



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-01-42-A
Date: 3 October 2007
Original: English

IN THE APPEALS CHAMBER

Before: Judge Andréia Vaz, Pre-Appeal Judge

Registrar: Mr. Hans Holthuis

Order of: 3 October 2007

PROSECUTOR

v.

PAVLE STRUGAR

PUBLIC

**DECISION ON "SECOND DEFENCE REQUEST SEEKING
EXTENSION OF TIME IN RESPECT TO COMPLYING
WITH THE APPEAL CHAMBER'S 'ORDER REGARDING
BRIEFING ON APPEAL'"**

The Office of the Prosecutor:

Ms. Michelle Jarvis
Ms. Laurel Baig

Counsel for Pavle Strugar:

Mr. Goran Rodić
Mr. Vladimir Petrović

I, ANDRÉSIA VAZ, 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 (“Appeals Chamber” and “Tribunal”, respectively) and Pre-Appeal Judge in the present case,¹

RECALLING the Appeals Chamber’s Order Regarding Briefings on Appeal issued on 23 August 2007 (“Order of 23 August 2007”) *proprio motu* inviting the parties to update by means of *addenda* their submissions on the merits of the present appeals in light of the Tribunal’s jurisprudence which has developed since the withdrawal of their appeals on 20 September 2006;²

RECALLING that, pursuant to Order of 23 August 2007, such *addenda*, if any, were to be filed no later than 7 September 2007;³

FURTHER RECALLING that on 31 August 2007, the above-mentioned deadline was extended until 30 September 2007;⁴

NOTING the Prosecution’s Addendum on Recent Case-Law Pursuant to Order of 23 August 2007, filed on 1 October 2007;

NOTING that, at the status conference held on 1 October 2007, Counsel for Pavle Strugar (“Defence”) stated that the Defence did not intend to file any *addendum* to the existing briefs, unless it deemed necessary to include references to a recent judgement,⁵ which it had not yet had the time to analyse;⁶

BEING SEIZED OF the “Defence Second Request Seeking Extension of Time in Respect to Complying with the Appeal Chamber’s ‘Order Regarding Briefings on Appeal’” filed on the same day (“Defence Request”);

NOTING that the Defence seeks to have the deadline for filing an *addendum*, if any, extended until 22 October 2007 in order to allow the Defence sufficient time to review and analyse the *Mrkšić* Trial Judgement which may be relevant to the present appeal;⁷

NOTING that the Prosecution has indicated to the Legal Officer of the Appeals Chamber that it does not object to the Defence Request and will not file a response;

¹ Order Appointing the Pre-Appeal Judge, 13 July 2007.

² Final Decision on “Defence Notice of Withdrawing Appeal” and “Withdrawal of Prosecution’s Appeal against the Judgement of Trial Chamber II Dated 31 January 2005”, 20 September 2006.

³ Order of 23 August 2007, p. 2.

⁴ Decision on “Defence Request Seeking Extension of Time in Respect to Complying with the Appeals Chamber’s ‘Order Regarding Briefing on Appeal’”, 31 August 2007 (“Decision of 31 August 2007”).

⁵ *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13-1-T, Judgement, 27 September 2007 (“*Mrkšić* Trial Judgement”).

CONSIDERING that the Order of 23 August 2007 was issued by the Appeals Chamber, *proprio motu*, in exceptional circumstances where the appeals were first withdrawn and then re-opened almost two years after the initial filings⁸ in order to allow the parties to adequately update their submissions on the merits of their appeals, mainly with respect to those case-law developments that took place during the period where there was no live appeal in this case;

CONSIDERING that the Order of 23 August 2007 should not be regarded as an open authorization to update the existing submissions every time a relevant decision or judgement is rendered by the Tribunal;

CONSIDERING therefore that a further extension of time set by the Order of 23 August 2007 and by the Decision of 31 August 2007 is not appropriate in the circumstances of this case;⁹

RECALLING that where an appeal is pending before the Appeals Chamber the parties may amend or supplement their notices of appeal and briefs pursuant to Rules 108, 127(A)(ii) and (B) of the Rules of Procedure and Evidence, by filing the said supplement with sufficient reasons constituting good cause for the Appeals Chamber to recognize it as validly filed;¹⁰

FOR THE FOREGOING REASONS,

DISMISS the Defence Request.

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

Dated this 3rd day of October 2007,
At The Hague, The Netherlands.



Judge Andrésia Vaz
Pre-Appeal Judge

[Seal of the Tribunal]

⁶ AT. 71-72 (not official; not corrected).

⁷ Defence Request, paras 3-4.

⁸ See *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-Misc.1, Decision on Strugar's Request to Reopen Appeal Proceedings, 7 June 2007.

⁹ Cf. AT. 73, lines 2-3 (not official; not corrected).

¹⁰ *Prosecutor v. Miroslav Bralo*, Case IT-95-17-A, Decision on Miroslav Bralo's Motion for Leave to Supplement Appeal Brief in Light of New Information Concerning *Ex Parte* Portion of the Trial Record, 9 January 2007 ("*Bralo* Decision"), para. 9; see also *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Confidential Decision on Prosecution's Motion for Extension of Time, 26 February 2004, p. 2; *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, Decision on Hazim Delić's Motion for Leave to File Second Supplementary Brief, 1 February 2001 ("*Delalić* Decision"), para. 6; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motions for Leave to Submit Additional Grounds of Appeal, to Amend the Notice of Appeal and to Correct his Appellant's Brief, 17 August 2006, paras 9-14. In particular, the requesting party must show that the proposed supplemental submissions are relevant to his grounds of appeal and add substantial new information to the submissions which have already been made. The new information at stake must be of sufficiently compelling importance to justify the admission of a supplemental brief at the stage where the briefing on appeal is completed (*Bralo* Decision, para. 9; *Delalić* Decision, paras 3, 5-6).