



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-00-39-A
Date: 1 February 2007
Original: English

IN THE APPEALS CHAMBER

Before: Judge Wolfgang Schomburg, Pre-Appeal Judge

Registrar: Mr. Hans Holthuis

Order of: 1 February 2007

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

**DECISION ON "URGENT MOTION FOR EXTENSION OF
TIME FOR FILING NOTICE OF APPEAL PENDING
TRANSLATION OF THE JUDGMENT INTO THE LANGUAGE
OF THE CONVICTED PERSON"**

The Office of the Prosecutor:

Mr. Peter Kremer
Ms. Christine Dahl

Counsel for the Applicant:

Mr. Colin Nicholls

I, WOLFGANG SCHOMBURG, a Judge of 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”) and Pre-Appeal Judge in this case;

BEING SEIZED of Momčilo Krajišnik’s (“Applicant”) “Urgent Motion for Extension of Time for Filing Notice of Appeal Pending Translation of the Judgment into the Language of the Convicted Person” (“Motion”) filed by Counsel for the Applicant on 29 January 2007;

NOTING that the Applicant in his Motion seeks “an extension of time for the filing of the Notice of Appeal until the Appellant has received a translation of the Judgment convicting him in his own language, namely Bosnian/Croatian/Serbian (“BCS”)¹ and that “it is requested that the Appellant be granted 75 days following the provision of the Judgment in a language he understands for the filing of his Notice of Appeal”,²

NOTING the “Prosecution’s Response to ‘Motion for Extension of Time for Filing Notice of Appeal Pending Translation of the Judgment into the Language of the Convicted Person’” (“Prosecution Response”) filed on 30 January, in which the Prosecution states that it is generally not opposed to the granting of the Applicant’s request but that in its view an extension “should be limited to a 30-day period [...] after transmission of the translation [of the judgement] to Mr. Krajišnik”,³

NOTING the Applicant’s “Urgent Reply to ‘Prosecution’s Response to Motion for Extension of Time for filing Notice of Appeal Pending Translation of the Judgment into the Language of the Convicted Person’” (“Reply”) filed on 1 February 2007 in which the Applicant again “submits that there is good cause for the 75 day period requested”,⁴

NOTING that the Trial Judgement was delivered on 27 September 2006;

NOTING that Rule 108 of the Rules of Procedure and Evidence (“Rules”) provides that “a party seeking to appeal the judgement shall, not more than thirty days from the date on which the judgement was pronounced, file a notice of appeal, setting forth the grounds”;

NOTING that the Pre-Appeal Judge has previously granted three extensions of time for the filing of the Applicant’s Notice of Appeal, in particular taking into account the assignment of new counsel to the Applicant as well as the court recess;⁵

¹ Motion, para. 1.

² Motion, para. 24.

³ Prosecution Response, para. 9.

⁴ Reply, para. 4; *see also* Reply. Para 9.

⁵ *See* Decision on Request for Extension of Time to File Notice of Appeal, 26 October 2006, ordering the Applicant to “file his notice of appeal no later than 30 days after the assignment of counsel to him”; (Oral) Decision of the Pre-Appeal Judge, Status Conference, 11 December 2006, Transcript, p. 18, extending the

NOTING that the extension of time on these grounds already exceeds what has been granted in similar circumstances in other cases;⁶

NOTING furthermore that the Applicant already once moved the Chamber to grant him an extension of time for the filing of the Notice of Appeal until after the availability of the judgement in B/C/S but that this request was denied;⁷

CONSIDERING that Rule 127(A,(i), B) of the Rules provides that a Chamber or Pre-Trial/Pre-Appeal Judge may, on good cause being shown by motion, enlarge or reduce any time prescribed by or under these Rules;

CONSIDERING that Counsel for the Applicant claims that he only became aware on 25 January 2007 that the Applicant had not yet received a version of the Trial Judgement in B/C/S⁸ and that the Applicant “is, therefore, still unaware of the details of the Judgement and consequently unable meaningfully to prepare a Notice of Appeal”;⁹

NOTING that the Applicant in footnote 2 of his Motion cites case-law of the International Tribunal that in his view shows that “the Appeals Chamber has regularly endorsed the Appellant’s right to use his language in this context by granting extensions of time for the filing of the Notice of Appeal until the Appellant has received the Judgement in a language that he understands”;¹⁰

CONSIDERING that, with the exception of the Pre-Appeal Judge’s decision in *Prosecutor v. Milan Babić*,¹¹ the settled jurisprudence of the International Tribunal rejects extensions of time for the filing of the Notice of Appeal based on the submission that a translation of the judgement into the language of the accused is not yet available;¹²

Applicant’s filing deadline for the Notice of Appeal until 5 February 2007; Order on Extension of Time for Filing the Notice of Appeal, 11 January 2007, granting an extension of time for the filing of the Notice of Appeal until 12 February 2007.

⁶ See e.g., *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Vidoje Blagojević’s Expedited Motion for Extension of Time in Which to File His Notice of Appeal, 16 February 2005 (“Blagojević and Jokić Decision”).

⁷ See Decision on Request for Extension of Time to File Notice of Appeal, 26 October 2006, considering “that, once a defence counsel has been assigned to the Appellant, who according to Article 14 of the Directive on the Assignment of Defence Counsel, has to be proficient in one of the two working languages of the International Tribunal, this counsel will be able to discuss with the Appellant possible grounds of appeal and determine which grounds of appeal should be filed before the Appeals Chamber.”

⁸ Motion, para. 2.

⁹ Motion, para. 2.

¹⁰ Motion, para. 17.

¹¹ *Prosecutor v. Milan Babić*, Case No. IT-03-72-A, Decision on Motion to Extend Time for Filing of Notice of Appeal, 28 July 2004. In this small sentencing case, the appeal was directed against a judgement of less than 50 pages of actual text requiring translation. The translation took less than two months and any delay in those proceedings was thus negligible. (The *Babić* Sentencing Judgement was delivered on 29 June 2004; the B/C/S translation was filed on 18 August 2004.)

¹² See *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-08-34-A, Decision on Motions for Extension of Time, 25 April 2003 (“*Naletilić and Martinović* Decision”); *Prosecutor v. Radoslav Brdanin*, Case

CONSIDERING that the Chief of the Conference and Language Services Section has advised the Pre-Appeal Judge that a B/C/S translation of the Judgement will be available not before May / June 2007;

CONSIDERING that the expeditiousness of proceedings forms part of the fundamental principle of fair trial;

CONSIDERING that the filing of a Notice of Appeal marks the very beginning of the appeal proceedings in a case, and that since the time limits for the filing of the Appellant's Briefs, Respondent's Briefs, and Briefs in Reply are calculated as of the date on which the Notice of Appeal is filed, any delays at such an early stage will affect subsequent filings;

CONSIDERING that according to the Motion the Applicant "has indicated to assigned Counsel that he wishes to file his own Notice of Appeal and the Appellant is not providing any instructions to Assigned Counsel regarding the substantive appeal and matters which arose at trial,"¹³ that the Applicant "is unable to do so, since he is unable to read the Judgment,"¹⁴ that Counsel "is unable to [file a Notice of Appeal] without reading more than 27,000 pages of transcripts in conjunction with more than 4,000 exhibits, which is plainly impossible in the allotted time",¹⁵ that "if assigned Counsel were to file a Notice of Appeal without the client's instructions, in a situation in which the Appellant has indicated that he wishes to file his own Notice of Appeal but is unable to do so, assigned Counsel would effectively be barring the Applicant from the raising the grounds of appeal which he wishes to raise, thereby depriving him of his right to appeal,"¹⁶ and that "there is no prejudice [...] caused to the Prosecution by granting an extension of time" as "the Appellant is in custody, serving his sentence [...]";¹⁷

CONSIDERING that in the Prosecution Response, the Prosecution states that "[f]ailure to cooperate with assigned counsel does not constitute good cause for an extension of time"¹⁸ and that "[a]s a represented person, Mr. Krajišnik has no standing to file a separate notice of appeal"¹⁹ but that "in these circumstances, the interests of justice would be served by affording Mr. Krajišnik the opportunity to read the judgment in his own language so that he can provide full instructions to counsel to assist in the preparation of any notice of appeal";²⁰

No. IT-99-36-A, 4 October 2004 ("*Brdanin* Decision"); *Blagojević and Jokić* Decision; Decision on Request for Extension of Time to File Notice of Appeal, 26 October 2006.

¹³ Motion, para. 18.

¹⁴ Motion, para. 19.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Motion, para. 20.

¹⁸ Prosecution Response, para. 6.

¹⁹ *Ibid.*

²⁰ Prosecution Response, para. 8.

NOTING that the Applicant's "Request for Review of the Decisions of the Registry in Relation to Assignment of Counsel" of 27 December 2006 was dismissed by decision of the President of the International Tribunal ("President's Decision) of today's date;²¹

NOTING that the President's Decision is limited to finding that Mr. Nicholls was properly assigned as lead counsel, and that it is therefore Counsel's duty to file a Notice of Appeal within the already extraordinary long period of time granted (from 8 December 2006 to 12 February 2007);

NOTING furthermore that the question of self-representation on appeal is still pending before the Appeals Chamber²² and that time does not allow the Appeals Chamber in its entirety to decide on the merits of this request before 12 February 2007, and that it is therefore premature for the Prosecution to submit that Mr. Krajišnik has no standing to file a separate Notice of Appeal;

NOTING therefore that, at present, there is no obstacle for Mr. Krajišnik to file a separate Notice of Appeal (opposed to an Appellant's Brief) until 12 February 2007;

CONSIDERING, however, that Counsel was properly²³ assigned to the Applicant so as to assist him in his appeal and that Counsel, having chosen English as the working language is able to understand the Judgement;

CONSIDERING, therefore, that Counsel in any event is in a position to file a Notice of Appeal within the time limit provided for under Rule 108 of the Rules as extended by previous orders, that is, until 12 February 2007, regardless of the purported non-cooperation of the Applicant;

CONSIDERING moreover that, after the Judgement becomes available in B/C/S, the Applicant/Counsel, having filed a valid and timely Notice of Appeal, may seek, pursuant to Rule 108 of the Rules, to vary or specify in greater detail the grounds of appeal or to file additional grounds of appeal or – at any time - to withdraw grounds of appeal;²⁴

FINDING therefore that good cause has not been shown for an extension of time for the filing of the Notice of Appeal until a translated version of the Judgement will be received;²⁵

²¹ [President's] Decision on Request for Review of the Decision of the Registry in Relation to Assignment of Counsel, 1 February 2007.

²² Decision on "Motion Seeking Review of the Decisions of the Registry in Relation to Assignment of Counsel", 29 January 2007, p. 4.

²³ See President's Decision.

²⁴ See already Decision on Request for Extension of Time to File Notice of Appeal, 26 October 2006.

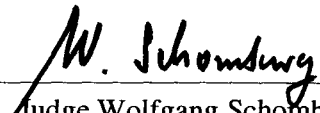
²⁵ See already *Naletilić and Martinović* Decision; *Brđanin* Decision; *Blagojević and Jokić* Decision; Decision on Request for Extension of Time to File Notice of Appeal, 26 October 2006.

FOR THE FOREGOING REASONS,

HEREBY DISMISS the Motion in its entirety.

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

Dated this 1st day of February 2007,
At The Hague, The Netherlands.



Judge Wolfgang Schomburg
Pre-Appeal Judge

[Seal of the International Tribunal]