



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-98-29-A
Date: 2 September 2004
Original: English

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Florence Ndepele Mwachande Mumba

Registrar: Mr. Hans Holthuis

Decision: 2 September 2004

PROSECUTOR

v.

STANISLAV GALIĆ

**DECISION ON "URGENT PROSECUTION MOTION
FOR AN ORDER REQUIRING THE APPELLANT TO
RE-FILE HIS APPEAL BRIEF AND REQUEST FOR
LEAVE TO EXCEED WORD-LIMIT FOR MOTION"**

The Office of the Prosecutor:

Mr. Norman Farrell

Counsel for the Accused:

Ms. Mara Pilipović
Mr. Stéphane Piletta-Zanin

I, FLORENCE NDEPELE MWACHANDE MUMBA, a 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 (“International Tribunal”);

NOTING the “Defence Appellant’s Brief” filed on 19 July 2004 (“Galić Appeal Brief”);

BEING SIEZED OF an “Urgent Prosecution Motion for an Order Requiring the Appellant to Re-File His Appeal Brief and Requests for Leave to Exceed Word-Limit for Motion” (“Motion”) filed on 20 August 2004, in which the Prosecution requests the following: 1) leave to exceed the word limit for the Motion by approximately 1,000 words; 2) the Appeals Chamber to strike Galić Appeal Brief and to order him to re-file it in proper form; or in the alternative, 3) to grant the Prosecution an extension of the word limit to 100,000 words for its Respondent’s Brief;¹

NOTING that in the “Defence Response on Prosecution Motion Dated 20 August 2004” (“Galić Response to Motion”) the Defence expresses its opposition to the Prosecutions’ request for leave to exceed the word limit for Motion;

CONSIDERING that the Practice Direction on the Length of Briefs and Motions provides that, “[m]otions and replies and responses before a Chamber will not exceed 10 pages or 3,000 words, whichever is greater;² “[b]riefs and motions will be submitted on A4 paper”,³ “[m]argins will be at least 2.5 centimetres on all four sides:”⁴ and that “[t]he typeface will be 12 point with 1.5 line spacing;”⁵

CONSIDERING that, Section (C) 7. of the Practice Direction on the Length of Briefs and Motions states, “[a] party must seek authorization in advance from the Chamber to exceed the page limits in this Practice Direction and must provide an explanation of the exceptional circumstances that necessitate the oversized filing;”⁶

CONSIDERING that the Prosecution made long and strong arguments about conformity of the Galić Appeal Brief with the Practice Direction without itself respecting similar requirements;

¹ IT/184/Rev. 1, 5 March 2002. Section (C) 1. (b).

² IT/184/Rev. 1, 5 March 2002. Section (C) 5.

³ IT/184/Rev. 1, 5 March 2002. Section (A).

⁴ IT/184/Rev. 1, 5 March 2002. Section (A).

⁵ IT/184/Rev. 1, 5 March 2002. Section (B).

⁶ IT/184/Rev. 1.

FINDING that in the interest of judicial economy and in the interest of an expeditious pre-appeal proceeding, the Appeals Chamber considers the Motion validly filed and will consider the merits of the Motion;

NOTING that the Prosecution's request to strike out Galić Appeal Brief and to have the Appellant ordered to re-file his Appeal brief in proper form is based on two arguments: 1) that Galić Appeal Brief is filed in breach of the Pre-Appeal Judge's decision of 16 July 2004, which granted the Defence an extension of 45 pages for its Appeal Brief, and since paragraph (B) of the Practice Direction on the Length of Briefs and Motions provide that "[a]n average page should contain fewer than 300 words," consequently, the 145 page limit corresponds to 43,500 words, and not to the actual 69,516 words of Galić Appeal Brief; 2) that "the Appeal Brief in many parts does not conform to the requirements for arguments on appeal" provided in, *inter alia*, paragraph 4 Section I of the Practice Direction on Formal Requirements for Appeals From Judgement;⁷

NOTING that the Defence opposes the Prosecution's argument that the Practice Direction on the Length of Briefs and Motions requires that "[a]n average page should contain fewer than 300 words" arguing that the provision included in Section C 1. a) of the Practice Direction⁸ "the brief of an appellant on appeal from a final judgment of a Trial Chamber will not exceed 100 pages or 30,000 words, whichever is greater," should be interpreted in the sense that it is sufficient to comply with the limit of page number and follow the provisions regarding size of paper, margins, typeface and line spacing included in Section (A) and (B) of the same Practice Direction;

NOTING that in the "Decision on Defence's Request for Reconsideration" issued on 16 July 2004 it was granted to the Defence leave to exceed the page limits set out in the above mentioned Practice Direction for the Appeal Brief by 45 pages;⁹

FINDING that Galić Appeal Brief is 145 pages long, was submitted on A4 paper, its margins are at least 2.5 centimetres on all four sides, its typeface is 12 point with 1.5 line spacing; and consequently, that Galić Appeal Brief is in accordance with the Pre-Appeal Judge's decision of 16 July 2004;

NOTING that the Defence opposes the Prosecution's argument that the Appeal Brief in parts does not conform to the requirements included in paragraph 4 Section I of the Practice Direction on Formal Requirements for Appeals From Judgement,¹⁰ on two grounds: 1) that the Prosecution

⁷ IT/201, 7 March 2002.

⁸ IT/184/Rev. 1, 5 March 2002.

⁹ Decision on Defence's Request for Reconsideration, 16 July 2004, at paragraph 3.

¹⁰ IT/201, 7 March 2002.

unduly used its present Motion to raise issues relating to the merits of the appeals proceedings; and
2) that the Prosecution does not have competence to assess the correctness of the arguments included in the Galić Appeal Brief;

NOTING the provision contained in paragraph 4 Section I of the Practice Direction on Formal Requirements for Appeals From Judgement;¹¹

CONSIDERING that with respect to the first Prosecution's example of alleged inobservance by the Defence of the formal requirements in its Appeal Brief¹² ("Prosecution's example"), the Defence makes a reference to paragraph 283 of the Judgment and Scheduled Incident No. 20 in footnote 14 included in paragraph. 28; and consequently, that the Defence complied with the requirement set down in paragraph 4 Section I of the Practice Direction on Formal Requirements for Appeals From Judgement;¹³

CONSIDERING with respect to the second Prosecution's example relating to belated disclosure of Rule 68 material¹⁴ that Galić makes a temporal reference to the evidence and even though a precise reference would be preferable the Prosecution has not argued that it is not in a position to identify the documents or to respond to the ground, and consequently, that the request by the Prosecution for re-filing is disproportionate to the imprecision provided in the references;¹⁵

CONSIDERING with respect to the third Prosecution's example¹⁶ that it is true that Galić reference in the first footnote of his Appeals Brief is incorrect, however, Galić identifies the decision to which he is referring to in paragraph 20 of the Galić Appeal Brief, and the Prosecution

¹¹ IT/201, 7 March 2002, paragraph 4 of Section I provides as follows "4. After having filed a Notice of Appeal, the Appellant shall file, in accordance with the Statute and the Rules, an Appellant's Brief containing, in the following order:

(a) an introduction with a concise summary of the relevant procedural history including the date of the judgement as well as the case number and date of any interlocutory filing or decision relevant to the appeal;

(b) the arguments in support of each ground of appeal, including, but not limited to;

(i) legal arguments, giving clear and precise references to relevant provisions of the Statute, the Rules, the jurisprudence of the International Tribunal or other legal authorities relied upon;

(ii) factual arguments and, if applicable, arguments in support of any objections as to whether a fact has been sufficiently proven or not, with precise reference to any relevant exhibit, transcript page, decision or paragraph number in the judgement;

(iii) arguments in support of the submitted causal link between any alleged error on a question of law invalidating the decision and/or any alleged error of fact which has occasioned a miscarriage of justice; the precise relief sought;

(c) the arguments in support of any overall relief sought.

The grounds of appeal and the arguments must be set out and numbered in the same order as in the Appellant's Notice of Appeal, unless otherwise varied with leave of the Appeals Chamber."

¹² Paragraph 28 of Galić's Appeal Brief.

¹³ IT/201, 7 March 2002.

¹⁴ Fourth and thirteenth Ground of Appeal of Galić's Appeal Brief.

¹⁵ Galić in his Appeal Brief refers to additional material disclose by the Prosecution in August and on 18 November 2003.

¹⁶ It concerns footnote 1 of Galić Appeals Brief.

was able to identify the correct transcript page, and consequently, there is no reason for any intervention by the Chamber;

CONSIDERING with respect to the sixth Prosecution's example¹⁷ that it is true that Galić does not develop legal support for his assertion that the *mens rea* of the accused cannot be proved by circumstantial evidence, however, this is a matter for the Prosecution to respond to in the Respondent's Brief and for the Chamber to determine when considering the merits of the appeal;

CONSIDERING with respect to the seventh Prosecution's example (whether a plan existed to attack civilians in Sarajevo), and with respect to the eighth,¹⁸ ninth¹⁹, tenth,²⁰ eleventh²¹ and twelfth Prosecution's examples (the assessment of disputed evidence), that they raise matters which the Appeals Chamber should analyse and decide when addressing the merits of this appeal and are not matters justifying an Appeal Brief to be struck out or re-filed;

CONSIDERING that the Prosecution only raise two examples of Galić making substantive arguments in the footnotes: the fourth Prosecution's example²² and the fifth Prosecution's example²³ and that in both cases the ground of appeal is set out in the main text and the footnote is used to exemplify and to develop the arguments;

NOTING that the Parties should comply with the practice of the Tribunal according to which grounds of appeals should be included in the main text of their filings²⁴ and that the failure to observe the provisions of the Practice Directions could be a legitimate reason to order that submissions of the parties are stricken out;

CONSIDERING that the Prosecution request to strike or re-file is a disproportioned measure and does not assist in smooth pre-appeal proceedings but only disrupts the filing schedule;

FINDING the Galić Appeal Brief should not be struck out or re-filed;

CONSIDERING the Prosecution's alternative request to grant it an extension of the word limit to 100.000 for its Respondent's Brief;

¹⁷ It concerns paragraphs 111 and 112 of Galić Appeal Brief, namely Galić's submission that the *mens rea* of the accused cannot be proved by circumstantial evidence.

¹⁸ It refers to the testimony of Aernaut van Lynden quoted in paragraph 221 of Galić Appeal Brief.

¹⁹ It refers to the evidence of Kucanin included in footnote number 160 of Galić Appeal Brief.

²⁰ It refers to paragraph 184 of Galić Appeal Brief.

²¹ It refers to paragraph 217 of Galić Appeal Brief.

²² It concerns footnotes 5 to paragraph 23 and 160 to paragraph 223 of Galić Appeals Brief.

²³ It concerns Galić tenth ground of appeal b. which is included, *inter alia*, in paragraph 110 of Galić Appeal Brief.

²⁴ *Prosecutor v. Kordić and Čerkez*, Order to File Amended Grounds of Appeal, IT-95-14/2-A, Judge David Hunt, Pre-appeal Judge, 18 February 2002, at p. 2.

CONSIDERING that the Practice Direction on the Length of Briefs and Motions provides that the Respondent's Brief should "not exceed 100 pages or 30,000 words, whichever is greater;"²⁵

CONSIDERING that in "Decision on Defence's Request for Reconsideration" issued on 16 July 2004 it was granted to the Defence leave to exceed the page limits set out in the above mention Practice Direction for the Appeal Brief by 45 pages;²⁶

NOTING that Galić Appeals Brief is 145 pages long and has 69.516 words;

FINDING that the exceptional circumstances of this case, the need to carry out the appeals proceedings with reasonable expedition, the principle of equality of arms and the interest of the Appeals Chamber to have the arguments presented clearly, justify granting the prosecution leave to file a Respondent's Brief with the same number of pages or words as Galić Appeal Brief.

FOR THE FOREGOING REASONS,

HEREBY


RECOGNIZE the Motion as validly filed;

DENY the Prosecution's request to strike out Galić Appeal Brief; and

GRANT the extension of word limit to 145 pages or 69.516 words to the Prosecution for the filing of its Respondent's Brief.

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

Done this second day of September 2004,
At The Hague,
The Netherlands



Judge Florence Ndepele Mwachande Mumba
Pre-Appeal Judge

[Seal of the Tribunal]

²⁵ IT/184/Rev. 1, 5 March 2002.

²⁶ Decision on Defence's Request for Reconsideration, 16 July 2004, at p. 3.