



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-02-60/1-A

Date: 6 April 2005

Original: English

**BEFORE THE PRE-APPEAL JUDGE**

**Before: Judge Mehmet Güney**

**Registrar: Mr. Hans Holthuis**

**Decision: 6 April 2005**

**Momir NIKOLIĆ**

**v.**

**PROSECUTOR**

**DECISION ON APPELLANT'S URGENT MOTION FOR  
RECONSIDERATION OF DECISION ON SECOND DEFENCE MOTION  
TO ENLARGE TIME FOR FILING OF REPLIES DATED 1 APRIL 2005**

**Counsel for the Appellant:**

**Mr. Rock Tansey, Q.C.**

**Counsel for the Prosecution:**

**Mr. Norman Farrell**

A handwritten signature in black ink, appearing to be 'Güney'.

**I, MEHMET GÜNEY**, Judge of the Appeals Chamber of the International Criminal 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”) and Pre-Appeal Judge in this case,

**NOTING** the “Appellant’s Motion for Leave to File Second Amended Notice of Appeal” and the confidential “Appellant’s Second Motion to Admit Additional Evidence” filed by Momir Nikolić (“Appellant”) on 23 December 2004 (“Appellant’s Motions”);

**NOTING** my confidential Decision of 7 February 2005<sup>1</sup> authorizing the Prosecution to file its responses<sup>2</sup> to the Appellant’s Motions by 21 February 2005 and instructing the Appellant to file his replies within twenty days of the filing of the Prosecution’s Responses, namely, by 14 March 2005;

**NOTING** my Decision of 8 March 2005<sup>3</sup> granting the Appellant a further extension of time, until Monday 11 April 2005 to file his replies to the Prosecution’s Responses on the ground that it was in the interests of justice to allow newly appointed Counsel Mr. Rock Tansey, to familiarise himself with the case;

**NOTING** the Second Motion for Extension of Time<sup>4</sup> filed by the Appellant on 31 March 2005 in which he sought a further extension of eight weeks to file his replies to the Prosecution’s Responses;

**NOTING** my Decision of 1 April 2005<sup>5</sup> denying the Second Motion for Extension of Time, *inter alia*, on the grounds that, (i) Ms. Virginia Lindsay, former Counsel for the Appellant, is currently part of the legal team of the newly appointed Counsel and is therefore able to significantly assist the new Counsel in preparing the replies,<sup>6</sup> and (ii) since a reply is restricted to dealing with issues raised in the opposite party’s response and must not supplement the initial motion with new arguments, the time required to prepare it should not be significant;<sup>7</sup>

**BEING SEISED** of the “Appellant’s Urgent Motion for Reconsideration of Decision on Second Defence Motion to Enlarge Time for Filing of Replies Dated 1 April 2005” filed on 5 April 2005 by

<sup>1</sup> Decision on Prosecution Urgent Request for Extension of Time and Motion for Access, Confidential, 7 February 2005.

<sup>2</sup> Prosecution’s Response to Appellant’s Motion for Leave to File Second Amended Notice of Appeal and Prosecution’s Response to Appellant’s Second Motion to Admit Additional Evidence, both filed confidentially on 21 February 2005 (together “Prosecution’s Responses”).

<sup>3</sup> Decision on Motion to Enlarge Time for Filing of Replies Relating to Appellant’s Second Motion to Admit Additional Evidence and Motion for Leave to File a Second Amended Notice of Appeal, 8 March 2005.

<sup>4</sup> Second Motion to Enlarge Time for Filing of Replies Relating to Appellant’s Second Motion to Admit Additional Evidence and Motion for Leave to File a Second Amended Notice of Appeal, 31 March 2005.

<sup>5</sup> Decision on Second Defence Motion to Enlarge Time for Filing of Replies, 1 April 2005.

<sup>6</sup> *Ibid.*, p. 3.

the Appellant (“Motion for Reconsideration”), in which he asks the Appeals Chamber to reconsider my Decision of 1 April 2005 and requests that the time for the filing of the replies to the Prosecution’s Responses be enlarged to allow an additional eight weeks, to and including 6 June 2005;

**NOTING** that in support of his Motion for Reconsideration the Appellant advances, *inter alia*, the following arguments not raised in his Second Motion for Extension of Time, which he submits amount to exceptional circumstances:

- (i) former Counsel for the Appellant who has been granted forty hours to assist newly appointed Lead Counsel in her capacity as a Legal Consultant, is a potential witness in the case, and “her involvement in the case may give rise to conflicts inherent her role as a potential witness”;<sup>8</sup>
- (ii) Counsel for the Appellant is “unwilling to simply sign pleadings drafted by former Counsel without full and proper consideration of them”;<sup>9</sup>
- (iii) the time allowed has not enabled Counsel for the Appellant to fully understand the issues raised in the appeal, thus he is not in a position to properly evaluate the Appellant’s Motions and the Prosecution’s Responses;<sup>10</sup>
- (iv) if Counsel for the Appellant is unable to file the replies to the Prosecution’s Responses and “proceed with the appeal in a proper and professional manner” due to the lack of time, he “would be compelled to ask to withdraw from the case”;<sup>11</sup>

**NOTING** that in its Response to the Second Motion for Extension of Time<sup>12</sup> the Prosecution indicated that it did not oppose the Second Motion for Extension of Time on the sole basis that the Appellant’s Counsel previous commitment in another trial to be heard in London, prevented him from being able to file the replies to the Prosecution’s Responses, unless he was granted two additional weeks after the end of the said trial to acquaint himself with the present case and consult further with his client;

**CONSIDERING** that it is not necessary to wait for a response from the Prosecution to the Motion for Reconsideration, as the Prosecution would not be prejudiced by the outcome of this decision;

---

<sup>7</sup> *Ibid.*, p. 4.

<sup>8</sup> Motion for Reconsideration, para. 8.

<sup>9</sup> *Ibid.*, para. 9.

<sup>10</sup> *Ibid.*, para. 11.

<sup>11</sup> *Ibid.*, para. 13.

<sup>12</sup> Prosecution Response to Second Motion to Enlarge Time for Filing of Replies Relating to Appellant’s Second Motion to Admit Additional Evidence and Motion for Leave to File a Second Amended Notice of Appeal, 1 April 2005.

**NOTING** that, pursuant to Rule 127 of the Rules of Procedure and Evidence of the International Tribunal and paragraph 19, Section VIII, of the Practice Direction,<sup>13</sup> the Appeals Chamber may vary any time-limit prescribed for the filing of written submissions;

**CONSIDERING** that the Appeals Chamber has an inherent power to reconsider its own decisions if the existence of a clear error of reasoning has been demonstrated or if reconsideration is necessary in order to prevent an injustice;<sup>14</sup>

**CONSIDERING** that disregarding the arguments raised in the Motion for Reconsideration might lead to an injustice and prejudice the Appellant;

**CONSIDERING** that the circumstances prevailing in this appeal warrant an extension of time for the Appellant to file his replies to the Prosecution's Responses;

**CONSIDERING** that the Appellant's argument to the effect that former Counsel's "involvement in the case may give rise to conflicts inherent her role as a potential witness" is indeed a matter that, as Counsel for the Appellant himself states, "requires very careful consideration"<sup>15</sup>;

**FOR THE FOREGOING REASONS,**

**GRANT** the Motion for Reconsideration;

**INVITE** Counsel for the Appellant to clarify with the Office of Legal Aid and Detention Matters, the issue raised in support of the Motion for Reconsideration concerning the fact that Ms. Virginia Lindsay's "involvement in the case may give rise to conflicts inherent her role as a potential witness"; and

**ORDER** the Appellant to file his replies to the Prosecution's Responses no later than Tuesday 7 June 2005.

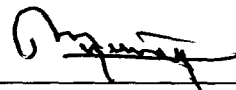
<sup>13</sup> Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the International Tribunal, IT/155/Rev.2, 21 February 2005 ("Practice Direction").

<sup>14</sup> *Prosecutor v. Stanislav Galić*, IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, p. 2; *Ferdinand Nahimana et al v. Prosecutor*, ICTR-99-52-A, Decision on Jean-Bosco Barayagwiza's Request for Reconsideration of Appeals Chamber Decision of 19 January 2005, 04 February 2005, p. 2.

<sup>15</sup> Motion for Reconsideration, para. 8.

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

Done this sixth day of April 2005,  
At The Hague, The Netherlands.



---

Mehmet Güney  
Pre-Appeal Judge

**[Seal of the International Tribunal]**