

**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-98-32/1-A
Date: 30 October 2009
Original: English

IN THE APPEALS CHAMBER

Before: Judge Mehmet Güney, Presiding
Judge Fausto Pocar
Judge Liu Daqun
Judge Theodor Meron
Judge Carmel Agius

Registrar: Mr. John Hocking

Decision of: 30 October 2009

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

PUBLIC

**DECISION ON MILAN LUKIĆ'S MOTION SEEKING
EXTENSION OF TIME TO FILE APPEAL BRIEF AND
MOTION FOR STAY OF PROCEEDINGS**

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for Milan Lukić:

Mr. Tomislav Višnjić
Mr. Dragan Ivetić

Counsel for Sredoje Lukić:

Mr. Đuro Čepić
Mr. Jens Dieckmann

1. 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) is seised of the “Defence Motion Seeking Extension of Time to File Appeal Brief”, filed publicly with confidential Annex A on 19 October 2009 (“Motion”) by Counsel for Milan Lukić (“Lukić”). On 22 October 2009, the Prosecution filed its response publicly with confidential Annex (“Prosecution Response”). On 26 October 2009, Sredoje Lukić filed his Response to the Motion (“Sredoje Lukić’s Response”). Milan Lukić has not filed a Reply to the Prosecution Response. The Appeals Chamber is also seised of “Milan Lukić’s Motion for Stay of Proceedings”, filed confidentially on 1 October 2009 (“Motion for Stay of Proceedings”). The “Prosecution Response to Milan Lukić’s Motion for Stay of Proceedings” was filed confidentially on 6 October 2009.

I. BACKGROUND

2. On 20 July 2009, Trial Chamber III (“Trial Chamber”) convicted Lukić, pursuant to Article 7(1) of the Statute of the Tribunal (“Statute”), of murder and cruel treatment as violations of the laws or customs of war under Article 3 of the Statute, and of murder, persecutions, extermination and inhumane acts as crimes against humanity under Article 5 of the Statute. The Trial Chamber sentenced him to life imprisonment.¹

II. APPLICABLE LAW

3. Pursuant to Rule 111 of the Rules of Procedure and Evidence (“Rules”), a party seeking to appeal a judgement shall file its appeal brief within 75 days of the filing of the notice of appeal pursuant to Rule 108. In this case, the parties are required to file their appeal briefs by 2 November 2009. Rule 127(A)(i) and (B) of the Rules provides that the Appeals Chamber may, on good cause being shown by motion, enlarge the time limits prescribed under the Rules.²

¹ *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Trial Judgement, 20 July 2009 (“Trial Judgement”), paras 1099 to 1011.

² See e.g. *Prosecutor v. Nikola Šainović et al*, Case No. IT-05-87-A, Decision on the Prosecution’s Motion for an Extension of Time to File Respondent’s Briefs, 1 October 2009 (“Šainović Decision”), p. 2; Decision on Milan Lukić’s Urgent Motion for Enlargement of Time to File Notice of Appeal, 19 August 2009, (“Decision on Lukić Motion for Enlargement of Time”), para. 3; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.4, Decision on Radovan Karadžić’s Motion for Extension of Time, 24 July 2009 (“Karadžić Decision”), p. 3.

III. DISCUSSION

A. Submissions of the parties

4. Lukić requests that the Appeals Chamber allow him to file his appeal brief no later than 45 days after the current deadline of 2 November 2009.³ He argues that the recent change of Lead Counsel on 14 October 2009 from Mr. Jason Alarid to Mr. Tomislav Višnjić involves a significant handover of duties and materials.⁴ Since Mr. Alarid is currently in the United States, and Mr. Višnjić is in Serbia, Lukić submits that the logistics of this exchange will take a considerable period of time.⁵ He further argues that the composition of the Defence team remains uncertain, with a request for assignment of Co-Counsel and Legal Assistants currently pending before the Registry.⁶

5. In further support of the Motion, Lukić claims that, given the length and complexity of the Trial Judgement and the grounds on appeal, more time is required for the preparation of the appeal brief. In addition, he suggests that a full translation of the Trial Judgement into the Serbian language is required to enable his participation in the preparation of his appeal brief. Lukić also submits that the severity of the sentence imposed warrants an extension of time in order to allow him to defend himself adequately.⁷

6. The Prosecution does not oppose the Motion, accepting that the appointment of new Lead Counsel to Lukić can amount to good cause, but indicates that Lukić's remaining submissions do not constitute good cause for the purposes of Rule 127(A)(i) and (B).⁸ The Prosecution requests that, should the Motion be granted, the Prosecution be allowed a 10-day extension for the filing of its response brief in order to accommodate scheduling difficulties likely to be engendered by the delay.⁹ The Prosecution submits that the proposed modified briefing schedule would significantly complicate its planning process with a view to the completion of briefs in other appeals and the availability of staff.¹⁰

7. Sredoje Lukić does not oppose either request,¹¹ but asks that, should the Motion be granted, "all Appeal Briefs and Responses of the parties be submitted on the same date and time, in order to avoid any potential prejudice to the parties".¹²

³ Motion, paras 6, 14, 19 - 23.

⁴ Motion, para. 11.

⁵ *Ibid.*

⁶ Motion, para. 13.

⁷ Motion, paras 15 - 20.

⁸ Prosecution Response, paras 2 - 3.

⁹ Prosecution Response, paras 4 - 6.

¹⁰ Prosecution Response, para. 5.

¹¹ Sredoje Lukić's Response, para. 3.

B. Analysis

8. The Appeals Chamber recalls that when assessing a motion for extension of time for the filing of an appeal brief pursuant to Rule 127(A)(i) of the Rules, “good cause” must be demonstrated by the requesting party.¹³

9. Fluctuations in the composition of the Defence team will not always constitute “good cause” when such changes are undertaken at the option of the Defendant.¹⁴ Further, the Appeals Chamber has previously found that the appointment of new Co-Counsel, or of new Legal Assistants, may not be sufficiently significant a change to merit an extension of time to file an appeal brief,¹⁵ nor does the complete absence of Co-Counsel necessarily warrant the extension of time for the preparation and filing of the appeal brief.¹⁶

10. However, the Appeals Chamber recognises that the Lead Counsel is crucial to all aspects of the Defence case for which he has the primary responsibility.¹⁷ As such, the pending appointment of new Lead Counsel,¹⁸ or potential delay caused by the handover process to a newly appointed Lead Counsel¹⁹ have been considered by the Appeals Chamber to amount to “good cause” for the extension of time. The Appeals Chamber also notes that the Prosecution does not oppose this Motion, subject to a request for a 10-day extension should the Motion be granted.²⁰

11. The Appeals Chamber finds that the appointment of Mr. Višnjić as Lead Counsel for Lukić, and the handover from the former Lead Counsel, constitutes good cause for granting an extension of time for the filing of Lukić’s appeal brief. Consequently, the Appeals Chamber will not consider the other grounds advanced by Lukić in support of the Motion.

¹² Sredoje Lukić’s Response, para. 4.

¹³ See Šainović Decision, p. 2; Decision on Lukić Motion for Enlargement of Time, para. 3; Karadžić Decision, p. 3.

¹⁴ *Prosecutor v. Ljube Bošković 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, p. 2.

¹⁵ See *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Dragan Jokić’s Supplemental Motion for An Extension of Time to File Appeal Brief, 31 August 2005, para. 8. See however *Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-2000-55A-A, Decision on “Accused Tharcisse Muvunyi’s Motion to Extend Time to file his Brief in Reply to the Prosecutor’s Appellant’s Brief”, 15 February 2007, pp. 2 - 3 (the appointment of new Co-Counsel and pending new appointment of legal assistants warranted extension of time in this case).

¹⁶ See *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Blagojević’s and Jokić’s Motions for Extension of Time to File Their Appeal Briefs, 21 July 2005, para. 6.

¹⁷ See Motion, para. 12.

¹⁸ *Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-71-A, Decision on Emmanuel Ndindabahizi’s Motion for Extension of Time, 6 January 2005, p. 3.

¹⁹ See *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-A, Decision on Johan Tarčulovski’s Second Motion for Extension of Time to File Appeal Brief, 22 October 2008, p. 3; *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-A, Decision on Mladen Naletilić’s Motions For Extension of Time, 25 June 2003 (“Naletilić Decision”), p. 3; in relation to extension of time for filing an appeal brief. See also *Momir Nikolić v. Prosecutor*, Case No. IT-02-60/1-A, Decision on Motion to Enlarge Time for Filing of Replies Relating to Appellant’s

12. With respect to the Prosecution's request for a 10-day extension for the filing of its respondent's brief, the Appeals Chamber recalls that the Prosecution "is expected to balance the work requirements involved in multiple cases and to assign staff to cases accordingly".²¹ However, the Appeals Chamber recognises that the modified briefing schedule will significantly complicate the Prosecution's ability to plan, assign and complete work in other cases, particularly given the limited availability of staff over the winter recess. The Appeals Chamber considers that these planning difficulties are not attributable to the Prosecution,²² and that the extension requested by the Prosecution is reasonable in the circumstances.

13. The Appeals Chamber finds Sredoje Lukić's request that all appeal briefs and responses of the parties be submitted on the same date is unclear. It is uncertain whether Sredoje Lukić requests that the Appeals Chamber grants him the same extension to file his appeal brief as the one requested by Lukić, or whether he requests an extension on behalf of all parties, including the Prosecution. In any case, the Appeals Chamber finds that he fails to substantiate any "potential prejudice" that could stem from the extension of the deadlines for Lukić's appeal brief and the Prosecution's response brief. Consequently, Sredoje Lukić's Request is unfounded.

C. The Motion for Stay of Proceedings

14. The Appeals Chamber is also seized of the "Milan Lukić's Motion for Stay of Proceedings", filed confidentially on 1 October 2009 ("Motion for Stay of Proceedings"),²³ in which Lukić requests a stay of proceedings to allow his now former Lead Counsel, Mr. Alarid, to resolve issues in relation to the present appeal. However, in light of this decision, and considering that Mr. Višnjić was appointed new Lead Counsel to Lukić on 14 October 2009,²⁴ the Appeals Chamber accordingly dismisses the Motion for Stay of Proceedings as moot.

IV. DISPOSITION

15. For the foregoing reasons, the Appeals Chamber

GRANTS the Motion and **ORDERS** that Lukić's appeal brief be filed by 17 December 2009;

Second Motion to Admit Additional Evidence and Motion for Leave to File a Second Amended Notice of Appeal, 8 March 2005, p. 3; *Naletilić* Decision, p. 3; in relation to extension of time in other filings.

²⁰ Prosecution Response, paras 4 - 5.

²¹ *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-A, Decision on Motion for Extension of Time for the Filing of Prosecution Response Brief, 20 July 2005 ("*Brdanin* Decision"), p. 4.

²² *Ibid.*

²³ The "Prosecution Response to Milan Lukić's Motion for Stay of Proceedings" was then filed confidentially on 6 October 2009.

²⁴ Decision of the Deputy Registrar, 14 October 2009.

ORDERS the Prosecution to file its response brief to Milan Lukić's appeal brief by 5 February 2010;

DISMISSES Sredoje Lukić's Request; and

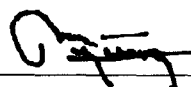
DISMISSES Milan Lukić's Motion for Stay of Proceedings.

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

Dated this 30th day of October 2009

At The Hague,

The Netherlands



Judge Mehmet Güney

Pre-Appeal Judge

[Seal of the Tribunal]