



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

IT-05-88-A 470
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20 OCTOBER 2010

Case No. IT-05-88-A
Date: 20 October 2010
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Pre-Appeal Judge

Registrar: Mr. John Hocking

Decision of: 20 October 2010

PROSECUTOR

v.

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

PUBLIC

**DECISION ON MOTIONS FOR EXTENSION OF TIME AND
FOR PERMISSION TO EXCEED WORD LIMITATIONS**

The Office of the Prosecutor:

Mr. Peter Kremer

Counsel for the Defence:

Mr. Zoran Živanović and Ms. Mira Tapusković for Mr. Vujadin Popović
Mr. John Ostojić and Mr. Predrag Nikolić for Mr. Ljubiša Beara
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Mr. Drago Nikolić
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, 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 this case,

NOTING the “Judgement” rendered by Trial Chamber II on 10 June 2010;¹

NOTING the respective notices of appeal filed by the parties on 8 September 2010;²

BEING SEISED OF the “Motion on Behalf of Drago Nikolić Seeking a Variation of Time and Word Limits to File Appellant’s Brief”, filed confidentially on 14 September 2010 (“Nikolić Motion”), in which Nikolić requests a 60-day extension of the time limit for filing his appellant brief and a 15,000-word increase in the word limitation for his appellant brief based upon the size and complexity of the Judgement and record on appeal, the substantial quantity of material disclosed since closing arguments, the unavailability of the Judgement in a language he understands, and the “all-encompassing nature” of his grounds of appeal;³

BEING SEISED OF “Vujadin Popović’s Motion for Extension of Time to File Appeal Brief and Variation of Word Limits”, filed confidentially on 15 September 2010 (“Popović Motion”), in which Popović requests a six-month extension of the time limit for filing his appellant brief and a 30,000-word increase in the word limitation for his appellant brief based upon the unique size and complexity of the case, the existence of novel issues of law and fact, and the need to analyse new disclosures from the Prosecution since the end of the trial;⁴

BEING SEISED OF the “Motion on Behalf of Ljubisa Beara Joining ‘Vujadin Popovic’s Motion for Extension of Time to File Appeal Brief and Variation of Word Limits’”, filed on 22 September 2010 (“Beara Motion”), in which Beara joins the Popović Motion;⁵

BEING SEISED OF the “Motion by Radivoje Miletić Defence for Extension of Time to File Appeal Brief and Authorisation to Exceed Word Limit with Confidential Annex”, filed partly

¹ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Judgement, 10 June 2010 (“Trial Judgement”).

² Prosecution’s Notice of Appeal, 8 September 2010; Vujadin Popović’s Notice of Appeal, 8 September 2010 (confidential); Appellant, Ljubisa Beara’s Notice of Appeal, 8 September 2010; Notice of Appeal on Behalf of Drago Nikolić, 8 September 2010 (confidential); Notice of Appeal by the Radivoje Miletić Defence, 8 September 2010; Notice of Appeal on Behalf of Vinko Pandurević Against the Judgment of the Trial Chamber Dated 10th June 2010, 8 September 2010 (confidential).

³ Motion on Behalf of Drago Nikolić Seeking a Variation of Time and Word Limits to File Appellant’s Brief, filed confidentially on 14 September 2010, paras 2, 5-29.

⁴ Vujadin Popović’s Motion for Extension of Time to File Appeal Brief and Variation of Word Limits, filed confidentially on 15 September 2010, paras 1-8.

⁵ Motion on Behalf of Ljubisa Beara Joining “Vujadin Popovic’s Motion for Extension of Time to File Appeal Brief and Variation of Word Limits”, filed on 22 September 2010, paras 2, 6.

confidentially on 23 September 2010 (“Miletić Motion”), in which Miletić requests a six-month extension of the time limit for filing his appellant brief and a 30,000-word increase in the word limitation for his appellant brief based upon the size and complexity of the Judgement and the record on appeal, the unavailability of the Judgement in a language he understands, the “continuous and voluminous” disclosure of material from the Prosecution, and the fact that his counsel work in French;⁶

NOTING the “Prosecution’s Consolidated Response to Defence Motions to Extend Time and Increase Word Limits for Appeal Briefs”, filed confidentially on 24 September 2010 (“Prosecution Response”), in which the Prosecution states that the complexity and size of the Judgement and record on appeal amount to good cause justifying an additional 60 days for filing the appellant briefs of all the parties, but that Nikolić, Popović, Beara, and Miletić have not demonstrated exceptional circumstances warranting an increase in the word limits for their appellant briefs;⁷

NOTING the “Combined Response of Vinko Pandurevic to Various Filings Concerning Extensions of Time for the Filing of Appeal Briefs”, filed confidentially on 28 September 2010 (“Pandurević Response”), in which Pandurević, *inter alia*, agrees that the complexity and the size of the Judgement and the record on appeal justifies a minimum 60-day extension, but makes no submissions concerning an increase in the word limitation;⁸

NOTING “Vujadin Popović’s Reply to Prosecution’s Consolidated Response to Defence Motions to Extend Time and Increase Word Limits for Appeal Briefs”, filed on 28 September 2010, in which Popović disputes representations in the Prosecution Response and reiterates his request for a six-month extension of the time limit for filing his appellant brief and a 30,000-word increase in the word limitation for his appellant brief;⁹

NOTING the “Reply on Behalf of Drago Nikolić to Prosecution’s Consolidated Response”, filed on 28 September 2010, in which Nikolić disputes representations in the Prosecution

⁶ Motion by Radivoje Miletić Defence for Extension of Time to File Appeal Brief and Authorisation to Exceed Word Limit With Confidential Annex, filed partly confidentially on 23 September 2010, paras 4-19.

⁷ Prosecution’s Consolidated Response to Defence Motions to Extend Time and Increase Word Limits for Appeal Briefs, filed confidentially on 24 September 2010, paras 1-23.

⁸ Combined Response of Vinko Pandurevic to Various Filings Concerning Extensions of Time for the Filing of Appeal Briefs, filed confidentially on 28 September 2010 (“Pandurević Response”), paras 2-3, 5.

⁹ Vujadin Popović’s Reply to Prosecution’s Consolidated Response to Defence Motions to Extend Time and Increase Word Limits for Appeal Briefs, filed on 28 September 2010, para. 10.

Response and reiterates his request for a 15,000-word increase in the word limitation for his appellant brief;¹⁰

NOTING the “Radivoje Miletić Defence Motion for Leave to Reply and Reply to Prosecution’s Consolidated Response of 24 September 2010”, filed confidentially on 5 October 2010 (“Miletić Reply”), in which Miletić disputes representations in the Prosecution Response and reiterates his request for a six-month extension of the time limit for filing his appellant brief and a 30,000-word increase in the word limitation for his appellant brief;¹¹

NOTING that, pursuant to Rule 111(A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), the appellant briefs are due to be filed within 75 days of the filing of the notices of appeal;

CONSIDERING that, pursuant to Rule 127 of the Rules, the Pre-Appeal Judge may, on good cause being shown by motion, enlarge the time limits prescribed under the Rules;

CONSIDERING that the Tribunal’s deadlines for the filing of briefs pursuant to Rule 111(A) of the Rules are essential to ensure the expeditious preparation of an appeal;¹²

CONSIDERING that “on appeal the main burden lies on counsel in preparing submissions as he has the legal expertise to advise the appellant whether there exist any potential errors of law and fact”;¹³

CONSIDERING that, pursuant to Rule 108 of the Rules and the Appeals Chamber’s well-established jurisprudence, the Appeals Chamber may, on good cause being shown by motion, authorise a variation of grounds of appeal and subsequent amendments to the notices of appeal and appellant briefs;¹⁴

CONSIDERING therefore that Popović, Beara, and Miletić (who have requested extensions in excess of 60 days) will have the opportunity, if they so wish, to show good cause by motion

¹⁰ Reply on Behalf of Drago Nikolić to Prosecution’s Consolidated Response, filed on 28 September 2010, paras 10, 12.

¹¹ Radivoje Miletić Defence Motion for Leave to Reply and Reply to Prosecution’s Consolidated Response of 24 September 2010, filed confidentially on 5 October 2010, paras 6-20. I note that it is not necessary for Miletić to seek leave to reply. See Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal, IT/155 Rev. 3, 16 September 2005, paras 13-14; *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on “Defence Request to File a Reply to Confidential ‘Prosecution Response to Šainović’s Second Motion to Admit Additional Evidence’”, 12 July 2010, p. 1.

¹² *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Decision on Defence Motion for Extension of Time to File Appellate Brief and to Increase the Word Limit, 11 August 2008 (“*Milošević Decision*”), p. 2.

¹³ *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009 (“*Šainović Decision of 29 June*”), p. 3 (citation omitted).

¹⁴ *Šainović Decision of 29 June*, p. 4 (citation omitted).

under Rule 108 of the Rules for any variations or amendments after they have read the Bosnian/Croatian/Serbian translation of the Trial Judgement and discussed it with their counsel;¹⁵

CONSIDERING the length of the Judgement and the complexity of the issues that it raises;¹⁶

CONSIDERING that the Prosecution does not oppose a 60-day extension;¹⁷

CONSIDERING that good cause has been shown for a 60-day extension of the time limit for the parties to file their appellant briefs;

CONSIDERING the Prosecution's suggestion that the Appeals Chamber may wish to consider harmonising the briefing schedule in the interests of effective case management;¹⁸

CONSIDERING that, pursuant to paragraph (C)(1)(a) of the Practice Direction on the Length of Briefs and Motions ("Practice Direction"), an appellant brief from a final judgement of a Trial Chamber will not exceed 30,000 words;¹⁹

CONSIDERING that the Tribunal's word limits for appellant briefs are necessary to ensure the fair and expeditious conduct of the appeal;²⁰

CONSIDERING that the Pre-Appeal Judge may, in exceptional circumstances, grant an extension of the word limit set by the Practice Direction;²¹

CONSIDERING that the number of grounds or sub-grounds on appeal is not a factor that in itself provides sufficient reason to enlarge the word limits prescribed by the Practice Direction;²²

CONSIDERING Miletić's submission that the use of the French language for his appellant brief will require him to use more words to convey the same information than if he were to write the brief in English, citing a decision from the *Galić* case as support;²³

¹⁵ *Šainović* Decision of 29 June, p. 4 (citation omitted).

¹⁶ See Decision on Joint Motion for Extension of Time to File Notice of Appeal, 25 June 2010, p. 2.

¹⁷ Prosecution Response, paras 1, 7, 22.

¹⁸ Prosecution Response, paras 1, 24. Pandurević supports this submission of the Prosecutor. Pandurević Response, para. 4.

¹⁹ IT/184/Rev. 2, 16 September 2005.

²⁰ *Milošević* Decision, p. 3.

²¹ Practice Direction, para. (C)(7).

²² *Prosecutor v. Nikola Šainović*, Case No. IT-05-87-A, Decision on Nikola Šainović's and Dragoljub Ojdanić's Joint Motion for Extension of Word Limit, 11 September 2009 ("*Šainović* Decision of 11 September"), p. 3 (citing *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Decision on Defence Motion for Extension of Word Limit for Defence Appellant's Brief ("*Orić* Decision"), 6 October 2006, p. 3).

CONSIDERING however that the Practice Direction does not distinguish between English and French when setting out the page limitations for briefs and that decisions more recent than the one cited by Miletić in the *Galić* case have denied motions for extensions of the word limit based upon the fact that a brief will be written in French;²⁴

CONSIDERING that the quality and effectiveness of an appellant brief does not depend upon length, but upon the clarity and cogency of the arguments presented and that excessively long briefs do not necessarily facilitate the efficient administration of justice;²⁵

CONSIDERING the length of the Judgement and the complexity of the issues that it raises;²⁶

CONSIDERING therefore that Nikolić, Popović, Beara, and Miletić have demonstrated exceptional circumstances for a 10,000-word increase in the word limitation for their appellant briefs;

CONSIDERING that the Prosecution submits that, if an increase in the words for the appellant briefs is granted to the defence, the Prosecution should be granted a similar increase for its respondent brief(s);²⁷

CONSIDERING that paragraph (C)(1)(b) of the Practice Direction follows the principle of allowing the respondent to file a brief of the same length as the appellant brief;

PURSUANT TO Rules 108, 111, 112, 113, and 127 of the Rules and paragraph (C)(1) of the Practice Direction;

HEREBY GRANT, in part, the Nikolić, Popović, Beara, and Miletić Motions and **ORDER** as follows:

1. The appellant briefs shall be filed no later than 21 January 2011.
2. The respondent briefs shall be filed no later than 4 April 2011.
3. The briefs in reply shall be filed no later than 2 May 2011.

²³ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, pp. 2-3.

²⁴ See *Milošević* Decision, p. 3; see also *Prosecutor v. François Karera*, Case No. ICTR-01-74-A, Decision on Motion for Leave to Exceed the Word Limit, 3 April 2008, p. 3.

²⁵ *Šainović* Decision of 11 September, p. 4 (citing *Orić* Decision, p. 3).


²⁶ See Decision on Joint Motion for Extension of Time to File Notice of Appeal, 25 June 2010, p. 2.

²⁷ Prosecution Response, paras 2, 21.

4. The appellant briefs of Nikolić, Popović, Beara, and Miletić shall not exceed 40,000 words each.
5. The respondent brief(s) of the Prosecution shall not exceed 190,000 words.
6. The briefs in reply of Nikolić, Popović, Beara, and Miletić shall not exceed 12,000 words each.

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

Dated this twentieth day of October 2010
At The Hague
The Netherlands



Judge Patrick Robinson
Pre-Appeal Judge

[Seal of the Tribunal]