

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: 5 March 2010
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision: 5 March 2010

PROSECUTOR

v.

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

PUBLIC

**DECISION ON NEBOJŠA PAVKOVIĆ'S MOTION FOR AN
EXTENSION OF TIME FOR FILING HIS SUPPLEMENTARY
BRIEF**

The Office of the Prosecutor:

Mr. Peter Kremer QC

Counsel for the Defence:

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 Mr. 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 that all parties lodged their appeals against the Trial Judgement and that the briefing with respect to all the appeals in this case has been completed;

NOTING the Appeals Chamber’s decision of 12 February 2010, granting in part Nebojša Pavković’s (“Pavković”) motion seeking admission of additional evidence on appeal,³ and admitting 24 of the 36 tendered documents as confidential Exhibits 4DA1 through 4DA24;⁴

NOTING that no rebuttal material was filed by the Prosecution;

RECALLING that pursuant to Rule 115 of the Tribunal’s Rules of Procedure and Evidence (“Rules”), the Appeals Chamber ordered Pavković to file a supplemental brief on the impact of the admitted additional evidence within 22 days of the Decision of 12 February 2010, *i.e.* no later than 8 March 2010;⁵

RECALLING that on 2 March 2010, the Appeals Chamber dismissed Pavković’s motion for stay of proceedings⁶ and ordered him comply with the applicable deadlines provided for in the Decisions of 12 and 16 February 2010,⁷ or any forthcoming decisions that may be rendered pending the resolution of his application for additional funding;⁸

BEING SEISED OF the “Emergency Motion [*sic*] for Very Short Extension” filed by Pavković’s Counsel on 5 March 2010 (“Motion”), seeking a five-day extension to file his supplementary brief pursuant to the Decision of 12 February 2010;

NOTING that the Office of the Prosecutor (“Prosecution”) has not yet filed a response;

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 General Pavković Motion to Admit Additional Evidence Before the Appeals Chamber Pursuant to Rule 115, with Annexes A, B, C and Request to Exceed the Word Limit, 14 October 2009 (confidential) (“Motion for Additional Evidence”).

⁴ Decision on Nebojša Pavković’s Motion to Admit Additional Evidence, 12 February 2010 (public redacted version) (“Decision of 12 February 2010”), para. 60.

⁵ *Ibid.*, para. 61.

⁶ General Pavković’s Motion for Stay of Proceedings Pending Action by the Registrar, 19 February 2010.

⁷ Decision on Vlastimir Đorđević’s Motion for Access to Transcripts, Exhibits and Documents, 16 February 2010.

⁸ Decision on Nebojša Pavković’s Motion for Stay of Proceedings, 2 March 2010 (“Decision of 2 March 2010”), para. 16.

CONSIDERING that in light of the lateness of the Motion and the imminent expiration of the deadline at stake, it is in the interests of justice to decide on the matter without delay, bearing in mind that the Prosecution will not be prejudiced by the outcome of the present decision;

NOTING that Pavković claims that the sought extension is justified because “only two working days were left within which to complete the brief, March 4 and 5” given that his request for additional hours was granted by the Registry on 3 March 2010;⁹

RECALLING that in its Decision of 2 March 2010, the Appeals Chamber ruled that Pavković’s Counsel was “under the obligation to continue working in his client’s best interests until the representation is terminated (with the completion of the proceedings or an approved withdrawal)” and could not therefore stay his work on the supplementary brief on the ground that he was awaiting a decision of the Registrar of the Tribunal on the issue of remuneration of his Defence team;¹⁰

RECALLING FURTHER that the Appeals Chamber explicitly considered that “Pavković [had] filed his Motion for Additional Evidence on 14 October 2009 and should have been aware of the subsequent procedure pursuant to Rule 115 of the Rules, including the fact that in case his motion were to be granted, rebuttal evidence could be presented by the Prosecution and both parties would have the possibility to submit supplementary briefs regarding the alleged impact of the admitted evidence”;¹¹

CONSIDERING that Pavković and his Defence team should have anticipated since October 2009, that there is a possibility that a supplementary brief would need to be prepared and, in any case, should have started working on it immediately after the Decision of 12 February 2010 had been issued;

CONSIDERING, therefore, that Pavković and his Defence team have had ample time to work on the preparation of the supplementary brief to be filed pursuant to Rule 115 of the Rules and the Decision of 12 February 2010;

FINDING that the arguments presented in the Motion are untenable and borderline frivolous;¹²

HEREBY DISMISS the Motion and **ORDER** Pavković to comply with the Decision of 2 March 2010.

⁹ Motion, paras 5-6.

¹⁰ Decision of 2 March 2010, para. 14.

¹¹ *Ibid.*, para. 15.

¹² See Rule 73(D) of the Rules.

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

Done this fifth day of March 2010,
At The Hague, The Netherlands.



Judge Liu Daqun, Presiding

[Seal of the Tribunal]