

IT-04-84-R77.5 - A

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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-04-84-R77.5-A

Date: 4 September 2008

Original: English

IN THE APPEALS CHAMBER

Before:

**Judge Wolfgang Schomburg, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andréia Vaz
Judge Theodor Meron**

Registrar:

Mr. Hans Holthuis

Decision of:

4 September 2008

PROSECUTOR

v.

BATON HAXHIU

PUBLIC

**DECISION ON ADMISSIBILITY OF NOTICE OF APPEAL
AGAINST TRIAL JUDGEMENT**

The Office of the Prosecutor:

Ms. Barbara Goy
Ms. Laurel Baig

Counsel for Baton Haxhiu:

Mr. Christian Kemperdick

W. J.

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 (“Appeals Chamber” and “International Tribunal”, respectively) is seized of a “Public Notice of Appeal Against Judgement” (“Notice of Appeal”) filed by Baton Haxhiu (“Haxhiu”) on 19 August 2008.¹ In response, the Prosecution filed a “Motion to Strike Notice of Appeal” on 25 August 2008 (“Motion”).²

A. Procedural Background

2. An Indictment for contempt against Haxhiu was confirmed on 10 April 2008.³ On 24 July 2008, Trial Chamber I of the International Tribunal found Haxhiu guilty of contempt of the International Tribunal, punishable under Rule 77(A)(ii) and Rule 77(G) of the Rules of Procedure and Evidence (“Rules”) for knowingly revealing confidential information related to a protected witness in violation of an order of a Trial Chamber. Haxhiu was sentenced to a fine of 7,000 Euros.⁴

3. Haxhiu filed his Notice of Appeal on 19 August 2008; the Prosecution filed its Motion on 25 August 2008. Haxhiu responded to this Motion on 28 August 2008⁵ and the Prosecution replied on 1 September 2008.⁶

B. Submissions

4. In his Notice of Appeal, Haxhiu challenges the Trial Judgement on three grounds. He alleges that his trial was unfair,⁷ that the Trial Chamber erred in law when finding that he disclosed protected information,⁸ and that his fine is disproportionate.⁹ He seeks an acquittal or, in the alternative, a retrial or a reduced fine.¹⁰

5. In its Motion, the Prosecution requests the Appeals Chamber to strike Haxhiu’s Notice of Appeal as it was time-barred.¹¹ It argues that Rule 77(J) of the Rules requires that

¹ Public Notice of Appeal Against Judgement, 19 August 2008.

² Motion to Strike Notice of Appeal, 25 August 2008.

³ *Prosecutor v. Baton Haxhiu*, Case No. IT-04-84-R77.5, Decision on Review of Indictment, 10 April 2008.

⁴ *Prosecutor v. Baton Haxhiu*, Case No. IT-04-84-R77.5, Judgement on Allegations of Contempt, 24 July 2008 (“Trial Judgement”).

⁵ Public Reply to Prosecution’s Motion to Strike Notice of Appeal, 28 August 2008 (“Response”).

⁶ Reply to Defence Response to Motion to Strike Notice of Appeal, 1 September 2008 (“Reply”).

⁷ Notice of Appeal, pp. 2 *et seq.*

⁸ *Ibid.*, pp. 7 *et seq.*

⁹ *Ibid.*, pp. 10 *et seq.*

¹⁰ *Ibid.*, p. 11.

¹¹ Motion, paras 1 and 3.

an appeal against the Trial Judgement, which was rendered on 24 July 2008, had to be filed within 15 days and was therefore due on 8 August 2008.¹² The Prosecution points out that the Notice of Appeal was filed on 19 August 2008 and Haxhiu had not asked for a variation of time-limits pursuant to Rule 127 of the Rules.¹³

6. Haxhiu responds that the Notice of Appeal was filed within the 30-day time-limit pursuant to Rule 108 of the Rules.¹⁴ He claims that Rule 77(J) of the Rules, which sets out a 15-day time-limit, is not applicable in the case of an appeal against judgement, as it speaks only of “decisions” but not of “judgements.”¹⁵ Haxhiu asserts in this context that not only the Rules distinguish between decisions and judgements but also the Judicial Database of the International Tribunal.¹⁶ Furthermore, according to Haxhiu, Rule 116 *bis* of the Rules, which provides for an expedited appeals procedure, implies that Rule 108 of the Rules is applicable to an appeal against a decision rendered under Rule 77 as Rule 116 *bis*(B) specifies that only Rules 109 to 114 shall not apply to such appeals.¹⁷ Furthermore, Haxhiu claims that the relevant Practice Direction¹⁸ does not contradict his view since its Paragraph 4 only refers to appeals against decisions but not against judgements under Rule 77 of the Rules.¹⁹

7. In the event that the Appeals Chamber finds that the Notice of Appeal was filed outside the applicable time-limits, Haxhiu requests the Appeals Chamber to recognize this filing as validly done pursuant to Rule 127(A)(ii) of the Rules.²⁰ Haxhiu submits that good cause exists because the Rules give rise to ambiguity and could be interpreted in different ways.²¹

8. The Prosecution replies that the Appeals Chamber has addressed the time-limits for appeals against judgements in contempt proceedings and refers to the judgement of the Appeals Chamber in *Prosecutor v. Marijačić and Rebić*.²²

¹² *Ibid.*, para. 3.

¹³ *Ibid.*, para. 3.

¹⁴ Response, p. 2.

¹⁵ *Ibid.*, pp. 2 *et seq.*

¹⁶ *Ibid.*, p. 5.

¹⁷ *Ibid.*, p. 4.

¹⁸ Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal of 16 September 2005 (IT/155/Rev.3) (“Practice Direction”).

¹⁹ Response, pp. 4-5.

²⁰ *Ibid.*, p. 6.

²¹ *Ibid.*, p. 7.

²² Reply, paras 1-2.

C. Discussion

9. The Appeals Chamber recalls that the International Tribunal, pursuant to Rule 77 of the Rules and in accordance with the International Tribunal's consistent jurisprudence, possesses the inherent power to address conduct interfering with its administration of justice. The International Tribunal has both the subject matter and personal jurisdiction to prosecute contempt.²³ Haxhiu was convicted by the Trial Chamber for contempt pursuant to Rules 77(A)(ii) and (G) of the Rules.

10. Rule 77(J) of the Rules provides the following:

Any decision rendered by a Trial Chamber under this Rule shall be subject to appeal. Notice of appeal shall be filed within fifteen days of filing of the impugned decision.

11. Paragraph 4 in Section III of the relevant Practice Direction²⁴ provides the following:

A party wishing to appeal from a decision of the Trial Chamber ("appellant") pursuant to Rule 11 *bis*, Rule 77 or Rule 91 shall file notice of appeal within 15 days of the decision ...

12. At the outset, the Appeals Chamber recalls that in *Prosecutor v. Marijačić and Rebić* it was confronted with a question similar to the one in this case. The Appeals Chamber in that case explicitly rejected the argument, made by one of the appellants in relation to the filing of the appeal brief, that Section III of the Practice Direction is only applicable to interlocutory decisions but not to judgements rendered pursuant to Rule 77. The Appeals Chamber consequently held that "Section III [of the Practice Direction] applies to final decisions of a Trial Chamber under Rule 77."²⁵

13. The same reasoning applies to Rule 77(J) of the Rules, which is mirrored in paragraph 4 of the Practice Direction. Indeed, in *Prosecutor v. Šešelj*, the Appeals Chamber stated that "Rule 77(J) of the Rules shall be interpreted as allowing for appeals against decisions *disposing* of contempt cases only."²⁶

14. Accordingly, the Appeals Chamber finds that Haxhiu's Notice of Appeal was filed outside the prescribed time-limits. However, Haxhiu has requested the Appeals Chamber to

²³ See *Prosecutor v. Josip Jović*, Case No. IT-95-14 & 14/2-R77-A, Judgement, 17 March 2007, para. 34 with further references.

²⁴ See *supra* note 18.

²⁵ *Prosecutor v. Ivica Marijačić and Markica Rebić*, Case No. IT-95-14-R77.2-A, Judgement, 27 September 2006, para. 14.

²⁶ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR77.1, Decision on Vojislav Šešelj's Appeal Against the Trial Chamber's Decision of 19 July 2007, 14 December 2007, p. 2, with further references (emphasis added).

recognize the late filing as validly done pursuant to Rules 127(A)(ii) and 127(B) of the Rules. He concedes that “counsel’s unfamiliarity with the Appeals Chamber’s procedure does not constitute good cause for an extension of time.”²⁷ Indeed, the Appeals Chamber recalls that “counsel participating in appeals proceedings are expected to familiarize themselves with the procedural requirements.”²⁸

15. Additionally, Haxhiu argues that good cause exists because according to him the Rules are ambiguous on the question of time-limits in contempt cases and “no judgement has been rendered on the question which time limit applies to appeals against judgements in contempt proceedings...”²⁹ The Appeals Chamber rejects this argument. As noted above, the Appeals Chamber in a previous contempt case has explicitly ruled that the time-limits in Section III of the Practice Direction – and by implication in Rule 77(J) of the Rules – apply to final decisions of the Trial Chamber taken under Rule 77, *i.e.* judgements on allegations of contempt.³⁰ Given the existence of only a few judgements on appeal in contempt proceedings before the International Tribunal, Counsel is expected to have acquainted himself with the relevant jurisprudence on this issue. Accordingly, no good cause has been shown that would allow the Appeals Chamber to exercise its discretion in recognizing the filing of the Notice of Appeal as validly done.

16. The Appeals Chamber stresses once again that time-limits in the Rules must be observed. Finality is an important component of any criminal trial. Parties cannot reopen the proceedings at will. As the ICTR Appeals Chamber held in *The Prosecutor v. Kayishema and Ruzindana*, rejecting the entire appeal lodged by the Prosecution in that case:

Procedural time-limits are to be respected, ... they are indispensable to the proper functioning of the Tribunal and the fulfilment of its mission to do justice. Violations of these time-limits, unaccompanied by any showing of good cause, will not be tolerated.³¹

²⁷ Response, p. 7.

²⁸ *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Motion by Radivoje Miletić for Access to Confidential Information, 9 September 2005, p. 2.

²⁹ Response, p. 7.

³⁰ *Prosecutor v. Ivica Marijačić and Markica Rebić*, Case No. IT-95-14-R77.2-A, Judgement, 27 September 2006, para. 14.

³¹ *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-A, Judgement (Reasons), para. 46 (footnotes omitted). *See also* fn. 54 of that Judgement, which by referring to Rule 127 of the ICTY Rules of Procedure and Evidence states that “[t]he fact that an act performed after the expiration of a prescribed time may be recognized as validly done illustrates the following principle: timely filing is the rule, and filing after the expiration of a time-limit constitutes late filing, which is normally not permitted. However, if good cause is shown, the Rule establishes that despite the expiration of time and tardy filing, an act may be recognized as validly done, as a permitted derogation from the usual rule. Thus, the Rule reinforces the principle that procedural time-limits are to be respected.”

D. Disposition

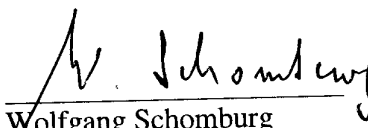
For the foregoing reasons, the Appeals Chamber

REJECTS the Notice of Appeal as inadmissible and

DECLARES the case closed.

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

Dated this 4th day of September 2008,
At The Hague, The Netherlands.


Wolfgang Schomburg
Presiding

[Seal of the International Tribunal]