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07 August 2009

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UNITED
NATIONS



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: 7 August 2009
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision: 7 August 2009

PROSECUTOR

v.

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

PUBLIC

**DECISION ON SRETEN LUKIĆ'S AND NEBOJŠA
PAVKOVIĆ'S REQUESTS FOR EXTENSION OF TIME TO
FILE RESPONDENT'S BRIEFS AND SRETEN LUKIĆ'S
REQUEST FOR A FURTHER EXTENSION OF TIME TO FILE
APPELLANT'S BRIEF**

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

NOTING the “Decision on Joint Request for Extension of Time to File Respondent’s Brief” rendered on 27 July 2009 (“Decision of 27 July 2009”) granting Nikola Šainović, Dragoljub Ojdanić and Vladimir Lazarević (“Šainović”, “Ojdanić” and “Lazarević”, respectively) an extension of time to file their respective respondent’s briefs no later than 2 November 2009;

BEING SEIZED OF “Sreten Lukic’s [*sic*] Request Seeking Extension of Time to File Respondent’s Brief with Confidential Annex” filed confidentially on 28 July 2009 (“Lukić’s Motion”) by Counsel for Sreten Lukić (“Lukić”), requesting authorisation to file his respondent’s brief no later than 2 November 2009⁴ and a further extension of time to file his appellant’s brief no later than 5 October 2009;⁵

BEING ALSO SEIZED OF “General Pavković Request Seeking Extension of Time to File Respondent’s Brief” filed on 5 August 2009 (“Pavković’s Motion”) by Counsel for Nebojša Pavković (“Pavković”), also seeking authorisation to file his respondent’s brief no later than 2 November 2009;⁶

NOTING that the Office of the Prosecutor (“Prosecution”) has indicated that it does not intend to file a response to either of the Motions;

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, 27 May 2009.

⁴ Lukić’s Motion, paras 7-9.

⁵ *Ibid.*, para. 10.

⁶ Pavković’s Motion, paras 1, 9, 10. Šainović, Ojdanić, Pavković, Lazarević and Lukić are herein jointly referred to as the “Defence”.

NOTING that, pursuant to Rule 112(A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), a respondent’s brief is due to be filed within 40 days of the filing of the appellant’s brief;

NOTING that the Prosecution’s appeal brief is due to be filed no later than 10 August 2009, and that the Defence respondent’s briefs would consequently be due to be filed no later than 21 September 2009;

FURTHER NOTING that the Defence appellant’s briefs are due to be filed no later than 23 September 2009;⁷

RECALLING that the Pre-Appeal Judge may, on good cause being shown by the motion, enlarge the time limits prescribed by the Rules;⁸

NOTING that Lukić and Pavković submit that good cause for the sought extension exists and is identical to that recognised by the Decision of 27 July 2009 in relation to Šainović, Ojdanić and Lazarević;⁹

RECALLING that in my Decision of 27 July 2009, I granted Šainović, Ojdanić and Lazarević the requested extension of time to file their respondent’s briefs because of the “considerable and unusual temporal overlap in the current deadlines for the submission of the Defence appellant’s briefs and their respondent’s briefs” and concluded that “it [was] in the interests of justice to ensure that the parties have sufficient time to prepare meaningful respondent’s briefs in full conformity with the applicable provisions”;¹⁰

CONSIDERING that the same considerations apply with respect to Lukić and Pavković;

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

FINDING FURTHER that, in the circumstances of this case, the requested extension of 40 days running from the date of the filing of the Prosecution’s appeal brief is reasonable and justified for the purposes of the preparation of the respective respondent’s briefs;

⁷ Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009 (“Decision of 29 June 2009”), p. 5.

⁸ Rules 127(A)(i) and 127(B) of the Rules.

⁹ Lukić’s Motion, paras 7-9; Pavković’s Motion, paras 8-10.

¹⁰ Decision of 27 July 2009, p. 4.

NOTING that Lukić's Motion further requests an extension of time to file his appellant's brief due to the ill health of Lukić's co-Counsel;¹¹

CONSIDERING that the Decision of 29 June 2009 granted a considerable extension of time for the filing of Defence appellant's briefs;¹²

CONSIDERING that Lukić's lead counsel and the rest of the team were able to continue working on the appellant's brief during the relatively short absence of his co-Counsel;

FINDING therefore that Lukić's Motion has failed to demonstrate good cause to warrant a further extension of time for filing his appellant's brief;

FOR THE FOREGOING REASONS,

HEREBY GRANT Lukić's Motion **IN PART**;

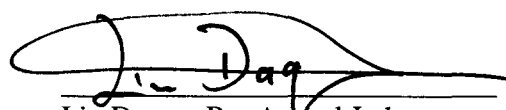
GRANT Pavković's Motion;

ORDER the Lukić and Pavković to file their respective respondent's briefs within 40 days of the date of the filing of the Prosecution's appeal brief, *i.e.* no later than 2 November 2009.

DISMISS the remainder of Lukić's Motion.

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

Done this seventh day of August 2009,
At The Hague, The Netherlands.



Liu Daqun, Pre-Appeal Judge

[Seal of the Tribunal]

¹¹ Lukić's Motion, para. 10.

¹² The original deadline for filing Defence appellant's briefs was 75 days from the filing of the notice of appeal, *i.e.* no later than 10 August 2009. This deadline was extended by the Decision of 29 June 2009 to 120 days from the filing of the notice of appeal, *i.e.* no later than 23 September 2009.