



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-03-66-A
Date: 5 April 2006
Original: English

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Theodor Meron, Pre-Appeal Judge
Registrar: Mr. Hans Holthuis
Decision of: 5 April 2006

PROSECUTOR

v.

**Fatmir LIMAJ
Haradin BALA
Isak MUSLIU**

DECISION ON EXTENSION OF TIME TO FILE RESPONSE

The Office of the Prosecutor:

Ms. Helen Duffy

Counsel for the Accused:

Mr. Michael Mansfield QC and Mr. Karim A.A. Khan for Fatmir Limaj
Mr. Gregor Guy-Smith and Mr. Richard Harvey for Haradin Bala
Mr. Michael Toploski QC and Mr. Steven Powles for Isak Musliu

1. **I, THEODOR MERON**, Judge of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991 (“Tribunal”), and Pre-Appeal Judge in this case, am seized of the “Defence Application for Extension of Time to File Response to Prosecution Brief on Appeal” (“Application for Extension”), filed on 27 March 2006 by counsel for Fatmir Limaj, Haradin Bala and Isak Musliu (“Applicants”).

I. INTRODUCTION

2. Trial Chamber II of the Tribunal (“the Trial Chamber”) rendered judgement on 30 November 2005. The following day, Applicant Haradin Bala (“Bala”) – who like the other Applicants speaks only Albanian – asked, pursuant to Rule 98^{ter}(D) of the Rules of Procedure and Evidence (“Rules”), that the Registry provide him with a copy of the Judgement in Albanian so he “could read and review it and assist counsel with regard to issues of fact and/or law that may be raised on appeal”.¹ On 18 January, the Judgement still not having been translated, Bala filed the “Motion for the Extension of Time to File the Appellant’s Brief” in which he asked for an extension of time to file his Appellant’s brief so that he could read and review the Judgement after its translation.² On 16 February, the Pre-Appeal Judge granted the request and ordered Bala “to file his Appellant’s brief not later than 40 days after the filing of the Albanian translation of the Judgement.”³

3. Like Applicant Bala, the Prosecution appealed from the Trial Judgement,⁴ and on 15 March the “Prosecution Brief on Appeal” was filed.⁵ Under Rule 112, the Applicants have 40 days from that date to file their responses.⁶ As of 27 March 2006, the date that the Application for Extension was filed, the Trial Judgement still had not been translated into Albanian. Because the Applicants wish to read and review the Judgement before filing their responses, the Application for Extension requests “an extension of 30 days to file the[] Response[s] to the Prosecution Brief”.⁷ Asserting that they are unable to “obtain[] adequate translation facilities in Albanian at Tribunal rates”, the

¹ See *Prosecutor v. Limaj et al.*, Case No. IT-03-66-A, Motion for the Extension of Time to File the Appellant’s Brief, 18 January 2006 (“Bala Motion”), para. 2.

² *Ibid.*, para. 12.

³ *Prosecutor v. Limaj et al.*, Case No. IT-03-66-A, Decision on Extension of Time, 16 February 2006 (“First Extension Decision”), para. 15.

⁴ *Prosecutor v. Limaj et al.*, Case No. IT-03-66-A, Prosecution’s Notice of Appeal, 30 December 2005.

⁵ *Prosecutor v. Limaj et al.*, Case No. IT-03-66-A, Prosecution Brief on Appeal, 15 March 2006.

⁶ Rule 112 of the Rules.

⁷ Application for Extension, para. 3.

Applicants also ask that the Registry be ordered to translate the Prosecution's Appellant's brief into Albanian.⁸

4. On 30 March 2006, the Albanian translation of the Judgement was filed.⁹ That same day, the "Prosecution's Response to Defence Application for Extension of Time to File Response Brief" ("Application Response"), was filed. In the Application Response, the Prosecution states that it "would not object to a reasonable extension of time for the filing of the Response Brief".¹⁰

II. REQUEST FOR EXTENSION OF TIME

5. Past decisions have held that it is "in the interests of justice to allow an [appellant] adequate time to read the Judgement in a language he understands and to consult with counsel before filing his Appeal brief".¹¹ For this reason, as mentioned above, Applicant Bala has already been granted an extension of the deadline for the filing of his Appellant's brief.

6. A response, no less than an Appellant's brief, may contain factual argument that can affect decisions taken by the Appeals Chamber. Therefore, the interests of justice equally require that accused be allowed to read the Judgement in a language they understand before responding to an Appellant's brief filed by the Prosecution.

7. Though the Application for Extension is not entirely clear on this point, it will be assumed that the Applicants seek a deadline thirty days after the filing of the Albanian translation of the Judgement – and not thirty days beyond the deadline prescribed by Rule 112 – as the extension has been requested in order to allow study of the Judgement, and as the First Extension Decision tied the deadline for Bala's Appellant's brief to the filing of the Albanian translation of the Judgement. Allowing the responses to be filed thirty days after the Albanian translation of the Judgement will cause no delay in this case. Even with the deadline for the Applicants' responses set at thirty days after the filing of the Albanian translation, it is highly unlikely, in light of the extension already granted to Bala, that the briefing of his appeal could be completed before completion of the briefing of the Prosecution Appeal.¹²

⁸ *Ibid.*, para. 6.

⁹ *Prosecutor v. Limaj et al.*, Case No. IT-03-66-T, Aktgjykim, 30 March 2006.

¹⁰ Application Response, para. 4.

¹¹ *Prosecutor v. Brđianin*, Case No. IT-99-36-A, Decision on Motions for Extension of Time, 9 December 2004 ("Brđianin Decision"), p. 3; *see also Prosecutor v. Naletilić & Martinović*, Case No. IT-98-34-A, Decision on Motions for Extension of Time, 12 June 2003, p. 4.

¹² The Prosecution's reply to the Applicants' responses will be due 15 days after those responses, or 45 days after the filing of the Albanian translation of the Judgement. *See* Rule 113. As discussed above, Bala's Appellant's brief is not due until 40 days after the Albanian translation is filed. The Prosecution's response to that brief will be due 40 days

8. In light of the foregoing, the Applicants' unopposed request for an extension of time will be granted, and the Applicants will be ordered to file their responses, if any, to the Prosecution Brief on Appeal no later than 30 days after the date on which the Albanian translation of the Judgement was filed.

III. REQUEST FOR TRANSLATION

9. Ordinarily, it is not Tribunal practice for the Registry to translate briefs into languages other than the Tribunal's official languages.¹³ On appeal however, assigned defence counsel, such as counsel for the Applicants, may be reimbursed at fixed rates for a certain number of hours of work performed by support staff, and this work may include the translation of briefs.¹⁴ Here, the Applicants contend that the Registry should be ordered to translate the Prosecution Brief on Appeal into Albanian because Defence Counsel have had trouble finding Albanian translators who will work for the rates at which the services of support staff are reimbursed.¹⁵ In other words, the Applicants seek to remedy the perceived inadequacy of the funding provided for an aspect of their defence.

10. The Appeals Chamber has held that "the Registrar has the primary responsibility in the determination of matters relating to" the funding of defence work "under the Legal Aid System of the International Tribunal."¹⁶ To be sure, in certain circumstances, a Chamber of the Tribunal can review the Registry's decision on a matter related to the Legal Aid System to ensure that the decision does not adversely impact upon the fairness of proceedings.¹⁷ Yet in the first instance, accused should address concerns about legal aid-related matters to the Registry.¹⁸ Here, the Applicants have not indicated whether or how they have attempted to resolve their concerns through the Registry.¹⁹ Accordingly, the request that the Registry be ordered to translate the "Prosecution Brief on Appeal" will be denied.

after Bala files his Appellant's brief. See Rule 112. Bala's reply will be due 15 days after the Prosecution files its response. See Rule 113.

¹³ The Tribunal will translate decisions, judgements, indictments and similar material. See ICTY Services/CLSS/Services/Translation, at <http://tribunet/index.cfm>. It will also translate "documents to be adduced as evidence" into the Tribunal's official languages. See Defence Counsel Document, Payment Scheme for the Trial Stage, 1 April 2005 ("Payment Scheme").

¹⁴ See Comprehensive report on the progress made by the International Criminal Tribunal for the Former Yugoslavia in reforming its legal aid system, 12 August 2003, UN Doc. A/58/288, paras 7-16 & annex 1.

¹⁵ Application for Extension, para. 6.

¹⁶ *Prosecutor v. Milutinović et al.*, Case No. IT-99-37-AR73.2, Decision on Interlocutory Appeal on Motion for Additional Funds, 13 November 2003, para. 19.

¹⁷ *Ibid.*

¹⁸ See *ibid.* (discussing when Chambers of the Tribunal may consider a legal aid-related matter and mentioning only situations in which the Registry has already pronounced on the matter).

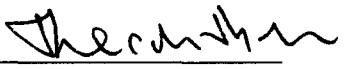
¹⁹ See Application for Extension, para. 6.

IV. DISPOSITION

11. For the foregoing reasons, the Pre-Appeal Judge **GRANTS** the Motion in part; **ORDERS** the Applicants to file their responses, if any, not later than 30 days after the date on which the Albanian translation of the Judgement was filed; and **DENIES** the Applicants' request that the Registry be ordered to translate the Prosecution Brief on Appeal.

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

Dated this 5th day of April 2006,
At The Hague,
The Netherlands.



Judge Theodor Meron
Pre-Appeal Judge

[Seal of the Tribunal]