

IT-05-87-A
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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: 1 October 2009
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision: 1 October 2009

PROSECUTOR

v.

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

PUBLIC

**DECISION ON THE PROSECUTION'S MOTION FOR AN
EXTENSION OF TIME TO FILE RESPONDENT'S 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 “Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs” rendered on 29 June 2009, granting Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić (respectively, “Šainović”, “Ojdanić”, “Pavković”, “Lazarević” and “Lukić”) an extension of 45 days to file their appellant’s briefs (“Decision of 29 June 2009”);³

NOTING the “Decision on Defence Motions for Extension of Word Limit” rendered on 8 September 2009, allowing Pavković and Lazarević to file appellant’s briefs of up to 45,000 words, allowing Lukić to file an appellant’s brief of up to 60,000 words and granting the Office of the Prosecutor (“Prosecution”) a corresponding extension of the word limit for its respective respondent’s briefs (“Decision of 8 September 2009”);

NOTING the “Decision on Nikola Šainović’s and Dragoljub Ojdanić’s Joint Motion for Extension of Word Limit” rendered on 11 September 2009, allowing Šainović and Ojdanić to file appellant’s briefs of up to 45,000 words and granting the Prosecution the same maximum number of words for each of its respective respondent’s briefs (“Decision of 11 September 2009”);

BEING SEIZED OF the “Prosecution’s Motion for Extension of Time to File Respondent’s Briefs” filed by the Prosecution on 28 September 2009 (“Prosecution’s Motion”) requesting the Appeals Chamber to allow it to file its respective respondent’s briefs no later than 16 January 2010;⁴

NOTING that the respondent’s briefs from the Prosecution are due to be filed no later than 2 November 2009;

¹ 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 Šainović, Ojdanić, Pavković, Lazarević and Lukić are herein jointly referred to as the “Defence”.

⁴ Prosecution’s Motion, paras 1, 6.

CONSIDERING that the interests of justice justify rendering this Decision without any delay and prior to the expiry of the deadline for filing Defence responses to the Prosecution Motion;⁵

NOTING that, pursuant to Rule 112 of the Tribunal's Rules of Procedure and Evidence ("Rules"), a respondent's brief should be filed within 40 days of filing of the appellant's brief;

RECALLING that the Pre-Appeal Judge may, on good cause being shown by motion, enlarge the time limits prescribed under the Rules;⁶

NOTING that the Prosecution submits that good cause exists given the complexity and size of this case which has merited extensions of time for the submission of the parties' notices of appeal,⁷ the Defence appellant's briefs⁸ and the Defence respondent's briefs;⁹

NOTING the Prosecution's contention that the additional 40 days granted to the Defence to file their respondent's briefs "suggests that the Prosecution should receive at least a comparable amount of time for filing its respondent's briefs";¹⁰

NOTING that the Prosecution emphasises that while the Defence are responding to a single appeal brief of 84 pages, by contrast, the Prosecution must respond simultaneously to five appellant's briefs of 804 pages, almost ten times that length;

NOTING that the Prosecution further claims that certain issues, such as the role of the military and police, joint criminal enterprise and the role of aiders and abettors which apply differently to each appellant will require the Prosecution to adopt a common approach to ensure consistency across five respondent's briefs;

NOTING the Prosecution's argument that as a result of the extension of time granted to the Defence for filing their appellant's briefs, the Prosecution's deadline for filing its respondent's briefs coincides with two other appeals hearings and, as a result, the majority of the Prosecution staff will be otherwise employed;¹¹

⁵ The deadline for filing the said responses expires on 8 October 2009. Considering the arguments presented by the Prosecution and the outcome of the Decision, I further find that rendering this Decision prior to the expiry of those deadlines is without prejudice to the parties.

⁶ Rules 127(A)(i) and 127(B) of the Rules.

⁷ See *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Decision on Motions for Extension of Time to File Notices of Appeal, 23 March 2009 ("Decision of 23 March 2009").

⁸ See Decision of 29 June 2009.

⁹ See Decision on Joint Request for Extension of Time to File Respondent's Brief, 27 July 2009; 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, 7 August 2009.

¹⁰ Prosecution's Motion, para. 3.

¹¹ Prosecution's Motion, paras 1, 3.

CONSIDERING the fact that the Prosecution's briefing schedule overlaps with that of another case does not in itself constitute "good cause" as the Prosecution is expected to balance the work requirements in multiple cases and to assign staff to those cases accordingly;¹²

CONSIDERING that the length of the Trial Judgement is unprecedented and that, in conjunction with the other factors referred to by the Prosecution's Motion, this case raises issues of significant complexity;¹³

CONSIDERING that it is 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;

CONSIDERING that the above considerations and, in particular the complexity and the size of this case coupled with the considerable volume and number of the Defence appellant's briefs constitute good cause for the requested extension;

FINDING that, in the circumstances of this case, an extension of 75 additional days is reasonable and justified for the purposes of the preparation of the respondent's briefs by the Prosecution;

FOR THE FOREGOING REASONS,

HEREBY GRANT the Prosecution's Motion;

ORDER the Prosecution to file its respondent's briefs no later than 16 January 2010 and in accordance with the word limits prescribed by the Decisions of 8 and 11 September 2009.

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

Done this first day of October 2009,
At The Hague, The Netherlands.



Judge Liu Daqun, Pre-Appeal Judge

[Seal of the Tribunal]

¹² See *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Prosecution's Request for Extension of Time to File Respondent's Brief, 28 July 2004; *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Decision on Motion for Extension of Time for the Filing of Prosecution Response Brief, 20 July 2005, p. 4.

¹³ Decision of 23 March 2009, p. 4, and references cited therein.