prosecution’s Response.¹³

⁵ IT/184 Rev. 2, 16 September 2005.

⁶ See Motion, para. 4.

⁷ Contrary to the contentions of the Defence, the Appeal Brief was not filed on 22 January 2007 prior to the Decision of the Appeals Chamber, as the Registry refused to file the oversized brief pending the resolution of the Motion for Extension of Page Limits. See Motion, paras 4, 6.

⁸ Motion, para. 10.

⁹ *Ibid.*, para. 12.

¹⁰ *Ibid.*, paras 44, 45, and 49.

¹¹ Prosecution’s Response to Hadžihasanović’s Motion for Reconsideration and Extension of Time to File Appeal Brief, 25 January 2007 (“Prosecution’s Response”), paras 1-2.

¹² *Ibid.*, para. 3.

¹³ The Defence was required to file its reply within four days of the filing of the Prosecution’s Response, pursuant to paragraph 14 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal, IT/155/Rev.3, 16 September 2005 (“Practice Direction on the Filing of Written Submissions”).

II. DISCUSSION

9. It is well established that the Appeals Chamber has inherent discretionary power to reconsider its own previous decisions other than a final judgement.¹⁴ As a Judge of the Appeals Chamber, I may exercise that power to reconsider decisions issued in my capacity as Pre-Appeal Judge.¹⁵ A motion for reconsideration cannot succeed unless the applicant has demonstrated “the existence of a clear error of reasoning in the [impugned decision], or of particular circumstances justifying its reconsideration in order to avoid injustice”.¹⁶ For example, the Appeals Chamber has previously held that a Chamber may reconsider a decision “where there has been a change of circumstances” or “where the Chamber has been persuaded that its previous decision was erroneous and has caused prejudice”.¹⁷

10. The Defence has not demonstrated a clear error of reasoning in the Decision of 22 January 2007. First, the Defence is not correct that “the standard applicable for requesting an extension of the word limit [...] is a showing of good cause, taking into consideration the reasonableness of the application in the circumstances”.¹⁸ Rather, a party seeking an extension of word limits must demonstrate “exceptional circumstances” which necessitate an extension of the word limits prescribed in the Practice Direction on Length.¹⁹ The Defence has not established that I, as Pre-Appeal Judge, committed a clear error in determining that the Defence had failed to establish the presence of such exceptional circumstances.

11. Moreover, the additional request for leave to file a 45,000-word Appeal Brief which the Defence sought to submit as part of its oversized Appeal Brief, does not constitute a new circumstance meriting reconsideration of the 22 January 2007 Decision. The Practice Direction on Length is clear that motions for extensions of word limits must be requested “in advance”, not as part of the oversized filing that the applicant seeks to have admitted.²⁰ There is no reason that the new arguments raised in the Motion could not have been presented in the original Motion for Extension of Word Limits. Having been granted two extensions of time for the filing of its Appeal

¹⁴ *Prosecutor v. Žigić*, Case No. IT-98-30/1-A, Decision on Žoran Žigić’s “Motion for Reconsideration of Appeals Chamber Judgement IT-98-30/10A, Delivered on 28 February 2005”, 26 June 2006, para. 9; *Prosecutor v. Zdravko Mucić, Hazim Delić and Esad Landžo*, Case No. IT-96-21-Abis, Judgement on Sentencing Appeal, 8 April 2003, (“Čelebići Judgement on Sentencing Appeal”), para. 49.

¹⁵ *The Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-A, Decision on the Appellant’s Request for Reconsideration of the Order Concerning Aloys Simba’s Appellant’s Brief, 8 November 2006, p. 2; *Momir Nikolic v. Prosecutor*, Case No. IT-02-60/1-A, Decision on Appellant’s Urgent Motion for Reconsideration of Decision on Second Defence Motion to Enlarge Time for Filing of Replies Dated 1 April 2005, 6 April 2005.

¹⁶ *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Dragan Jokić’s Supplemental Motion for Extension of Time to File Appeal Brief, 31 August 2005, para. 7.

¹⁷ *See ibid.*; Čelebići Judgement on Sentencing Appeal, para. 49.

¹⁸ Motion, paras 15-16.

¹⁹ Practice Direction on Length, para. C(7).

Brief, the Defence had nine months from the filing of its Notice of Appeal in which to prepare the Appeal Brief. Defence Counsel was certainly capable of beginning work on the Brief while the B/C/S translation of the Trial Judgement was being prepared.²¹ The argument of the Defence that it only realized on 16 or 17 January 2007 that it would be necessary to exceed the word limit,²² provides no justification for its failure to file a timely motion setting forth the full length of extension sought and the grounds on which it was sought.²³

12. In addition, the new arguments raised by the Defence do not constitute a particular circumstance justifying reconsideration of the Decision of 22 January 2007. As the Prosecution correctly points out, most of the Appellant's grounds of appeal challenge the Trial Chamber's admission, exclusion, and assessment of evidence at trial; while these issues may be complex, they are not new or unique, and they do not distinguish this Appeal. Likewise, while the Motion claims that the Defence Appeal raises the issue of conviction for charges based solely on Article 7(3) liability for the first time, it has not been demonstrated that the Appeal raises novel issues concerning command responsibility meriting an enlargement of the Appeal Brief. In short, the Defence has not demonstrated that the issues presented by its Appeal are so difficult and complex that they cannot be addressed sufficiently within 30,000 words. Nor has it shown that the nature of these issues renders this case "exceptional" in comparison to other cases coming before the Appeals Chamber, which are generally complex and difficult and often involve challenges to a large number of the Trial Chamber's findings.²⁴ In all events, the Defence has not established that reconsideration of the Decision of 22 January 2007 is necessary in order to avoid injustice.

13. Having determined that reconsideration is not warranted, I now consider the Defence's alternative request for an extension of five days from the date of the decision on this Motion in which to file a shorter, edited Appeal Brief. I note that the Defence was required to file its Appeal Brief on 22 January 2007, in compliance with the Practice Direction on Length. It had no basis for proceeding on the assumption that its Motion for Extension of Word Limits would be granted, let alone on the assumption that the Appeals Chamber would accept a 45,000-word Appeal Brief absent the prior authorization required by paragraph C(7) of the Practice Direction on Length. Nonetheless, pursuant to paragraph 19 of the Practice Direction on the Filing of Written Submissions, I find that

²⁰ *Ibid.*

²¹ Decision on Motion for Extension of Time, 8 August 2006, p. 6; *see also* *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Decision on Defence Request for Extension of Time, 9 May 2005, p. 2.

²² Motion, para. 25.

²³ Paragraph 12 of the Practice Direction on the Filing of Written Submissions provides that a motion filed during an appeal from judgement must specify: "(a) the precise ruling or relief sought; (b) the specific provision of the Rules under which the ruling or relief is sought; and (c) the grounds on which the ruling or relief is sought".

²⁴ *See* *Prosecutor v. Brdanin*, Case No. IT-99-36-A, Decision on Appellant's Motion for Extension of Time to File a Consolidated Brief and for Enlargement of Page Limit, 22 June 2005, paras 11-12.

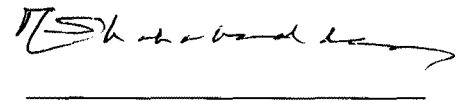
an extension of five days for the filing of the Defence Appeal Brief is merited in the circumstances of this case.

III. DISPOSITION

14. The Motion is granted in part and denied in part. The Defence request for reconsideration is denied. The Defence request for an extension of time to file the Appeal Brief is granted. The Appellant is granted leave to file his Appeal Brief within five days of this Decision, in full compliance with all relevant Rules and Practice Directions, including sub-paragraphs C(1) and C(6) of the Practice Direction on Length. The Prosecution may file its Consolidated Response Brief within 40 days of the filing date of the latter of the two appeal briefs of Mr. Hadžihasanović and Mr. Kubura.²⁵

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

30 January 2007,
The Hague,
The Netherlands



Mohamed Shahabuddeen
Pre-Appeal Judge

[Seal of the International Tribunal]

²⁵ See Practice Direction on Length, para. C(1)(b); see Decision on Motions for Extension of Time, Request to Exceed Page Limit, and Motion to File a Consolidated Response to Appeal Briefs, 27 June 2006, para. 8.