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SCSL-03-01-A
(115-130)

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THE SPECIAL COURT FOR SIERRA LEONE

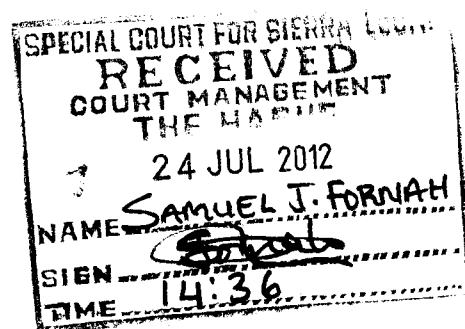
THE APPEALS CHAMBER

Before: Justice Shireen Avis Fisher
Pre-Hearing Judge

Registrar: Ms. Binta Mansaray

Date: 24 July 2012

Case No.: SCSL-2003-01-A



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

**DEFENCE MOTION FOR EXTENSIONS OF TIME AND PAGE LIMITS FOR WRITTEN
SUBMISSIONS PURSUANT TO RULES 111, 112 AND 113**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Mr. Mohamed A. Bangura
Ms. Nina Tavakoli
Ms. Leigh Lawrie
Mr. Christopher Santora
Ms. Kathryn Howarth
Ms. Ruth Mary Hackler
Ms. Ula Nathai-Lutchman
Mr. James Pace
Mr. C3man Kenny

Counsel for Charles G. Taylor:

Mr. Morris Anyah
Mr. Eugene O'Sullivan
Mr. Christopher Gosnell
Ms. Kate Gibson
Ms. Magda Karagiannakis

I. INTRODUCTION

1. Charles Taylor respectfully requests extensions of time and page limits for the filing of his briefs on appeal as follows:
 - (i) Appeal Brief: 90 additional days and 200 additional pages;
 - (ii) Response Brief: 60 additional days and 50 additional pages;
 - (iii) Reply Brief: 15 additional days and 70 additional pages.¹

2. The proposed extensions would bring the total time-period between the delivery of Judgement and the filing of the appeal brief to 160 days. That is substantially less than has been accorded for appeals of comparable judgements of the tribunals of the former Yugoslavia and Rwanda. The time requested is reasonable, necessary and proportionate, given the unprecedented size of the Judgement and the size of the record on which it is based.

II. PROCEDURAL HISTORY

3. The Parties received official notice of the Judgement in this case on 31 May 2012.² The Sentencing Judgement, which is also being appealed, was also served on the Parties on 31 May 2012.³

4. Notices of appeal from the Prosecution⁴ and Defence⁵ were filed on 19 July 2012. On 20 July 2012, the Pre-Hearing Judge issued a Scheduling Order, ordering that “Parties

¹ Rules of Procedure and Evidence, The Special Court for Sierra Leone, as amended on 31 May 2012 (“Rules”), Rules 111, 112 and 113, respectively.

² *Prosecutor v. Taylor*, Case No. SCSL-03-01-T-1283, Judgement, 18 May 2012, filed 30 May 2012 (hereinafter “Judgement”) and *Prosecutor v. Taylor*, Case No. SCSL-03-01-T-1284, Corrigendum to Judgement Filed on 18 May 2012, filed 30 May 2012 (hereinafter “Corrigendum”). Cf., *Prosecutor v. Taylor*, SCSL-03-01-T-1281, Judgement, 18 May 2012. The version communicated to the parties on 31 May 2012 substantially revised the version that had been communicated on 18 May 2012.

³ *Prosecutor v. Taylor*, SCSL-03-01-T-1285, Sentencing Judgement, 30 May 2012.

⁴ *Prosecutor v. Taylor*, SCSL-03-01-A-1300, Prosecution’s Notice of Appeal, 19 July 2012.

requesting an extension of time and/or page limit for filing Submissions pursuant to Rules 111, 112 and/or 113 shall file a consolidated written Motion no later than 24 July.”⁶

III. APPLICABLE LAW

5. The Rules provide for the following time-limits, in respect of filings pursuant to Rules 111, 112 and 113:
 - (i) Appellant’s Submissions: within 21 days after filing of the notice of appeal pursuant to Rule 108;⁷
 - (ii) Respondent’s Submissions: within 14 days after the filing of the Appellant’s submissions;⁸ and
 - (iii) Submissions in Reply: within 5 days after the filing of the Respondent’s submissions.⁹

6. The Appeals Chamber has the discretion, pursuant to Rule 116 of the Rules, to extend the time-limits upon a showing of “good cause.”

7. The Practice Direction on dealing with Documents in The Hague - Sub-Office¹⁰ provides for the following limits on the lengths of Appeal filings:
 - (i) Brief of an Appellant: 100 pages or 30,000 words, whichever is greater.¹¹

⁵ *Prosecutor v. Taylor*, SCSL-03-01-A-1301, Notice of Appeal of Charles Ghankay Taylor, 19 July 2012 (the “Notice”). The requested extensions of time and page limits being made through this Motion are without prejudice to Grounds 36 and 37 of the Notice, in the sense that compliance with the directive to file this Motion should not be construed as being inconsistent with the relief sought by *Prosecutor v. Taylor*, SCSL-03-01-A-1302, Charles Ghankay Taylor’s Motion for Partial Voluntary Withdrawal or Disqualification of Appeals Chamber Judges, 19 July 2012.

⁶ *Prosecutor v. Taylor*, SCSL-03-01-A-1303, Scheduling Order for Written Submissions Regarding Rules 111, 112 and 113, 20 July 2012, indicating at page 3 that Responses are to be filed no later than 26 July 2012 and Replies to Responses are to be filed no later than 27 July 2012.

⁷ Rule 111.

⁸ Rule 112.

⁹ Rule 113(A).

¹⁰ Practice Direction on dealing with Documents in The Hague - Sub-Office, amended 25 April 2008 (the “Practice Direction”).

¹¹ Practice Direction, Article 6(E)(i).

- (ii) Brief of a Respondent: 100 pages or 30,000 words, whichever is greater.¹²
- (iii) Reply Brief of an Appellant: 30 pages or 9,000 words, whichever is greater.¹³

8. The Appeals Chamber (or a Judge thereof) has the discretion, pursuant to Article 6(G) of the Practice Direction, to extend the page limits if it is provided with an “explanation of the exceptional circumstances that necessitate the oversized filing.”

IV. SUBMISSIONS

- (i) *The Proposed Extension for the Appeal Brief is Reasonable Given the Volume and Complexity of the Judgement, and the Breadth of Grounds of Appeal*

9. The Trial Judgement in this case, 2,488 pages in length, may be the longest judicial pronouncement in human history, and certainly the longest against a single criminal defendant.
10. The Defence, as is its right, has comprehensively challenged the Trial Chamber’s findings. Forty-five grounds of appeal have been asserted, necessitated by the unprecedented length of the Judgement itself. The errors alleged relate not only to errors of law, but also errors of procedure, mixed errors of law and fact, and errors of fact. These alleged errors require exposition with reference to the record of the case, which is also extremely lengthy. Notably, the Trial Chamber erred systematically in its approach to various types of evidence, an error with broad implications for its assessment of the evidence, and on numerous findings, throughout the Trial Judgement.
11. The Defence’s right of appeal would be frustrated if it does not have adequate time to carefully review and set forth the extent of the Trial Chamber’s errors for the Appeals Chamber, and how these errors have impacted upon its large number of findings.

¹² Practice Direction, Article 6(E)(ii).

¹³ Practice Direction, Article 6(E)(iii).

12. A total period of 160 days between the rendering of the Judgement and filing of the Appeal Brief is reasonable and proportionate, particularly when compared with the time periods that have been accorded at other tribunals:

Court / Case	Notice of Appeal	Appeal Brief	Total
<i>Popović</i>	90 days ¹⁴	135 days ¹⁵	225 days
<i>Milutinović/ Sainović</i>	90 days ¹⁶	120 days ¹⁷	210 days
<i>Nyiramasuhuko</i>	90 days ¹⁸	60 or 90 days ¹⁹	150 or 180 days
<i>Perišić</i>	60 days ²⁰	89 days ²¹	149 days
ICTY Statute	30 days ²²	75 days ²³	105 days
STL Statute	30 days ²⁴	75 days ²⁵	105 days

¹⁴ *Prosecutor v. Popović et al.*, IT-05-88-A, Decision on Joint Defence Motion for Extension of Time to File Notice of Appeal, 25 June 2010, p. 2.

¹⁵ *Prosecutor v. Popović et al.*, IT-05-88-A, Decision on Motions for Extension of Time and for Permission to Exceed Word Limitations, 20 October 2010, pp. 5-6.

¹⁶ *Prosecutor v. Milutinović et al.*, IT-05-87-A, Decision on Motions for Extensions of Time to File Notices of Appeal, 23 March 2009, p. 4.

¹⁷ *Prosecutor v. Sainović et al.*, IT-05-87-A, Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009, pp. 4-5.

¹⁸ *Prosecutor v. Nyiramasuhuko et al.* ICTR-98-42-A, Decision on Motions for Extension of Time for the Filing of Appeal Submissions, 22 July 2011, paras. 9, 13 and 16 (Five of the defendants whose counsel had a working knowledge of English were given 60 additional days from the date of the normal English Judgement in which to file their notices of appeal. The one defendant whose counsel was exclusively francophone was given 90 days in total from the service of the French translation of the Judgement).

¹⁹ *Prosecutor v. Nyiramasuhuko et al.* ICTR-98-42-A, Decision on Motions for Extension of Time for the Filing of Appeal Submissions, 22 July 2011, paras. 9, 13 and 16 (The five defendants whose counsel had a working knowledge of English were given 60 days from the service of the French translation of the Judgement in which to file their appeal briefs. The one defendant whose counsel was exclusively francophone was given 90 days in total to file his appeal brief from the date of the filing of his notice of appeal).

²⁰ *Prosecutor v. Perišić*, IT-04-81-A, Decision on Momčilo Perišić's Motion for an Extension of Time to File a Notice of Appeal, 16 September 2011, pp. 1-2.

²¹ *Prosecutor v. Perišić*, IT-04-81-A, Decision on Momčilo Perišić's Motion for an Extension of Time to File his Appeal Brief, 24 November 2011, pp. 1-2 (the deadline for Perišić to file his Appeal brief was extended from 23 January 2011 to 6 February 2011).

²² ICTY Rules of Procedure and Evidence, Rule 108.

²³ *Ibid.*, Rule 111.

²⁴ STL Rules of Procedure and Evidence, Rule 177.

²⁵ *Ibid.*, Rule 182(A).

13. The three international cases that come the closest to the *Taylor* Judgement in terms of length and complexity of the trial judgement, and size of the trial record, are *Milutinović et al.*,²⁶ *Nyiramasuhuko et al.*,²⁷ and *Popović et al.*²⁸ The ICTY Appeals Chamber in the first case granted a *minimum* of 210 days after the trial judgement to the appellants to prepare their submissions.²⁹ The period granted had nothing to do with the need for translation to the accused, as the accused (as is common practice at the ICTY) were accorded the right to amend or supplement their submissions following translation of the trial judgement.³⁰ The *Nyiramasuhuko* Appeals Chamber granted the defence appellants a *minimum* of 150 days to file their submissions, but also suspended the running of the deadline pending translation of the judgement from English into French.³¹ These defendants have now had 372 days to prepare their appeal brief, without the time-period allotted for filing appeal briefs having yet been triggered. Appellants in the “*Media Case*” were given a total of more than 400 days to file their Appeal Briefs, albeit as a result of issues that are not germane in the present case, including a change of counsel during the appeal.³²

14. The ICTY Appeals Chamber granted the extension in the *Milutinović* case (which is about one-third shorter than the Judgement in this case) on the basis that “the volume of the trial record, including the length of the Trial Judgement, is unprecedented and that

²⁶ *Prosecutor v. Milutinović et al.* IT-05-87-T, Judgement, 26 February 2009.

²⁷ *Prosecutor v. Nyiramasuhuko et al.*, ICTR-98-42-T, Judgement and Sentence, 24 June 2011.

²⁸ *Prosecutor v. Popović et al.* IT-05-88-T, Judgement, 10 June 2010.

²⁹ *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-A, Decision on Motions for Extensions of Time to File Notices of Appeal, 23 March 2009, p. 4; *Prosecutor v. Sainović et al.*, Case No. IT-05-97-A, Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009, pp. 4-5.

³⁰ *Prosecutor v. Sainović et al.*, Case No. IT-05-87-A, Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009, p. 4: “Recalling that, pursuant to Rule 109 of the Rules and the Appeals Chamber’s well-established jurisprudence, it may, on good cause being shown by motion, authorize a variation of grounds of appeal and subsequent amendments to the notices of appeal and appellant’s briefs; Considering that the Defence will have the opportunity, if they so wish, to request any variations or amendments after the appellants have read the Serbian translation of the Trial Judgement and discussed it with their counsel, provided that they show good cause under Rule 108 of the Rules; Reiterating that it would be unreasonable to delay the appellate proceedings until the filing of the Serbian translation of the Trial Judgement”.

³¹ *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Decision on Motions for Extension of Time for the Filing of Appeal Submissions, 22 July 2011, para. 13.

³² *The Prosecutor v. Nahimana et al.*, Decision on Hassan Ngeze’s Motion for Extension of Time, ICTR-99-52-A, 2 December 2004.

this case raises issues of significant complexity.”³³ Similarly, in *Popović* the ICTY Appeals Chamber relied specifically on “the length of the Judgement and the complexity of the issues it raises.”³⁴ The Judgement in that case is about one-third the length of the *Taylor* Judgement.

15. The Defence request for 160 days is 50 days less than the period granted in *Milutinović*, and 65 days shorter than the period granted in *Popović* – cases involving much shorter trial judgements. The period requested is therefore reasonable and proportionate given the nature of the Judgement being appealed.

(ii) *The Period for Response Should be Two-Thirds of the Period Accorded for the Appeal Brief*

16. The Statutes of all the international courts and tribunals require the response brief on appeal to be filed no later than two-thirds more than the time accorded to file the appeal brief.³⁵ This reflects that a response brief is, by its nature, easier to prepare than an appeal brief. It is responsive, rather than propositional, and involves less consultation. The extensions granted in the above cases reflect the same ratio of giving approximately two-thirds the time for the preparation of response briefs.³⁶

(iii) *The Periods Accorded for Both Prosecution and Defence Appeals Should Be Harmonized*

17. The interests of justice favour a harmonization of the deadlines for both the Prosecution and Defence appeals.

³³ *Prosecutor v. Sainović*, Case No. IT-05-87-A, Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009, pp. 4-5.

³⁴ *Prosecutor v. Popović et al.*, IT-05-88-A, Decision on Motions for Extension of Time and for Permission to Exceed Word Limitations, 20 October 2010, pp. 5-6.

³⁵ ICTY Rules of Procedure and Evidence, Rules 111 and 112 (75 days for the Appellant’s Brief and 40 days for the Respondent’s Brief); ICTR Rules of Procedure and Evidence, Rules 111 and 112 (75 days for the Appellant’s Brief and 40 days for the Respondent’s Brief); STL Rules of Procedure and Evidence, Rules 182(A) and 183 (75 days for the Appellant’s Brief and 60 days for the Respondent’s Brief).

³⁶ *Prosecutor v. Popović et al.*, IT-05-88-A, Decision on Motions for Extension of Time and for Permission to Exceed Word Limitations, 20 October 2010 (granting about 75 days for the response briefs while granting 135 days for the appeal briefs).

(iv) *The Extension of Page Limits is Justified Given the Complexity of the Judgement and the Breadth of the Appeal*

18. The issues discussed above that justify the extensions of time for the filing of submissions pursuant to Rules 111, 112 and 113 give rise to exceptional circumstances necessitating the extension of the page limits provided by the Practice Direction.
19. Exceptional circumstances resulting in 50-page extensions for the appeal and response briefs were found to exist in the *RUF* case on the basis of the length and complexity of the Trial Judgement and Kallon's thirty-one grounds of appeal.³⁷ For similar reasons, the parties in the *CDF* case were also granted 50-page extensions for the filing of appeal briefs.³⁸ The length and complexity of the *AFRC* Trial Judgement, as well as the Prosecution's nine grounds of appeal, constituted exceptional circumstances resulting in an extension of 150 pages for its consolidated appeal brief against the defendants.³⁹ Considering that the Trial Judgement in this case is approximately three, four and six times longer than those in the *RUF*, *AFRC* and *CDF* cases, it is submitted that the 200-page, 50-page and 70-page extensions for the filings pursuant to Rules 111, 112 and 113 are reasonable and proportionate.
20. The Defence would not oppose the same extensions being granted to both parties. In any event, should the Prosecution be granted a greater page limit for any appeal brief or submission, the Defence requests that it be granted the same extension so that it is not placed in a less advantageous position.

³⁷ *Prosecutor v. Sesay et al.*, SCSL-04-15-A-1263, Decision on "Kallon Defence Motion for Extension of Time to File Appeal Brief and Extension of Page Limit", 4 May 2009, pp. 2-4.

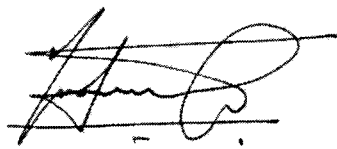
³⁸ *Prosecutor v. Fofana et al.*, SCSL-04-14-A-804, Decision on Urgent Joint Defence and Prosecution Motion for an Extension of Time for the Filing of Appeal Briefs and Extension of Page Limits for Appeal Briefs, 7 November 2007, p. 4.

³⁹ *Prosecutor v. Brima et al.*, SCSL-04-16-A-645, Decision on Urgent Prosecution Motion for an Extension of the Page Limit for its Appeal Brief, 24 August 2007, pp. 2-3.

V. CONCLUSION & RELIEF REQUESTED

21. The extraordinary length and complexity of the Judgement justify the extensions of time and page limits requested. These extensions are necessary to: consult adequately with Mr. Taylor in the preparation of all submissions, prepare submissions pursuant to Rule 111 which fully addresses the issues on appeal, and prepare considered and meaningful responses and replies in the submissions pursuant to Rules 112 and 113. Accordingly, the Defence respectfully requests the extensions of time and page limits as outlined above.

Respectfully Submitted,




Morris Anyah
Lead Counsel for Charles G. Taylor
Dated this 24th Day of July 2012
The Hague, The Netherlands



Eugene O'Sullivan
Co-Counsel for Charles G. Taylor



Christopher Gosnell
Co-Counsel for Charles G. Taylor



Kate Gibson
Co-Counsel for Charles G. Taylor

List of Authorities

Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-A-1303, Scheduling Order for Written Submissions Regarding Rules 111, 112 and 113, 20 July 2012.

Prosecutor v. Taylor, SCSL-03-01-A-1301, Notice of Appeal of Charles Ghankay Taylor, 19 July 2012.

Prosecutor v. Taylor, SCSL-03-01-A-1300, Prosecution's Notice of Appeal, 19 July 2012.

Prosecutor v. Taylor, SCSL-03-01-A, Decision on Defence Motion for Extension of Time to File Notice of Appeal, 20 June 2012

Prosecutor v. Taylor, SCSL-03-01-T-1285, Sentencing Judgement, 30 May 2012.

Prosecutor v. Taylor, SCSL-03-01-T-1284, Corrigendum to Judgement Filed on 18 May 2012, filed 30 May 2012.

Prosecutor v. Taylor, SCSL-03-01-T-1281, Judgement, 18 May 2012.

Other SCSL Jurisprudence

Prosecutor v. Sesay et al., SCSL-04-15-A-1263, Decision on "Kallon Defence Motion for Extension of Time to File Appeal Brief and Extension of Page Limit", 4 May 2009.

Prosecutor v. Fofana et al., SCSL-04-14-A-804, Decision on Urgent Joint Defence and Prosecution Motion for an Extension of Time for the Filing of Appeal Briefs and Extension of Page Limits for Appeal Briefs, 7 November 2007.

Prosecutor v. Brima et al., SCSL-04-16-A-645, Decision on Urgent Prosecution Motion for an Extension of the Page Limit for its Appeal Brief, 24 August 2007.

ICTY Jurisprudence

Prosecutor v. Perišić, IT-04-81-A, Decision on Momčilo Perišić's Motion for an Extension of Time to File his Appeal Brief, 24 November 2011.
<http://www.icty.org/x/cases/perisic/acdec/en/111124.pdf>

Prosecutor v. Perišić, IT-04-81-A, Decision on Momčilo Perišić's Motion for an Extension of Time to File a Notice of Appeal, 16 September 2011.
<http://www.icty.org/x/cases/perisic/acdec/en/110916.pdf>

Prosecutor v. Popović et al., IT-05-88-A, Decision on Motions for Extension of Time and for Permission to Exceed Word Limitations, 20 October 2010.

<http://www.icty.org/x/cases/popovic/acdec/en/101020.pdf>

Prosecutor v. Sainović, Case No. IT-05-87-A, Decision on the Prosecution's Motion for an Extension of Time to File Respondent's Briefs, 1 October 2009.

<http://www.icty.org/x/cases/milutinovic/acdec/en/091001.pdf>

Prosecutor v. Sainović, Case No. IT-05-87-A, Decision on Joint Request for Extension of Time to File Respondent's Brief, 27 July 2009.

<http://www.icty.org/x/cases/milutinovic/acdec/en/090727.pdf>

Prosecutor v. Sainović et al., IT-05-87-A, Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009.

[The authority is not readily available on the internet and has, therefore, been appended to this Motion]⁴⁰

Prosecutor v. Milutinović et al., IT-05-87-A, Decision on Motions for Extensions of Time to File Notices of Appeal, 23 March 2009.

<http://www.icty.org/x/cases/milutinovic/acdec/en/090323.pdf>

Prosecutor v. Milutinović et al. IT-05-87-T, Judgement, 26 February 2009.

<http://www.icty.org/x/cases/milutinovic/tjug/en/jud090226-e1of4.pdf>

<http://www.icty.org/x/cases/milutinovic/tjug/en/jud090226-e2of4.pdf>

<http://www.icty.org/x/cases/milutinovic/tjug/en/jud090226-e3of4.pdf>

<http://www.icty.org/x/cases/milutinovic/tjug/en/jud090226-e4of4.pdf>

ICTR Jurisprudence

Prosecutor v. Nyiramasuhuko et al. ICTR-98-42-A, Decision on Motions for Extension of Time for the Filing of Appeal Submissions, 22 July 2011.

<http://www.unictr.org/Portals/0/Case%5CEnglish%5CNyira%5Cdecisions%5C110722.pdf>

Prosecutor v. Nyiramasuhuko et al., ICTR-98-42-T, Judgement and Sentence, 24 June 2011.

http://www.unictr.org/Portals/0/Case%5CEnglish%5CNyira%5Cjudgement%5C110624_judgement.doc

⁴⁰ Pursuant to Article 7(D) of the Practice Direction.



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: 29 June 2009
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision: 29 June 2009

PROSECUTOR
v.

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

PUBLIC

**DECISION ON JOINT DEFENCE MOTION SEEKING
EXTENSION OF TIME TO FILE APPEAL BRIEFS**

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 Motion Seeking Extension of Time to File Appeal Briefs" filed on 12 June 2009 ("Motion") by Counsels for Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, and Sreten Lukić (jointly, "Defence") requesting the Appeals Chamber to allow them to file their respective appeal briefs no later than "120 days following the translations of the Judgement into the language of the respective accused";⁴

NOTING the "Prosecution Response to Joint Defence Motion Seeking Extension of Time to File Appeal Briefs" filed by the Office of the Prosecutor ("Prosecution") on 22 June 2009 ("Response"), opposing the Motion;

NOTING that the Defence did not file a reply;

NOTING that, pursuant to Rule 111(A) of the Rules of Procedure and Evidence of the Tribunal ("Rules"), the appellant's briefs are due to be filed within 75 days of filing of their notices of appeal, *i.e.* no later than 10 August 2009;

RECALLING that the Pre-Appeal Judge may, on good cause being shown by motion, enlarge the time limits prescribed under the Rules;⁵

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; *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 (I note that the request for the extension of the page limit is moot and have so informed the parties concerned).

⁴ Motion, p. 6.

⁵ Rules 127(A)(i) and 127(B) of the Rules.

NOTING that the Defence submits that good cause for the sought extension exists because of the complexity and all-encompassing nature of the grounds of appeal presented in the respective notices of appeal which in turn derive from an unprecedentedly voluminous trial record,⁶ as well as the necessity to receive detailed instructions from the represented appellants once the Serbian translation of the Trial Judgement is filed;⁷

NOTING that the Prosecution submits that the requested extension would unreasonably delay the appellate proceedings⁸ and is in any case unjustified given that “defence counsel are intimately acquainted with the material legal and factual issues, and are well able to seek instructions from their clients on the arguments to be advanced”;⁹

NOTING that the Prosecution further refers to the Pre-Appeal Judge’s decision in another case arguing that it was the correct way to balance the “right to a fair trial with the requirement for expeditious pleading”;¹⁰

NOTING that the Prosecution finally submits that the extension of time granted for the filing of notices of appeal was “more than sufficient to meet the complexity arguments raised by the Defence as showing good cause to extend time”,¹¹ and therefore suggests that if good cause were found to have been demonstrated on the basis of the need to receive the Serbian translation of the Trial Judgement, the extension should not surpass 30 days from its filing;¹²

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

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 the case;¹⁴

⁶ Motion, paras 8-12.

⁷ Motion, paras 13-14.

⁸ Response, para. 1.

⁹ Response, para. 2 (footnote omitted).

¹⁰ Response, para. 3, referring to *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-A, Decision on Johan Tarčulovski’s Motion for Extension of Time to File Appeal Brief, 16 October 2008 (“*Tarčulovski Decision*”).

¹¹ Response, para. 4, referring to *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Decision on Motion for Extension of Time to File Notices of Appeal, 23 March 2009 (“*Decision on Extension of Time for Notices of Appeal*”).

¹² Response, para. 5.

¹³ *Tarčulovski Decision*, p. 2, referring to *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-A, Decision on Motion for Extension of Time, 16 February 2006, para. 12; *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-A, Decision on Motions for Extension of Time, 9 December 2004, p. 3.

¹⁴ *Tarčulovski Decision*, p. 2.

CONSIDERING that all Defence Counsel in the instant case are able to work in English, in conformity with Rule 44(A)(ii) of the Rules;

CONSIDERING that the deadlines for filing of notices of appeal have been considerably extended¹⁵ and that all Defence Counsel have, as they should, already started working on the respective appeals since the Trial Judgement was rendered;

RECALLING that, pursuant to Rule 108 of the Rules and the Appeals Chamber's well-established jurisprudence, it may, on good cause being shown by motion, authorize a variation of grounds of appeal and subsequent amendments to the notices of appeal and appellant's briefs;¹⁶

CONSIDERING therefore that the Defence will have the opportunity, if they so wish, to request any variations or amendments after the appellants have read the Serbian translation of the Trial Judgement and discussed it with their counsel, provided that they show good cause under Rule 108 of the Rules;¹⁷

REITERATING that it would be unreasonable to delay the appellate proceedings until the filing of the Serbian translation of the Trial Judgement;¹⁸

FINDING therefore that the Defence has not shown good cause for the extension of time in relation to the filing of the Serbian translation of the Trial Judgement;

RECALLING, however, 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;¹⁹

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

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

¹⁵ Decision on Extension of Time for Notices of Appeal, p. 4.

¹⁶ Decision on Extension of Time for Notices of Appeal, p. 4; *Tarčulovski* Decision, pp. 2-3.

¹⁷ Cf. Decision on Extension of Time for Notices of Appeal, p. 4; *Tarčulovski* Decision, pp. 2-3.

¹⁸ Decision on Extension of Time for Notices of Appeal, p. 4.

¹⁹ Decision on Extension of Time for Notices of Appeal, p. 4, referring to *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-A, Decision on Motions for Extension of Time, Request to Exceed Page Limit, and Motion to File a Consolidated Response to Appeal Briefs, 27 June 2006, para. 7, in which the Pre-Appeal Judge noted the "unusual length" of the Trial Judgement rendered in that case; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Decision on the Defence Motion for Extension of Time, 26 April 2004, para. 5, mentioning the complexity of issues in that appeal as one of the factors in favour of an extension of time; *Prosecutor v. Dario Kordić & Mario Čerkez*, Case No. IT-95-14/2-A, Decision on Motions to Extend Time for Filing Appellant's Briefs, 11 May 2001, para. 19, referring to the length and the complexity of the trial.

FOR THE FOREGOING REASONS,

HEREBY GRANT the Motion **IN PART**;

ORDER the Defence to file their respective appellant's briefs within 120 days of the filing of their notice of appeal, *i.e.* no later than 23 September 2009;

DISMISS the remainder of the Motion.

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

Done this 29th day of June 2009,
At The Hague, The Netherlands.



Liu Daqun, Pre-Appeal Judge

[Seal of the Tribunal]