



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: 16 October 2008
Original: English

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Fausto Pocar, Pre-Appeal Judge
Registrar: Mr. Hans Holthuis
Decision of: 16 October 2008

PROSECUTOR

v.

**LJUBE BOŠKOSKI
JOHAN TARČULOVSKI**

PUBLIC

**DECISION ON JOHAN TARČULOVSKI'S MOTION FOR
EXTENSION OF TIME TO FILE APPEAL BRIEF**

The Office of the Prosecutor:

Mr Paul Rogers

Counsel for Joahn Tarčulovski:

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

Counsel for Ljube Boskoski:

Ms Edina Rešidović
Mr Guénaél Mettraux

70

I, Fausto Pocar, Judge 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”);

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

RECALLING the “Order Assigning Judges to a Case Before the Appeals Chamber and Appointing a Pre-Appeal Judge” issued by me on 30 July 2008;

NOTING that, pursuant to Rule 111(A) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), an appellant’s brief shall be filed within 75 days of filing the notice of appeal;

NOTING that according to Rules 127(A)(i) and (B), the Appeals Chamber may, on good cause being shown, “enlarge or reduce any time prescribed by or under these Rules”;

NOTING the decision of the Duty Judge on 5 August 2008, denying the motion for extension of time to file a notice of appeal;²

NOTING therefore that, according to the Rules, the deadline to file the Appeal Brief of Johan Tarčulovski (“Appellant”) expires on 23 October 2008;

NOTING the “Tarčulovski Motion for Extension of Time to File the Appellant Brief” (“Motion”) filed by the Appellant on 1 October 2008, in which he seeks an extension of time to file its Appeal Brief within 75 days of receipt of the translation of the Trial Judgement, *i.e.*, presumably on or about 15 February 2009;³

NOTING that the Appellant submits that an extension of time to file the Appeal Brief is in the interests of justice, considering that the Defence team is undergoing restructuring and that the Appellant is not fluent in English;⁴

NOTING that the Prosecution submits that the filing schedule on appeal is a matter that rests within the discretion of the Appeals Chamber but that the restructuring of the Defence team does not establish good cause for any extension of time;⁵

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

² Decision on Johan Tarčulovski Motion for Extension of Time to File the Notice of Appeal, 5 August 2008.

³ Motion, para. 5.

⁴ Motion, paras 6-9.

CONSIDERING that “on appeal the main burden lies on counsel in preparing the submissions as he has the legal expertise to advise the Appellant whether there exist any potential errors of law and fact”;⁶

CONSIDERING that the Tribunal’s deadlines for the filing of briefs pursuant to Rule 111(A) of the Rules are essential to ensure the expeditious preparation of the case;

CONSIDERING that the Motion states that “the Defence ... is currently working hard on the Appellant Brief”;⁷

NOTING that, on 1 October 2008, the same day the Motion was filed, the Appellant informed the Registrar that he was withdrawing his request for the assignment of Tribunal-paid Counsel because the Government of Macedonia had agreed to bear the costs of legal representation on appeal;⁸

NOTING that, pursuant to the Deputy Registrar Decision, the Appellant’s Defence team is composed of three attorneys and that one of them is former lead Counsel;⁹

CONSIDERING that in the circumstances of this case, the restructuring of the Defence team, voluntarily undertaken by the Appellant, does not amount to good cause within the meaning of Rule 127 of the Rules;

CONSIDERING that the Appellant has not shown good cause to postpone the filing of the Appeal Brief 75 days after the filing of the Macedonian translation of the Trial Judgement;

CONSIDERING that Rules 73 and 107 of the Rules provide that, after the case is assigned to a Chamber, either party may at any time move before the Chamber by way of motion “for appropriate ... relief”;

CONSIDERING moreover that the practice of the Appeals Chamber allows the parties to amend or supplement their notices of appeal and briefs by filing addenda with sufficient reasons constituting good cause;¹⁰

⁵ Prosecution Response to Tarčulovski Motion for Extension of Time to File the Appellant Brief, 9 October 2008, para. 2.

⁶ *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-A, Decision on Motions for Extension of Time, 9 December 2004, p. 3; *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-A, Decision on Motion for Extension of Time, 16 February 2006, para. 12.

⁷ Motion, para. 7.

⁸ Decision [by the Deputy Registrar], 10 October 2008, p. 2 (“Deputy Registrar Decision”).

⁹ Deputy Registrar Decision, p. 2.


CONSIDERING therefore that, should the Appellant deem it necessary to amend or supplement the Appeal Brief after receiving the Macedonian translation of the Trial Judgement, he is free to do so subject to the above-mentioned standard;

FOR THE FOREGOING REASONS

HEREBY DENY the Motion.

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

Dated this 16th day of October 2008
At The Hague
The Netherlands



Judge Fausto Pocar
Pre-Appeal Judge

[Seal of the Tribunal]

¹⁰ *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Decision on “Second Defence Request Seeking Extension of Time in Respect to Complying with the Appeals Chamber’s ‘Order Regarding Briefing on Appeal’”, 3 October 2007, p. 3; *Prosecutor v. Miroslav Bralo*, Case IT-95-17-A, Decision on Miroslav Bralo’s Motion for Leave to Supplement Appeal Brief in Light of New Information Concerning *Ex Parte* Portion of the Trial Record, 9 January 2007, in particular para. 9 and case-law cited thereof.