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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 the
Former Yugoslavia since 1991

Case No. IT-04-82-A
Date: 18 February
2009
Original: English

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Mehmet Güney, Pre-Appeal Judge
Acting Registrar: Mr. John Hocking
Decision of: 18 February 2009

PROSECUTOR

v.

**LJUBE BOŠKOSKI
JOHAN TARČULOVSKI**

PUBLIC

**DECISION ON PROSECUTION'S URGENT MOTION FOR
EXTENSION OF TIME**

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for Johan Tarčulovski:

Mr. Alan M. Dershowitz
Mr. Nathan Z. Dershowitz
Mr. Antonio Apostolski
Mr. Jordan Apostolski

Counsel for Ljube Boškosi

Ms. Edina Rešidović
Mr. Guénaél Mettraux

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I, **MEHMET GÜNEY**, 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 (“Tribunal”), and Pre-Appeal Judge in this case;

NOTING the Judgement rendered by Trial Chamber II in this present case on 10 July 2008 (“Trial Judgement”);¹

RECALLING the “Order Designating the Pre-Appeal Judge” issued by me on 17 November 2008;

NOTING that the Appeals Chamber is currently seized of the appeals against the Trial Judgement filed by Johan Tarčulovski (“Tarčulovski”)² and the Prosecution;³

NOTING that the Prosecution is due to file its Respondent’s Brief in the present case by 23 February 2009;

NOTING the “Motion of Johan Tarčulovski for Leave to Present Appellate Arguments in Order Different from that Presented in Notice of Appeal, Pursuant to Practice Direction 4 and to Amend the Notice of Appeal Pursuant to Practice Direction 2”, filed by Tarčulovski on 12 January 2009 (“Motion of 12 January 2009”); the “Prosecution Response to Johan Tarčulovski’s Motion of 12 January 2009, and Motion to Strike”, filed on 22 January 2009 (“Prosecution’s Response and Motion to Strike”); the “1) Reply of Tarčulovski on Motion 2) Response to Prosecution’s Motion to Strike”, filed on 26 January 2009 (“Tarčulovski’s Reply and Response to Motion to Strike”); the “Prosecution Reply to Johan Tarčulovski’s Response of 26 January 2009, to Prosecution Motion to Strike”, filed on 29 January 2009 (“Prosecution’s Reply to Response to Motion to Strike”); and “Motion to File Sur-Reply to Prosecution’s Motion to Strike and Sur-Reply”, filed on 30 January 2009 (“Tarčulovski Motion to File Sur-Reply”);

BEING SEIZED OF the Prosecution’s “Urgent Motion for Extension of Time”, filed on 13 February 2009 (“Motion”), in which it seeks an extension of time to file its Respondent’s Brief, to run from the date of an eventual Appeals Chamber decision on both Tarčulovski’s Motion of 12 January 2009 and the Prosecution’s Response and Motion to Strike;

NOTING that Tarčulovski has not responded in writing to the Motion, but has indicated to the Prosecution that it does not object to the grant of a 14 day extension of time to file the Prosecution’s

¹ *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-T, Judgement, 10 July 2008.

² Tarčulovski Notice of Appeal, 8 August 2008; confidential Appeal Brief, 9 January 2009; and public redacted Appeal Brief, 12 January 2009 (“Tarčulovski’s Appeal Brief”).

Response Brief, to run from the date of the decision of the Appeals Chamber and from not later than 23 February 2009;⁴

RECALLING that the Appeals Chamber may, on good cause being shown by motion, enlarge the time limits prescribed under Rule 127 (A) (i) of the Tribunal's Rules of Procedure and Evidence ("Rules");

NOTING that in its Prosecution's Response and Motion to Strike, the Prosecution objected to the Motion of 12 January 2009 in which Tarčulovski sought to reorder his grounds of appeal within his Appeal Brief, and requested the Appeals Chamber to:

- (1) strike out allegedly new Grounds 1 and 2 of Tarčulovski's Appeal Brief;
- (2) order Tarčulovski to file an Amended Notice of Appeal; and
- (3) extend the period of time to file the Prosecution's Response to Tarčulovski's Appeal Brief;⁵

NOTING that absent an Appeals Chamber decision on Tarčulovski's Motion of 12 January 2009 and on the Prosecution's Motion to Strike, the Prosecution contends that it is "left in considerable uncertainty as to the scope of Tarčulovski's appeal" and is not in a position to properly prepare its Respondent Brief;⁶

NOTING further the Prosecution's submission that if the Appeals Chamber were to render its decision in the course of the current week, this would still leave the Prosecution insufficient time to file its Response Brief;⁷

CONSIDERING that in the circumstances of this case, the fact that a decision of the Appeals Chamber is still pending amounts to a delay outside the control of the Prosecution which affects its ability to prepare a Respondent's Brief, and satisfies the "good cause" requirement within the meaning of Rule 127 of the Rules;

CONSIDERING that this would remain the case should a decision not be issued by the Appeals Chamber by 23 February 2009;

³ The Prosecution has appealed the acquittal of Ljube Bošković. *See inter alia* Prosecution's Notice of Appeal, 6 August 2008; and Prosecution's Appeal Brief, filed confidentially on 20 October 2008.

⁴ Motion, para. 4.

⁵ Motion, para. 2.

⁶ Motion, para. 3.

⁷ Motion, para. 3.

FINDING that the Prosecution has shown good cause to request an extension of time to file its Respondent's Brief;

FOR THE FOREGOING REASONS,

HEREBY GRANT the Motion;

ORDER the Prosecution to file its Respondent Brief no later than 14 days from the filing of a decision of the Appeals Chamber on Tarčulovski's Motion of 12 January 2009 and Prosecution's Response and Motion to Strike.

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

Done this 18 day of February 2009,
At The Hague,
The Netherlands.



Judge Mehmet Güney
Pre-Appeal Judge

[Seal of the International Tribunal]