



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-05-88-A
Date: 7 September 2010
Original: English

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Patrick Robinson, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision of: 7 September 2010

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ**

PUBLIC

**DECISION ON MOTION ON BEHALF OF MILAN GVERO
FOR A FURTHER EXTENSION OF TIME TO FILE NOTICE
OF APPEAL**

The Office of the Prosecutor:

Mr. Peter Kremer, QC

Counsel for the Accused:

Mr. Zoran Živanović and Ms. Mira Tapušковиć for Mr. Vujadin Popović
Mr. John Ostojić and Mr. Predrag Nikolić for Mr. Ljubiša Beara
Ms. Jelenda Nikolić and Mr. Stéphane Bourgon for Mr. Drago Nikolić
Mr. Christopher Gosnell and Ms. Tatiana Čmerić for Mr. Ljubomir Borovčanin
Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić for Mr. Radivoje Miletić
Mr. Dragan Krgović and Mr. David Josse for Mr. Milan Gvero
Mr. Peter Haynes and Mr. Simon Davis for Mr. Vinko Pandurević

I, JUDGE PATRICK ROBINSON, Presiding 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 the instant case;¹

BEING SEISED of the “Motion on Behalf of Milan Gvero for a Further Extension of Time to File Notice of Appeal”, filed by the Defence for Milan Gvero on 3 September 2010 (“Gvero Request”),² and the “Response from Radivoje Miletić Defence to Milan Gvero’s Motion for a Further Extension of Time to File Notice of Appeal”, filed by the Defence for Radivoje Miletić on 6 September 2010 (“Miletić Request”);³

NOTING the “Judgement” rendered by Trial Chamber II on 10 June 2010 (“Judgement”);

NOTING that pursuant to Rule 108 of the Tribunal’s Rules of Procedure and Evidence (“Rules”), parties seeking to appeal a trial judgement should file their notices of appeal no later than 30 days from the date of the judgement;

NOTING that pursuant to Rules 127(A)(i) and 127(B) of the Rules, the Pre-Appeal Judge may, on good cause being shown by motion, enlarge the time limits prescribed under the Rules;

RECALLING that on 18 June 2010, the Prosecution and Counsel for Vujadin Popović, Ljubiša Beara, Drago Nikolić, and Radivoje Miletić filed a joint motion requesting a 60 day extension of time up to and including 8 September 2010, for the filing of any notices of appeal in the instant case;⁴

RECALLING that in a decision issued on 25 June 2010, I found that good cause existed for granting the requested 60 day extension on the basis: (1) of “the length of the Judgement and the complexity of the issues that it raises”, and (2) that the interests of justice would be served by ensuring that “the parties have sufficient time to prepare meaningful notices of appeal in full conformity with the applicable provisions”;⁵

¹ Order Assigning Judges to a Case Before the Appeals Chamber, 24 June 2010.

² The Gvero Request was filed publicly with confidential and *ex parte* annexes. On 6 September 2010 the Defence for Milan Gvero filed a “Notice to Include Annex III to the Motion on Behalf of Milan Gvero for a Further Extension of Time to File Notice of Appeal from the 3. September [sic] 2010”, whereby it filed an additional confidential and *ex parte* annex inadvertently omitted from the annexes filed with the Gvero Request on 3 September 2010.

³ The French version of the Miletić Request was filed on 6 September 2010. The English version of the Miletić Request was filed on 7 September 2010.

⁴ Joint Motion for an Extension of Time to File Notice of Appeal, 18 June 2010 (“Joint Motion”).

⁵ Decision on Joint Motion for Extension of Time to File Notice of Appeal, 25 June 2010, p. 2.

RECALLING that I thereby ordered “all parties wishing to appeal the Judgement to file their notices of appeal within 90 days of the date of the Judgement, *i.e.*, no later than 8 September 2010” (“8 September 2010 Deadline”);⁶

NOTING that in the Gvero Request, the Defence for Milan Gvero requests “a further six week extension for the filing of any Notice of Appeal” on the basis that Milan Gvero’s current state of ill health prevents him from participating in the preparation of his notice of appeal;⁷

NOTING that in its response to the Gvero Request, the Prosecution states that it “takes no position on Gvero’s Request including the amount of time of any extension should the Appeals Chamber find that good cause exists”;⁸

CONSIDERING the submission by the Defence for Milan Gvero that due to a stroke suffered by Milan Gvero on 21 August 2010, and the neurological damage which appears to have resulted therefrom, Milan Gvero is currently unable to speak coherently and is thus unable at present to instruct his Counsel concerning the preparation of his notice of appeal;⁹

FINDING therefore that good cause exists for granting the Defence for Milan Gvero an extension of time in which to file Milan Gvero’s notice of appeal;

CONSIDERING however that the period between the issuance of the Judgement on 10 June 2010, and the date on which Milan Gvero suffered the aforementioned stroke, namely, 21 August 2010, provided the Defence for Milan Gvero with ample time in which to obtain and commence the implementation of instructions from Milan Gvero concerning his notice of appeal;

CONSIDERING also that an appellant may, subsequent to filing his or her notice of appeal, apply to vary the grounds of appeal therein, and that pursuant to Rule 108 the Appeals Chamber may, on good cause being shown, authorise a variation of the grounds of appeal;¹⁰

FINDING therefore that an extension of six weeks is excessive in the given circumstances, and that an extension three weeks from the 8 September 2010 Deadline constitutes a reasonable extension of time for the filing of Milan Gvero’s notice of appeal;

⁶ *Id.*

⁷ Gvero Request, paras 6-11 and 13.

⁸ Prosecution’s Response to Milan Gvero’s Request for a Further Extension of Time to File Notice of Appeal, 6 September 2010 (“Prosecution Response”), para. 1.

⁹ *Id.*, paras 7-10.

¹⁰ *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Motions for Extension of Time to File Notices of Appeal, 23 March 2009, p. 3.

NOTING with regard to the Miletić Request that the Defence for Radivoje Miletić requests a six-week extension from the 8 September 2010 Deadline to file the notice of appeal of Radivoje Miletić;

CONSIDERING that the only submission advanced in support of the Miletić Request is that “if the Appeals Chamber grants Milan Gvero’s Motion, Radivoje Miletić requests that the extension of time and new deadline also apply to the Notice of Appeal of the Defence for Radivoje Miletić”;¹¹

CONSIDERING that the Defence for Radivoje Miletić has thus failed to provide any basis whatsoever for the requested extension of time;

CONSIDERING that the Prosecution correctly “opposes any request for a further extension of time by other Accused based on Gvero’s Request” on the premise that “[a]n extension of time granted to one Accused based on medical grounds cannot constitute good cause pursuant to Rule 127(B) of the Rules [...] for granting an extension of time his co-Accused”;¹²

FINDING therefore that the Defence for Radivoje Miletić has failed to demonstrate that good cause exists for granting the Miletić Request for a six-week extension to file the notice of appeal of Radivoje Miletić;

FOR THE FOREGOING REASONS,

HEREBY:

- (a) **DENY** the Miletić Request in its entirety;
- (b) **GRANT** the Gvero Request **IN PART**; and
- (c) **ORDER** that the Defence for Milan Gvero file the notice of appeal of Milan Gvero within 112 days of the Judgement *i.e.*, no later than 30 September 2010.

¹¹ Miletić Request, para. 2.

¹² Prosecution Response, para. 2.

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



Judge Patrick Robinson
Pre-Appeal Judge

Dated this 7th day of September 2010,
At The Hague,
The Netherlands

[Seal of the Tribunal]