



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-99-36-A  
Date: 22 June 2005  
Original: English

**BEFORE THE PRE-APPEAL JUDGE**

**Before:** Judge Mohamed Shahabuddeen, Pre-Appeal Judge  
**Registrar:** Mr. Hans Holthuis  
**Decision:** 22 June 2005

**THE PROSECUTOR**

v.

**Radoslav BRĐANIN**

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**DECISION ON APPELLANT'S MOTION FOR EXTENSION OF TIME TO FILE A  
CONSOLIDATED BRIEF AND FOR ENLARGEMENT OF PAGE LIMIT**

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**Counsel for the Prosecutor:**

**Mr. Mark McKeon**

**Counsel for the Accused:**

**Mr. John Ackerman**

## INTRODUCTION

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, filed by both the Prosecution and Radoslav Brdanin (“the Appellant”), from the Judgement rendered in this case by Trial Chamber II on 1 September 2004 (“Judgement”). I, Mohamed Shahabuddeen, Judge of the Appeals Chamber of the International Tribunal, was designated Pre-Appeal Judge in this case by an Order signed by the President and filed on 22 October 2004.
2. On 1 October 2004, the Appellant filed a Notice of Appeal containing 160 grounds of appeal. On 3 June 2005, the Appellant was granted leave to file a supplemental Notice of Appeal, which contained 12 additional grounds.
3. Based on the filing date of his original Notice of Appeal and extensions of time thereafter granted, the date for filing the Appellant’s Brief on Appeal is now fixed for 27 June 2005.<sup>1</sup> The Appellant seeks a further extension to 25 July 2005, on the grounds that further time is necessary in order to prepare a “consolidated and comprehensive brief” addressing all of the grounds of appeal, including those raised by the supplemental Notice.<sup>2</sup> In addition, he requests an enlargement of the page limit for this brief from 100 to 250 pages. The Prosecution does not object to the first request, but opposes the second on the ground that no “exceptional circumstances” justifying an oversized brief are present.<sup>3</sup>

## DISCUSSION

### A. Extension of Time

4. Rule 127 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”) permits the enlargement of time on the basis of “good cause being shown by motion.” The Appellant argues that good cause is present here because of the complexity of the case, which now includes 172

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<sup>1</sup> See Decision on Motion to Extend Date for Filing Appellant’s Brief, 5 May 2005; Decision on Motions for Extension of Time, 9 December 2004.

<sup>2</sup> See Motion for Extension of Time to File a Consolidated Brief and for Enlargement of Page Limit (“Motion”), 10 June 2005.

<sup>3</sup> See Prosecution Response to Motion for Extension of Time to File a Consolidated Brief and for Enlargement of Page Limit (“Response”), 15 June 2005.

grounds of appeal arising from a trial that lasted 27 months and produced a 60,000-page record, and because of the need to include argument pertaining to the 12 newly added grounds of appeal.

5. To a significant extent, the previous extensions granted to the Appellant have already taken into account the complexity of the case.<sup>4</sup> However, these extensions were granted prior to the filing of the Appellant's Supplemental Notice of Appeal, which added at least somewhat to the difficulty of the task of preparing the Appeal Brief. Moreover, in light of the disposition of the appellant's request for an enlargement of the page limit below, the Pre-Appeal Judge considers that the additional time requested will facilitate defence counsel's efforts to winnow and consolidate the arguments in the Appeal Brief, benefiting both parties as well as the Appeals Chamber. Thus, although ordinarily the filing of a Supplementary Notice of Appeal does not itself constitute good cause for an extension of time,<sup>5</sup> under the circumstances of this case there is "good cause" for the modest extension requested by the Appellant.

6. The Appellant further argues that no delay in the proceedings will result from the extension of time requested because an extension has been granted with respect to the *amicus curiae* brief being filed by the Association of Defence Counsel.<sup>6</sup> This contention is, however, mistaken, as that *amicus curiae* brief pertains to an issue relevant to the appeal of the Prosecution and not that of Brdanin. The Prosecution's appeal has already been briefed in full by the parties; it is the multiple delays in Brdanin's appeal that are slowing the proceedings in this case down, and the extension now requested will cause some further delay. However, in light of "good cause" having been shown, a slight delay is warranted.

#### B. Enlargement of Page Limit

7. Pursuant to the Practice Direction on the Length of Briefs and Motions ("Practice Direction"), an appellant's brief may not exceed 100 pages or 30,000 words, whichever is greater. An appellant

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<sup>4</sup> See *supra* Note 1.

<sup>5</sup> The Appellant appears to assume that having filed the supplemental Notice of Appeal would ordinarily entitle him to file an additional Appeal Brief in support of it, and suggests that an extension of time (and page length) is merited here so that he can instead file a consolidated brief addressing all grounds of appeal. But consolidation is the normal required procedure. The filing of a supplemental notice of appeal does not in and of itself entitle an appellant to an extension of time nor to an enlargement of length for the appeal brief, and it certainly does not entitle him to file two appeal briefs. Instead, the appellant must file a single appeal brief, the deadline for which is calculated, pursuant to Rule 111, based on the date of filing the original notice of appeal, not on the date on which a variation of that notice was authorised pursuant to Rule 108.

<sup>6</sup> See Decision on the Association of Defence Counsel's Motion for an Extension of Time, 3 June 2005.

must “seek authorization in advance” for any exception to this limit and “must provide an explanation of the exceptional circumstances that justify this oversized filing.”<sup>7</sup>

8. As the Prosecution observes, the Appellant’s Motion does not explicitly address this “exceptional circumstances” test.<sup>8</sup> However, the Appellant makes certain arguments designed to show that he meets this standard; he states that his case is “extraordinary” because of the size of the record and the number of grounds of appeal.<sup>9</sup> As to the latter point, he offers the calculation that the ordinary page limit would allow him not much more than half a page per ground of appeal, which he asserts is inadequate to argue his case.

9. The Prosecution contends,<sup>10</sup> and the Appellant in his Reply does not deny, that the 172 grounds of appeal put forward by the Appellant amount effectively to challenges to every single factual and legal finding made by the Trial Chamber. This approach, at least if followed in the Appeal Brief, seems likely not to be well tailored to the limited nature of the Appeals Chamber’s review.

10. Given the limitations on brief length as well as the greater effectiveness of cohesive and well structured arguments, it is useful for appellants to organize their various allegations of error rather than simply setting them forth seriatim in no particular groupings. Even a cursory look at the Appellant’s original and supplemental Notices of Appeal reveals that many of the 172 “separate” grounds of appeal are in fact related to one another in subject matter, and could be addressed effectively in a brief containing fewer than 172 separate subsections. The Appellant’s counsel himself stated at the Status Conference of 6 June 2005 that he expected to “abandon” some of the grounds of appeal “because I’m finding they overlap a little bit”.<sup>11</sup>

11. In light of the foregoing observations, the Pre-Appeal Judge does not find it helpful, for purposes of determining whether “exceptional circumstances” justifying an enlargement exist, simply to divide the number of pages by the number of listed grounds of appeal. Nor, indeed, can the number of grounds of appeal be considered an “exceptional circumstances.” As the Prosecution observes, many other appeals before this Tribunal involve challenges to a large number or even all of the Trial Chamber’s findings, and yet the Appeals Chamber has not considered that this factor in

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<sup>7</sup> Practice Direction § C(7).

<sup>8</sup> Response para. 14.

<sup>9</sup> Motion para. 7.

<sup>10</sup> Response paras. 16-17.

<sup>11</sup> Status Conference, Unofficial Tr. at 9-12, 6 June 2005.

itself provides sufficient reason for an enlargement of page limits.<sup>12</sup> Although some of these other appellants may not have listed and numbered each of their challenges to findings as a separate ground of appeal, this difference is structural or nominal, not substantive.

12. The Appellant has offered no satisfactory reason why his appeal involves issues that are so complex and difficult that they cannot be addressed sufficiently within 100 pages; nor has he demonstrated, as required by the Practice Direction, that the nature of these issues makes his case “extraordinary” in comparison with other cases addressed by the Appeals Chamber, which are generally complex and difficult. It is not sufficient to point to the extensiveness of the trial record or the length of the trial;<sup>13</sup> these facts are not especially “extraordinary” in the context of the Tribunal’s cases, and moreover do not bear directly on the issue of the space necessary to discuss the issues on appeal. In his Reply, the Appellant asserts that “some of the issues raised in this appeal are complicated requiring multiple pages to set out and explain and properly support”,<sup>14</sup> but does not explain which issues these are.

13. The Pre-Appeal Judge notes that the length of the extension sought would expand the Appellant’s brief to two and a half times its normal size. As the Prosecution points out,<sup>15</sup> this expansion would make the Appellant’s brief longer even than the 233 pages which the Appellant required to address all the issues in the case in his Final Trial Brief.

14. For the foregoing reasons, the Pre-Appeal Judge considers that the Appellant has not demonstrated “exceptional circumstances” justifying an enlargement of the page limit for his Appeal Brief.

## DISPOSITION

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<sup>12</sup> Response para. 15 (citing, *e.g.*, *Prosecutor v. Stanislav Galić*, Decision on Defence’s Request for Leave to Exceed Page Limit in Defence’s Appeal Brief, Case No. IT-98-29-A, 16 July 2004; *Prosecutor v. Elizaphan and Gerard Ntakirutimana*, Décision sur les demandes en modifications des moyens d’appel et les requêtes aux fins d’outrepasser la limite de pages dans les mémoires d’appelant, Case Nos. ICTR-96-10-A and ICTR-96-17-A, 21 July 2003).

<sup>13</sup> Motion para. 7.

<sup>14</sup> Reply para. 6.

<sup>15</sup> Response para. 26.

The Appellant's request for an extension of time for filing his Appeal Brief to 25 July 2005 is **GRANTED**. His request for an enlargement of the page limit for that brief is **DENIED**.

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



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Mohamed Shahabuddeen  
Pre-Appeal Judge

Dated 22 June 2005  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**