

**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-05-88-A
Date: 13 December 2012
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andréia Vaz
Judge Khalida Rachid Khan

Registrar: Mr. John Hocking

Decision of: 13 December 2012

PROSECUTOR

v.

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

CONFIDENTIAL AND EX PARTE

**DECISION ON MILAN GVERO'S MOTION TO RESCIND
DECISION IN PART OR FOR AN EXTENSION OF TIME TO
FILE VARIOUS BRIEFS**

The Office of the Prosecutor:
Mr. Peter Kremer QC

Counsel for the Defence:
Mr. Dragan Krgović and Mr. David Josse for Mr. Milan Gvero

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);

NOTING the Judgement rendered by Trial Chamber II of the Tribunal on 10 June 2010, in which Milan Gvero (“Gvero”) was found guilty of persecution and other inhumane acts as crimes against humanity and sentenced to five years of imprisonment;¹

NOTING the notice of appeal filed by the Office of the Prosecutor (“Prosecution”) on 8 September 2010 containing two grounds of appeal against Gvero;²

NOTING its decision issued confidentially and *ex parte* on 13 December 2010 suspending the appeal proceedings in relation to Gvero pending a determination by the Appeals Chamber of his capacity to meaningfully participate in the appellate proceedings;³

NOTING the decision of the Duty Judge issued confidentially on 21 December 2010 allowing the Prosecution to omit from its Appeal Brief those grounds of appeal concerning Gvero;⁴

RECALLING its “Decision on Request to Terminate Appellate Proceedings in Relation to Milan Gvero” issued confidentially and *ex parte* on 30 November 2012 (“Decision”), in which the Appeals Chamber revoked the suspension of the appellate proceedings against Gvero and ordered Counsel for Gvero, to the extent that they wish to pursue Gvero’s right of appeal, to file a notice of appeal no later than 17 December 2012 and further ordered Counsel for Gvero and the Prosecution to the extent that they wish to pursue their appeals to file their respective: (i) appeal briefs within thirty (30) days of the filing of Gvero’s notice of appeal, if any; (ii) response briefs, if any, within fifteen (15) days of the filing of their respective appeal briefs; and (iii) reply briefs, if any, within seven (7) days of the filing of their respective response briefs;⁵

BEING SEISED OF the “Gvero Defence Motion to Rescind the Decision In Part or for an Extension of Time to File Appellant’s Brief, Respondent’s Brief and Brief in Reply” filed confidentially and *ex parte* by Counsel for Gvero on 5 December 2012 (“Motion”);

¹ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Judgement, 10 June 2010 (public redacted version), para. 2109, pp. 830-831.

² Prosecution’s Notice of Appeal, 8 September 2010, paras 30-32 (“Ground Four: JCE III Responsibility of Milan Gvero”), paras 33-34 (“Ground Five: Milan Gvero’s Manifestly Inadequate Sentence”).

³ Decision on Motion by Counsel Assigned to Milan Gvero Relating to His Present Health Condition, 13 December 2010 (confidential; public redacted version filed on 16 May 2011), paras 14-15.

⁴ Decision on Prosecution’s Motion Seeking Clarification on Decision Relating to Gvero’s Health Condition, 21 December 2010 (confidential), p. 2.

⁵ Decision, para. 30.

NOTING the “Prosecution’s Response to Gvero Motion for an Extension of Time to File Appellant’s Brief, Respondent’s Brief and Brief in Reply” filed confidentially and *ex parte* by the Prosecution on 6 December 2012 (“Response”);

NOTING that Gvero did not file a reply;

NOTING that Counsel for Gvero intend to file a notice of appeal within the time limit prescribed in the Decision;⁶

NOTING that Counsel for Gvero seek an extension of the time ordered for filing of the briefs by either rescinding the time limits set out in the Decision and restoring the time allowed by the Rules of Procedure and Evidence of the Tribunal (“Rules”), or alternatively, by granting both parties an extension of thirty (30) days, fifteen (15) days and seven (7) days, over and above the time allowed in the Decision, to file their appeal briefs, response briefs and reply briefs, respectively;⁷

NOTING that the Prosecution supports the Motion as it relates to the request for extension of time, however, it seeks an extension of twenty-five (25) days for the filing of both parties’ response briefs, rather than the fifteen (15) days sought in the Motion;⁸

RECALLING that the Appeals Chamber in its Decision varied the time prescribed under the Rules,⁹ and may, on good cause being shown by motion, enlarge or reduce these times;¹⁰

CONSIDERING the personal averment of Counsel for Gvero that the notice of appeal “is likely to include *a number of appeal grounds* detailing various factual and legal errors and seeking appropriate relief” and that “[t]he number and complexity of the appeal grounds will undoubtedly impact upon the time and efforts required for completion of the Appellant’s Brief”;¹¹

CONSIDERING that, in the special circumstances of this case, the potentially extensive scope of Gvero’s appeal amounts to a good cause;¹²

FINDING it unnecessary to consider any additional basis as submitted in the Motion or Response to determine whether good cause is shown;¹³

⁶ Motion, para. 10.

⁷ Motion, paras 32-33.

⁸ Response, paras 1-2.

⁹ Compare Decision, para. 30 with Rules 111-113 of the Rules.

¹⁰ Rule 127(B) of the Rules.

¹¹ Motion, para. 10 (emphasis added).

¹² See Response, para. 4.

¹³ Motion, paras 7-9, 11-31; Response, para. 3.

FINDING that the Prosecution's further request for a further ten days for the filing of response briefs is unpersuasive;

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 111, 112, 113, and 127 of the Rules,

HEREBY GRANTS the Motion seeking to extend the time limits for the filing of the relevant briefs;

DISMISSES the remaining part of the Motion with respect to rescission of the Decision in part as being rendered moot; and

ORDERS as follows:

1. Counsel for Gvero and the Prosecution, to the extent that they wish to pursue their appeals, to file their respective appeal briefs within sixty (60) days of the filing of Gvero's notice of appeal, if any;
2. Counsel for Gvero and the Prosecution to file their respective response briefs, if any, within thirty (30) days of the filing of their respective appeal briefs; and
3. Counsel for Gvero and the Prosecution to file their respective reply briefs, if any, within fourteen (14) days of the filing of their respective response briefs.

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



Judge Patrick Robinson
Presiding

Dated this thirteenth day of December 2012,
At The Hague,
The Netherlands.

[Seal of the Tribunal]