



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-02-54-A-R77.4
Date: 23 June 2005
Original: English

THE APPEALS CHAMBER

Before: Judge Theodor Meron, President
Judge Fausto Pocar
Judge Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Wolfgang Schomburg

Registrar: Mr Hans Holthuis

Decision: 23 June 2005

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON PROSECUTION APPLICATION TO STRIKE
APPELLANT'S BRIEF IN THE APPEAL OF THE DECISION
ON CONTEMPT OF THE TRIBUNAL KOSTA BULATOVIĆ**

The Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Geoffrey Nice QC
Ms. Hildegard Uertz-Retzlaff
Mr. Dermot Groom

Counsel for the Appellant

Mr. Stéphane Bourgon

The Accused

Mr. Slobodan Milošević

Assigned Counsel

Mr. Steven Kay QC
Ms. Gillian Higgins

Amicus Curiae

Prof. Timothy McCormack

1. On 21 June 2005, the Prosecution filed an application to strike the Appellant's Brief filed in the appeal against the decision of the Trial Chamber in contempt proceedings against Kosta Bulatović.¹

2. The Prosecution rightly submits that in the Scheduling Order issued by the Appeals Chamber on 3 June 2005, the Appellant was ordered to file his Appellant's Brief no later than 17 June 2005.² However, the Appellant submitted his brief by fax to the Registry on Saturday 18 June 2005 at 00.26 am. As the Registry does not accept documents on the weekends, it was filed by the Registry on Monday, 20 June 2005.³

3. In filing his Appellant's Brief out of time the Appellant did not submit a motion pursuant to Rule 127 of the Rules of Procedure and Evidence ("Rules") requesting that his brief be considered as validly filed and showing good cause to justify the delay. In these circumstances, the Prosecution requests that the Appeals Chamber strike the Appellant's Brief from the court record as not timely filed.⁴ In the alternative, if the Appeals Chamber chooses to accept the Appellant's Brief as validly filed, the Prosecution asks that it be granted three extra days in which to respond to the brief to avoid prejudice accruing to it by the late filing.⁵

4. The Appellant filed a response to the Prosecution's Application, but failed to identify good cause justifying the Appeals Chamber receiving the Appellant's Brief as validly filed pursuant to Rule 127 of the Rules.⁶ In that Response, Appellant's Counsel states that he was unable to meet the deadline despite his best efforts to do so. He says that he notified the Registry that he would be unable to file the Appellant's Brief on time rather than waste additional time in requesting an extension of time from the Appeals Chamber.⁷

5. The Scheduling Order issued by the Appeals Chamber is unambiguous. The Appellant's Brief was to be filed on 17 June 2005. If good cause justified Counsel filing the Appellant's Brief after the time stipulated in that Order, then that good cause should be presented to the Appeals Chamber, and a request for an extension of time should have been made before the filing deadline or a request that the Appellant's Brief be received as validly filed pursuant to Rule 127 of the Rules

¹ Prosecution's Application to Strike Appellant's Brief, 21 June 2005 ("Prosecution Application"). The Prosecution's Application was directed to the Trial Chamber and not the Appeals Chamber. However, the Registry has marked the Prosecution's Application with the correct case number and circulated the filing to the Appeals Chamber. Upon this basis, the Prosecution's Application has been validly filed before the Appeals Chamber.

² Scheduling Order, 3 June 2005.

³ *Ibid*, pars 1-3.

⁴ *Ibid*, par 4.

⁵ *Ibid*, par 2.

⁶ Appellant's Response to Prosecution Application to Strike the Appellant's Brief and Request for Variation of Time Limits, 22 June 2005 ("Appellant's Response").

should have been made at the time of the filing of the Appellant's Brief out of time, if not before. The fact that Counsel for the Appellant has not sought to justify his late filing and has requested the Appeals Chamber to receive it as validly filed after the fact is sufficient grounds for the Appeals Chamber to strike the Appellant's brief as not validly filed, as is requested by the Prosecution. Indeed, when clear time limits are transgressed without justifiable explanation, the Appeals Chamber is hesitant to do other than reject the filing. In this case, however, the Appeals Chamber has determined that the interests of justice warrant it receiving the brief as validly filed despite Counsel's breach of its Order.

6. Contempt proceedings are ancillary to proceedings at the Tribunal and arise from the inherent power of the Judges of this Tribunal to protect the integrity of their own proceedings. However, this particular contempt appeal also touches upon fundamental due process rights of an Accused, Mr Milošević, charged with particularly serious offences in a way that other contempt proceedings heard at this Tribunal have not.

7. A central argument made by the Appellant in his grounds of appeal is that the Trial Chamber should not have allowed his cross-examination to continue in the absence of the Accused and that, as a result, he should never have been put in the position of refusing an order of the Tribunal and subsequently being charged with contempt of the Tribunal for such a refusal. Prior to the commencement of the contempt proceedings against him, the Appellant requested the Trial Chamber to reconsider its ruling on this basis. The Trial Chamber refused to do so on the basis that it was not its role to reconsider such a decision, one which it already had determined was warranted, in the context of a proceeding of contempt against the Appellant.

8. In these circumstances, if the Appeals Chamber refuses due to a procedural irregularity to accept the Appellant's Brief as validly filed, then the Appellant is placed in the unfortunate position of being charged with contempt but denied the opportunity to respond fully to that criminal charge. Upon this basis, the Appeals Chamber has determined that the possible implications of this contempt proceeding for the rights of the Accused Mr Milošević warrant some leniency to the Appellant despite his Counsel's failure to abide by the Scheduling Order of the Appeals Chamber.

9. On the basis of the foregoing, the Appellant's Brief filed on 20 June 2005 is deemed to be validly filed. The Prosecution is granted a further three days to file its response to the Appellant's Brief from 27 June 2005 as ordered in the Scheduling Order to 30 June 2005.

⁷ *Ibid*, pars 5-6.

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

Done this 23rd day of June 2005
At The Hague
The Netherlands



Theodor Meron
Presiding Judge

[Seal of the Tribunal]