



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-05-87-A
Date: 29 June 2009
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Pre-Appeal Judge

Registrar: Mr. John Hocking

Decision: 29 June 2009

PROSECUTOR

v.

**NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

PUBLIC

**DECISION ON JOINT DEFENCE MOTION SEEKING
EXTENSION OF TIME TO FILE APPEAL BRIEFS**

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for the Appellants:

Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

I, LIU DAQUN, 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 this case,¹

NOTING the “Judgement” rendered by Trial Chamber III on 26 February 2009;²

NOTING the respective notices of appeal filed by the parties on 27 May 2009;³

BEING SEIZED OF the “Joint Defence Motion Seeking Extension of Time to File Appeal Briefs” filed on 12 June 2009 (“Motion”) by Counsels for Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, and Sreten Lukić (jointly, “Defence”) requesting the Appeals Chamber to allow them to file their respective appeal briefs no later than “120 days following the translations of the Judgement into the language of the respective accused”;⁴

NOTING the “Prosecution Response to Joint Defence Motion Seeking Extension of Time to File Appeal Briefs” filed by the Office of the Prosecutor (“Prosecution”) on 22 June 2009 (“Response”), opposing the Motion;

NOTING that the Defence did not file a reply;

NOTING that, pursuant to Rule 111(A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), the appellant’s briefs are due to be filed within 75 days of filing of their notices of appeal, *i.e.* no later than 10 August 2009;

RECALLING that the Pre-Appeal Judge may, on good cause being shown by motion, enlarge the time limits prescribed under the Rules;⁵

¹ *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Order Appointing the Pre-Appeal Judge, 19 March 2009.

² *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Judgement, 26 February 2009 (“Trial Judgement”).

³ Prosecution Notice of Appeal, 27 May 2009; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Defence Submission Notice of Appeal, 27 May 2009 (filed by Counsel for Nikola Šainović); *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, General Ojdanić’s Notice of Appeal, 27 May 2009; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Notice of Appeal from the Judgement of 26 February 2009, 27 May 2009 (filed by Counsel for Nebojša Pavković); *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Vladimir Lazarević’s Defence Notice of Appeal, 27 May 2009 (confidential) and Defence Submission: Lifting Confidential Status of the Notice of Appeal, 29 May 2009; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Sreten Lukić’s Notice of Appeal from Judgement and Request for Leave to Exceed the Page Limit (I note that the request for the extension of the page limit is moot and have so informed the parties concerned).

⁴ Motion, p. 6.

⁵ Rules 127(A)(i) and 127(B) of the Rules.

NOTING that the Defence submits that good cause for the sought extension exists because of the complexity and all-encompassing nature of the grounds of appeal presented in the respective notices of appeal which in turn derive from an unprecedentedly voluminous trial record,⁶ as well as the necessity to receive detailed instructions from the represented appellants once the Serbian translation of the Trial Judgement is filed;⁷

NOTING that the Prosecution submits that the requested extension would unreasonably delay the appellate proceedings⁸ and is in any case unjustified given that “defence counsel are intimately acquainted with the material legal and factual issues, and are well able to seek instructions from their clients on the arguments to be advanced”;⁹

NOTING that the Prosecution further refers to the Pre-Appeal Judge’s decision in another case arguing that it was the correct way to balance the “right to a fair trial with the requirement for expeditious pleading”;¹⁰

NOTING that the Prosecution finally submits that the extension of time granted for the filing of notices of appeal was “more than sufficient to meet the complexity arguments raised by the Defence as showing good cause to extend time”,¹¹ and therefore suggests that if good cause were found to have been demonstrated on the basis of the need to receive the Serbian translation of the Trial Judgement, the extension should not surpass 30 days from its filing;¹²

CONSIDERING that “on appeal the main burden lies on counsel in preparing the submissions as he has the legal expertise to advise the appellant whether there exist any potential errors of law and fact”;¹³

CONSIDERING that the Tribunal’s deadlines for the filing of briefs pursuant to Rule 111(A) of the Rules are essential to ensure the expeditious preparation of the case;¹⁴

⁶ Motion, paras 8-12.

⁷ Motion, paras 13-14.

⁸ Response, para. 1.

⁹ Response, para. 2 (footnote omitted).

¹⁰ Response, para. 3, referring to *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-A, Decision on Johan Tarčulovski’s Motion for Extension of Time to File Appeal Brief, 16 October 2008 (“*Tarčulovski* Decision”),

¹¹ Response, para. 4, referring to *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Decision on Motion for Extension of Time to File Notices of Appeal, 23 March 2009 (“*Decision on Extension of Time for Notices of Appeal*”),

¹² Response, para. 5.

¹³ *Tarčulovski* Decision, p. 2, referring to *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-A, Decision on Motion for Extension of Time, 16 February 2006, para. 12; *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-A, Decision on Motions for Extension of Time, 9 December 2004, p. 3.

¹⁴ *Tarčulovski* Decision, p. 2.

CONSIDERING that all Defence Counsel in the instant case are able to work in English, in conformity with Rule 44(A)(ii) of the Rules;

CONSIDERING that the deadlines for filing of notices of appeal have been considerably extended¹⁵ and that all Defence Counsel have, as they should, already started working on the respective appeals since the Trial Judgement was rendered;

RECALLING that, pursuant to Rule 108 of the Rules and the Appeals Chamber's well-established jurisprudence, it may, on good cause being shown by motion, authorize a variation of grounds of appeal and subsequent amendments to the notices of appeal and appellant's briefs;¹⁶

CONSIDERING therefore that the Defence will have the opportunity, if they so wish, to request any variations or amendments after the appellants have read the Serbian translation of the Trial Judgement and discussed it with their counsel, provided that they show good cause under Rule 108 of the Rules;¹⁷

REITERATING that it would be unreasonable to delay the appellate proceedings until the filing of the Serbian translation of the Trial Judgement;¹⁸

FINDING therefore that the Defence has not shown good cause for the extension of time in relation to the filing of the Serbian translation of the Trial Judgement;

RECALLING, however, that the volume of the trial record, including the length of the Trial Judgement, is unprecedented and that this case raises issues of significant complexity;¹⁹

CONSIDERING that it is in the interests of justice to ensure that the parties have sufficient time to prepare meaningful appellant's briefs in full conformity with the applicable provisions;

FINDING that good cause exists for granting an extension on that basis;

¹⁵ Decision on Extension of Time for Notices of Appeal, p. 4.

¹⁶ Decision on Extension of Time for Notices of Appeal, p. 4; *Tarčulovski* Decision, pp. 2-3.

¹⁷ Cf. Decision on Extension of Time for Notices of Appeal, p. 4; *Tarčulovski* Decision, pp. 2-3.

¹⁸ Decision on Extension of Time for Notices of Appeal, p. 4.

¹⁹ Decision on Extension of Time for Notices of Appeal, p. 4, referring to *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-A, Decision on Motions for Extension of Time, Request to Exceed Page Limit, and Motion to File a Consolidated Response to Appeal Briefs, 27 June 2006, para. 7, in which the Pre-Appeal Judge noted the "unusual length" of the Trial Judgement rendered in that case; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Decision on the Defence Motion for Extension of Time, 26 April 2004, para. 5, mentioning the complexity of issues in that appeal as one of the factors in favour of an extension of time; *Prosecutor v. Dario Kordić & Mario Čerkez*, Case No. IT-95-14/2-A, Decision on Motions to Extend Time for Filing Appellant's Briefs, 11 May 2001, para. 19, referring to the length and the complexity of the trial.

FOR THE FOREGOING REASONS,

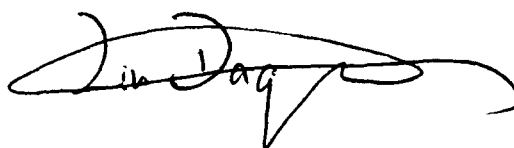
HEREBY GRANT the Motion **IN PART**;

ORDER the Defence to file their respective appellant's briefs within 120 days of the filing of their notice of appeal, *i.e.* no later than 23 September 2009;

DISMISS the remainder of the Motion.

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

Done this 29th day of June 2009,
At The Hague, The Netherlands.



Liu Daqun, Pre-Appeal Judge

[Seal of the Tribunal]