



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-04-74-A
Date: 5 September 2014
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision of: 5 September 2014

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ČORIĆ
BERISLAV PUŠIĆ**

PUBLIC

DECISION ON MOTIONS FOR RECONSIDERATION

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Douglas Stringer
Mr. Mathias Marcussen

Counsel for the Defence:

Mr. Michael G. Karnavas and Ms. Suzana Tomanović for Mr. Jadranko Prlić
Ms. Senka Nožica and Mr. Karim A. A. Khan for Mr. Bruno Stojić
Ms. Nika Pinter and Ms. Nataša Fauveau-Ivanović for Mr. Slobodan Praljak
Ms. Vesna Alaburić and Mr. Guénaél Mettraux for Mr. Milivoj Petković
Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Mr. Valentin Čorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Mr. Berislav Pušić

I, THEODOR MERON, 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 in French by Trial Chamber III of the Tribunal on 29 May 2013 and the English translation thereof filed on 6 June 2014;²

BEING SEISED OF the “Motion to Reconsider Decision on Defence Motions to Extend Time and/or Exceed Word Limits for Appeal Briefs and Prosecution Motion for Extension of Time to File Respondent’s Briefs”, filed by Valentin Ćorić (“Ćorić”) on 29 August 2014 (“Ćorić Motion”);

BEING FURTHER SEISED OF the “Prosecution Motion for Reconsideration of Decision Denying Requested Extensions of Time”, filed by the Office of the Prosecutor (“Prosecution”) on 29 August 2014 (“Prosecution Motion”);

BEING FURTHER SEISED OF “Slobodan Praljak’s Motion for Reconsideration Concerning Time Granted to Defence for Filing of Appeal and Response Briefs”, filed with one public and two confidential annexes by Slobodan Praljak (“Praljak”) on 1 September 2014 (“Praljak Motion”);

BEING FURTHER SEISED OF (i) “Bruno Stojić’s Joinder to Ćorić Motion to Reconsider Decision on Defence Motions to Extend Time and/or Exceed Word Limits for Appeal Briefs and Prosecution Motion for Extension of Time to File Respondent’s Briefs”, filed by Bruno Stojić on 2 September 2014 (“Stojić Motion”); (ii) “Jadranko Prlić’s Joinder to Valentin Ćorić’s Motion to Reconsider Decision on Defence Motions to Extend Time and/or Exceed Word Limits for Appeal Briefs and Prosecution’s Motion for Extension of Time to File Respondent’s Briefs and Prosecution’s Motion for Reconsideration of Decision Denying Requested Extensions of Time”, filed by Jadranko Prlić (“Prlić”) on 2 September 2014 (“Prlić Motion”); (iii) “Milivoj Petković’s Joinder to Ćorić’s Motion to Reconsider Decision on Defence Motions to Extend Time and/or Exceed Word Limits for Appeal Briefs and Prosecution Motion for Extension of Time to File Respondent’s Briefs”, filed by Milivoj Petković on 3 September 2014 (“Petković Motion”); and (iii) “Berislav Pušić’s Joinder to Defence Motions to Reconsider Decision on Defence Motions to Extend and/or Exceed Word Limits for Appeals Briefs and Prosecution’s Motion for Extension of Time to File Respondent’s Briefs”, filed by Berislav Pušić on 4 September 2014 (“Pušić Motion”)

¹ Order Designating a Pre-Appeal Judge, 19 June 2013, p. 1.

² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Judgement, 6 June 2014 (French original filed on 29 May 2013) (“Trial Judgement”).

and collectively with the Corić, Praljak, Stojić, Prlić, and Petković Motions, the “Defence Motions”);

RECALLING that in the “Decision on Defence Motions to Extend Time and/or Exceed Word Limits for Appeal Briefs and Prosecution Motion for Extension of Time to File Respondent’s Briefs”, issued on 22 August 2014 (“2014 Decision on Extensions”), I granted 15 additional days to all parties in this case for the filing of their Appellant’s Briefs and 15 additional days to the Prosecution for the filing of Respondent’s briefs;³

NOTING Corić’s submissions that (i) the additional time granted in the 2014 Decision on Extensions is “unreasonable and insufficient” in light of the size and complexity of the Trial Judgement and the time extensions granted to other “mega-trials” at the Tribunal with less voluminous judgements, and that (ii) the need for a harmonised briefing schedule and effective case management issues discussed in the 2014 Decision on Extensions should not take priority over the Appeals Chamber’s duty to safeguard the fairness of the proceedings;⁴

NOTING Praljak submissions that (i) while the 2014 Decision on Extensions correctly noted that Praljak was not represented by counsel between 28 April and 6 August 2014, it did not take into account that he was likewise unrepresented and unassisted by counsel between 25 July and 25 September 2013, and that (ii) from 25 September 2013 onwards, Praljak’s counsel assisted him on a pro-bono basis and only in relation to procedural matters, as a result of which no work has been done on the preparation of his Appellant’s brief since 25 July 2013;⁵

NOTING the Prosecution’s submission that the 2014 Decision on Extensions did not give appropriate weight to the following factors that will have an impact on the Prosecution’s obligation to simultaneously prepare six Respondent’s briefs, *i.e.*: (i) the complexity of the case; (ii) the practical problems posed by the English translation of the Trial Judgement; (iii) the length of the Appellant’s briefs and the number of grounds of appeal; and (iv) the impact of staff attrition on the Prosecution’s resources;⁶

NOTING FURTHER the Prosecution’s submission that the briefing schedule envisaged by the 2014 Decision on Extensions “makes it impossible for the Prosecution to discharge its professional responsibilities as a party to these proceedings”, as it allows the Prosecution Senior Counsel

³ 2014 Decision on Extensions, pp. 4, 5.

⁴ Corić Motion, paras 7-16. *See also* Stojić Motion, paras 1-3; Prlić Motion, p. 1; Petković Motion, para. 3; Pušić Motion, paras 4-5.

⁵ Praljak Motion, paras. 5-13.

⁶ Prosecution Motion, para. 4.

assigned to the case very limited time for each of the 168 grounds of appeal and virtually no time to ensure consistency across the Prosecution's six Respondent's briefs;⁷

NOTING that reconsideration is permitted if the requesting party can demonstrate that the impugned decision contains a clear error of reasoning or that "particular circumstances", which can be new facts or arguments, justify its reconsideration in order to avoid a miscarriage of justice;⁸

NOTING that the principle of finality dictates that the power to reconsider previous decisions should be exercised sparingly and a party must therefore meet a high threshold in order to succeed in its motion for reconsideration;⁹

REITERATING that all parties have already been granted extensions of time to file either their Notices of Appeal or Appellant's briefs based on, *inter alia*, the exceptional length of the Trial Judgement and the complexity of the issues contained therein;¹⁰

CONSIDERING that Praljak submitted his notice of appeal on 28 June 2013¹¹ but his Tribunal-remunerated counsel was not withdrawn until a month later, *i.e.*, on 25 July 2013;¹²

CONSIDERING FURTHER that by declaration filed on the record on 27 September 2013, Praljak stated that his counsel has agreed to represent him on a *pro bono* basis with "limited authority", but that the terms of Praljak's agreement with his counsel did not preclude preparatory work on Praljak's Appellant's brief;¹³

⁷ Prosecution Motion, para. 7(i)-(v).

⁸ *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-A, Decision on Mićo Stanišić's Motion Seeking Reconsideration of Decision on Stanišić's Motion for Declaration of Mistrial and Župljanin's Motion to Vacate Trial Judgement, 24 July 2014 ("*Stanišić and Župljanin Decision*"), para. 11 (citations omitted).

⁹ *Stanišić and Župljanin Decision*, para. 12 (citations omitted).

¹⁰ See 2014 Decision on Extensions, p. 3; Decision on Motions for Extension of Time to File Appeal Briefs and for Authorization to Exceed Word Limit, 22 August 2013 ("2013 Decision on Extensions"), para. 15; Decision on Motions for an Extension of Time to File Notices of Appeal and Other Relief, 21 June 2013, p. 3.

¹¹ Slobodan Praljak's Notice of Appeal, 28 June 2013. See also Corrigendum to Slobodan Praljak's Notice of Appeal with Annex, 29 July 2013.

¹² See Decision on Slobodan Praljak's Motion for Review of the Registrar's Decision on Means, 25 July 2013 (whereby the Appeals Chamber confirmed the Registrar's Decision on Means of 22 August 2012, which found that Praljak was able to fully remunerate counsel and pursuant to which the Registry withdrew Praljak's Tribunal-paid counsel).

¹³ See Praljak Motion, Annex 1 ("They will file submissions concerning all procedural issues, in particular the extension of time limits, translation expenses, the issue of paying the defence, *and everything else that has to be done* so that I can start defending myself if no solution is found for financing my defence" (emphasis added)). See also Slobodan Praljak's Urgent Motion for Stay of Procedure with Confidential Annexes, 3 October 2013, para. 13 (in which counsel for Praljak submits that, *inter alia*, they accepted to represent Praljak on a limited basis to "assure protection of his immediate interests and to enable him to take over his Defence in proper conditions if no solution is found for their remuneration").

REITERATING that the deadlines for the filing of briefs dictated by Rules 111(A) and 112(A) of the Tribunal's Rules of Procedure and Evidence ("Rules") are essential to ensuring appeal proceedings are conducted in a fair and expeditious manner;¹⁴

CONSIDERING that none of the parties have demonstrated that the 2014 Decision on Extensions contained a clear error of reasoning or that new facts or arguments justify its reconsideration with respect to the deadline for the filing of Appellant's briefs;

CONSIDERING, however, that in support of its request for reconsideration of the extension of time to file its Respondent's briefs, the Prosecution raises valid concerns over the impact of staff attrition on its resources,¹⁵ as well as the issue of limited staff availability over the winter judicial recess, which has been recognized as a factor warranting an extension of filing deadlines;¹⁶

CONSIDERING that these circumstances presented by the Prosecution justify a reconsideration of the 2014 Decision on Extensions with respect to the deadline for the filing of the Prosecution's Respondent's brief(s);¹⁷

NOTING that pursuant to Rule 113 of the Rules, an appellant may file a brief in reply within 15 days of filing of the Respondent's brief and that, pursuant to Rule 127 of the Rules, a Chamber may on good cause being shown by motion enlarge or reduce any time prescribed by or under the Rules;

CONSIDERING that the arguments presented by the Prosecution in relation to extensions of the deadline for the filing of its Respondent's briefs also constitute good cause for a limited extension of the deadline for the filing of Reply briefs in this case;

RECALLING, finally, that it is in the interests of effective case management to allow for a harmonized briefing schedule;¹⁸

FOR THE FOREGOING REASONS,

HEREBY DENY the Defence Motions;

GRANT the Prosecution Motion **in part**;

RECALL that all Appellant's briefs shall be filed no later than 4 November 2014;

¹⁴ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Motions for Extension of Time and for Permission to Exceed Word Limitations, 20 October 2010, p. 5 (citations omitted).

¹⁵ See Prosecution Motion, para. 4(iv) and fn. 6.

¹⁶ See, e.g., *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, Decision on Milan Lukić's Motion Seeking Extension of Time to File Appeal Brief and Motion for Stay of Proceedings, 30 October 2009, para. 12.

ORDER that (i) the Defence and Prosecution Respondent's brief(s) shall be filed no later than 13 February 2015 and (ii) the Defence and Prosecution's Reply briefs be filed no later than 9 March 2015.

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

Done this 5th day of September 2014,
At The Hague,
The Netherlands.


Judge Theodor Meron
Pre-Appeal Judge

[Seal of the Tribunal]

¹⁷ See Prosecution Motion, para. 8.

¹⁸ 2013 Decision on Extensions, para. 15.