

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: 27 July 2009
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision: 27 July 2009

PROSECUTOR

v.

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

PUBLIC

**DECISION ON JOINT REQUEST FOR EXTENSION OF TIME
TO FILE RESPONDENT'S BRIEF**

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for the Appellants:

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 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 the respective notices of appeal filed by the parties on 27 May 2009;³

BEING SEIZED OF the “Joint Defence Request Seeking Extension of Time to File Respondent’s Brief” filed on 17 July 2009 (“Joint Motion”) by Counsel for Nikola Šainović and Vladimir Lazarević (“Applicants”), requesting the Appeals Chamber to allow them to file their respective respondent’s briefs no later than 2 November 2009;⁴

BEING ALSO SEIZED OF “General Ojdanić’s [sic] Joinder in Joint Request Seeking Extension of Time to File the Respondent’s Brief” filed on 21 July 2009 (“Ojdanić’s Motion”) by Counsel for Dragoljub Ojdanić, in which he joins the Joint Motion in its entirety;⁵

NOTING the “Prosecution Consolidated Response to Defence Motions Seeking Extension of Time to File Respondent Briefs” filed by the Office of the Prosecutor (“Prosecution”) on 24 July 2009 (“Response”), opposing the Joint Motion;

FINDING that in light of the urgency of the matter and considering the fact that the Applicants would not be prejudiced by the outcome of this decision, it is in the interests of justice to render this decision prior to the expiration of the deadline for filing a reply to the Response;⁶

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 Prosecution Notice of Appeal, 27 May 2009 (“Prosecution’s Notice of Appeal”); *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Defence Submission Notice of Appeal, 27 May 2009 (filed by Counsel for Nikola Šainović); *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, General Ojdanić’s Notice of Appeal, 27 May 2009; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Notice of Appeal from the Judgement of 26 February 2009, 27 May 2009 (filed by Counsel for Nebojša Pavković); *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Vladimir Lazarević’s Defence Notice of Appeal, 27 May 2009 (confidential) and Defence Submission: Lifting Confidential Status of the Notice of Appeal, 29 May 2009; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Sreten Lukić’s Notice of Appeal from Judgement and Request for Leave to Exceed the Page Limit, 27 May 2009. The latter five appellants are herein collectively referred to as the “Defence”.

⁴ Joint Motion, para. 7.

⁵ Ojdanić’s Motion, para. 1.

⁶ The deadline for filing the said reply expires on 28 July 2009, close of business (see Practice Direction on Procedure for the filing of Written Submissions in Appeal Proceedings before the International Tribunal, 16 September 2005, para. 14).

NOTING that, pursuant to Rule 112(A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), a respondent’s brief is due to be filed within 40 days of the filing of the appellant’s brief;

NOTING that the Prosecution’s appeal brief is due to be filed no later than 10 August 2009, and that the Defence respondent’s briefs would consequently be due to be filed no later than 21 September 2009;

FURTHER NOTING that the appellant’s briefs from the Defence are due to be filed no later than 23 September 2009;⁷

RECALLING that the Pre-Appeal Judge may, on good cause being shown by the motion, enlarge the time limits prescribed by the Rules;⁸

NOTING that the Applicants submit that good cause for the sought extension exists because they do not have the human resources to analyse the Prosecution’s appeal brief and simultaneously write their respective respondent’s briefs in accordance with the existing timetable;⁹

NOTING that the Applicants express their concern that the Prosecution’s appeal brief will be “voluminous and complex” in accordance with the contents of the Prosecution’s Notice of Appeal;¹⁰

NOTING the Prosecution’s submission that the Joint Motion is premature since the Applicants’ argument that they will need more time to respond to a “voluminous and complex” Prosecution’s appeal brief is based on conjecture;¹¹

CONSIDERING that at this stage the Applicant’s claim regarding the volume and complexity of the Prosecution’s appeal brief is indeed speculative;

RECALLING, however, that the extension of time for the filing of the Defence appellant’s briefs was granted in light of the fact that “the volume of the trial record, including the length of the Trial Judgement, is unprecedented and that this case raises issues of significant complexity”;¹²

⁷ Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009 (“Decision of 29 June 2009”), p. 5.

⁸ Rules 127(A)(i) and 127(B) of the Rules.

⁹ Joint Motion, para. 6.

¹⁰ *Id.*

¹¹ Prosecution Response, para. 1.

¹² Decision of 29 June 2009, p. 4.

CONSIDERING that there is a considerable and unusual temporal overlap in the current deadlines for the submission of the Defence appellant's briefs and their respondent's briefs, which may have the effect of reducing the benefits of the extension of time accorded by the Decision of 29 June 2009;

CONSIDERING that it is in the interests of justice to ensure that the parties have sufficient time to prepare meaningful respondent's briefs in full conformity with the applicable provisions;

FINDING that good cause exists for granting an extension on that basis;

FINDING FURTHER that, in the circumstances of this case, the requested extension of 40 days running from the date of the filing of the Prosecution's appeal brief is reasonable and justified for the purposes of the preparation of the respective respondent's briefs;

FOR THE FOREGOING REASONS,

HEREBY GRANT the Joint Motion and Ojdanić's Motion;

ORDER the Applicants and Ojdanić to file their respective respondent's briefs within 40 days of the date of the filing of the Prosecution's appeal brief, *i.e.* no later than 2 November 2009.

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

Done this 27th day of July 2009,
At The Hague, The Netherlands.


Liu Daqun, Pre-Appeal Judge

[Seal of the Tribunal]