IT-98-34-A
A100 - A97
12 JUNE 2003

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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-98-34-A

Date: 12 June 2003

Original: ENGLISH

BEFORE THE PRE-APPEAL JUDGE

Before: **Judge Fausto Pocar, Pre-Appeal Judge**

Registrar: **Mr. Hans Holthuis**

Decision of: **12 June 2003**

PROSECUTOR

v.

MLADEN NALETILIĆ, aka "TUTA"
VINKO MARTINOVIĆ, aka "ŠTELA"

DECISION ON MOTIONS FOR EXTENSION OF TIME

Counsel for the Prosecutor:
Mr. Norman Farrell

Counsel for the Defence:
Mr. Kresimir Krsnik and Mr. Christopher Y. Meek for Mladen Naletilić
Mr. Želimir Par for Vinko Martinović

I, FAUSTO POCAR, 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 ("the International Tribunal"),

NOTING the "Order Designating A Pre-Appeal Judge" issued by the Presiding Judge of the Appeals Chamber on 25 April 2003;

NOTING that the judgment in this case was rendered on 31 March 2003 by Trial Chamber I, and that notices of appeal were filed by counsel for Mladen Naletilić and Vinko Martinović on 29 April 2003;

BEING SEIZED of the "Motion for Enlargement of Time to File Brief" filed on 26 May 2003 ("First Naletilić Motion") by counsel for Naletilić, and the "Appeal for Extension of Deadline for Filing the Motion of Appeal, and for the Extension of Deadline for Filing the Motion Requesting Presentation of Additional Evidence" ("Martinović Motion"), filed on the same day by counsel for Martinović, as well as the "Motion of Naletilić for Extension of time for Filing of Rule 115 Evidence" filed on 5 June 2003 ("Second Naletilić Motion");

NOTING that in the First Naletilić Motion, Naletilić seeks an extension of time of seventy-five days from the date he receives a copy of the judgment in his own language to file his appellant's brief; a suspension of the time limits until a new lead counsel has been appointed; and a reasonable period of time for the newly appointed counsel to familiarize himself with the case;

NOTING that in the Second Naletilić Motion, Naletilić seeks an extension of time to file additional evidence pursuant to Rule 115 of the Rules of Procedure and Evidence of the International Tribunal ("Rules"), of seventy-five days from the date that the new counsel who will replace Mr. Krsnik will be appointed by the Registry;

CONSIDERING that the primary reasons proffered by Naletilić in his motions are that he has requested the removal of lead counsel Mr. Kresimir Krsnik and replacement by Mr. Matthew Hennessy, but Mr. Hennessy has yet to meet with Naletilić and the Registry has not issued a decision on the matter; currently, Mr. Krsnik is counsel in name only; it is essential that

Naletilić be able to understand the judgment so that he may discuss his appeal with counsel; and without this input, he will be denied the equality of arms and his right to a fair appeal;

NOTING that Martinović in his motion requests that the time limits imposed by Rules 111 and 115 of the Rules, governing the filing of the appellant's brief and motions for additional evidence, respectively, should be calculated from the day the accused is provided with a copy of the judgment in his language;

CONSIDERING that the primary reasons advanced by Martinović in his motion are that his lead counsel was replaced on 19 May 2003; the defense team is newly organized; Martinović has not yet received a copy of the judgment in a language that he understands; and he has instructed his counsel not to submit the appellant's brief or Rule 115 motion without his instructions;

NOTING the "Prosecution Response to Defence Motions for Extensions of Time" filed on 3 June 2003 ("Prosecution Response"), in which the Prosecution submits that Martinović has not shown good cause for an extension of time greater than 40 days from the date of the filing of the BCS translation of the trial judgment, and that, in relation to the First Naletilić Motion, it would not oppose a similar extension of time—that is, 40 days from the date of the filing of the translation of the judgment;

NOTING that the Prosecution has not responded to the Second Naletilić Motion;

NOTING that no reply has been filed by the Defense in relation to the Prosecution Response;

CONSIDERING that Rule 111 of the Rules provides that "[a]n Appellant's brief setting out all the arguments and authorities shall be filed within seventy-five days of [the] filing of the notice of appeal pursuant to Rule 108";

CONSIDERING that Rule 115 of the Rules provides that motions to present additional evidence before the Appeals Chamber shall be filed "not later than seventy-five days from the date of the judgment, unless good cause is shown for further delay[;]"

CONSIDERING that pursuant to Rule 127 of the Rules, the time limits prescribed under these Rules may be enlarged on good cause being shown by motion;

CONSIDERING that the BCS translation of the trial judgment will be available to the Appellants by 1 July 2003;

CONSIDERING that it is in the interests of justice to allow an appellant adequate time to read the judgment and to consult with counsel before filing his appellant's brief and motion for additional evidence;

CONSIDERING further that lead counsel for Martinović was replaced on 19 May 2003, and that Naletilić seeks a change in lead counsel but this change has not been effected yet;

CONSIDERING that it is also in the interests of justice to allow newly appointed lead counsel to familiarize himself with the case;

FINDING that these circumstances constitute good cause for granting Martinović an extension of time to file his appellant's brief and Rule 115 motion, if any, and that, in relation to Naletilić, a decision on the motions will be taken after counsel has been replaced;

FOR THE FOREGOING REASONS,

GRANT in part Martinović's motion for extension of time; **ORDER** Martinović to file any Rule 115 motion by 1 August 2003, and the appellant's brief by 29 August 2003; and **STAY** a decision on the First and Second Naletilić Motion until counsel for Naletilić has been replaced.

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

Dated this 12th day of June 2003,

At The Hague,
The Netherlands.

Fausto Pocar
Pre-Appeal Judge

[Seal of the Tribunal]