



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. IF-98-32/1-A  
Date: 19 August 2009  
Original: English

**BEFORE THE PRE-APPEAL JUDGE**

**Before:** Judge Mehmet Güney, Pre-Appeal Judge  
**Registrar:** Mr. John Hocking  
**Decision of:** 19 August 2009

**PROSECUTOR**  
v.  
**MILAN LUKIĆ**  
**SREDOJE LUKIĆ**  
*PUBLIC*

**DECISION ON MILAN LUKIĆ'S URGENT MOTION FOR  
ENLARGEMENT OF TIME TO FILE NOTICE OF APPEAL**

**The Office of the Prosecutor:**

Mr. Paul Rogers

**Counsel for Milan Lukić:**

Mr. Jason Alarid  
Mr. Dragan Ivetić

**Counsel for Sredoje Lukić:**

Mr. Đuro J. Čepić  
Mr. Jens Dieckmann

1. **I, MEHMET GÜNEY**, Pre-Appeal 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) am seized of “Milan Lukić’s Urgent Motion for Enlargement of Time to File Notice of Appeal”, filed publicly on 17 August 2009 (“Motion”) by Counsel for Milan Lukić (“Lukić”).<sup>1</sup> On 18 August 2009, the Prosecution filed publicly its response, opposing the Motion.<sup>2</sup>

## **I. BACKGROUND**

2. On 20 July 2009, Trial Chamber III (“Trial Chamber”) found Lukić responsible, pursuant to Article 7(1) of the Statute of the Tribunal (“Statute”), for murder and cruel treatment as violations of the laws or customs of war under Article 3 of the Statute and for murder, persecutions, extermination and inhumane acts as crimes against humanity under Article 5 of the Statute. The Trial Chamber sentenced him to a term of imprisonment for the remainder of his life.<sup>3</sup>

## **II. APPLICABLE LAW**

3. Pursuant to Rule 108 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), a party seeking to appeal a judgement shall file its notice of appeal no later than 30 days from the date of that judgement, which in this case falls on 19 August 2009. Rule 127(A)(i) and (B) of the Rules provides that the Appeals Chamber may, on good cause being shown by motion, enlarge the time limits prescribed under the Rules.

## **III. DISCUSSION**

### **A. Submissions of the parties**

4. In his Motion, Lukić seeks an extension of time of 15 to 20 days beyond the due date of 19 August 2009 to file his notice of appeal.<sup>4</sup> Firstly, Lukić submits that the volume of the record

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<sup>1</sup> A confidential Annex A and a confidential Annex B were appended to the Motion (“Confidential Annex A” and “Confidential Annex B” respectively).

<sup>2</sup> Prosecution Response to Milan Lukić’s Urgent Motion for Enlargement of Time to File Notice of Appeal, 18 August 2009 (“Response”).

<sup>3</sup> *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1 T, Judgement, 20 July 2009 (“Trial Judgement”), paras 1099-1101.

<sup>4</sup> Motion, paras 9, 13 and 15.

to be reviewed and analysed in light of the Trial Judgement,<sup>5</sup> the length, complexity and seriousness of the case and the Trial Judgement<sup>6</sup> make it unrealistic for his Defence team “to decide on the merits and type of any appeal and to draft the detailed notice of appeal within 30 days of the delivery of the [Trial] Judgement as required under the Rules”.<sup>7</sup>

5. Lukić further submits that he does not speak or read English and that no official translation of the Trial Judgement in a language he understands has been provided yet.<sup>8</sup> Lukić claims that this places an additional burden upon his Defence team, which must explain to him, in Serbian, the Trial Judgement’s findings and conclusions, so that “he can play an important and necessary role in determining the matters to be [subject to appeal]”.<sup>9</sup> He therefore argues that a time limit to file a notice of appeal starting after the availability of the Trial judgement in B/C/S would contribute both to “justice and the appearance of justice”. In the alternative, he seeks an extension of time of 15 to 20 days.<sup>10</sup>

6. Finally, Lukić claims that various factors have prevented his Counsel from enjoying the full 30 day time limit to prepare the notice of appeal.<sup>11</sup> In particular, Lukić argues that his Lead Counsel, Mr. Jason Alarid, has been facing a considerable volume of work in his domestic practice, partly resulting from the time he spent engaged in the trial proceedings in The Hague, and which prevented him to travel to The Hague to work with his Co-Counsel, Mr. Dragan Ivetić, in order to prepare the notice of appeal.<sup>12</sup> Lukić further argues that Co-Counsel was under medical orders to remain near the hospital in Chicago, USA, for several days subsequently to an operation he had undergone on 23 July 2009, which prevented him to substantially work on the notice of appeal from 20 July 2009 until his return to The Hague on 4 August 2009.<sup>13</sup> Finally, Lukić alleges that the problems of Counsel were compounded by staffing and budgetary issues.<sup>14</sup>

<sup>5</sup> Motion, paras 3-4 (mentioning that: (i) the Trial Judgement is comprised of 372 pages and the transcripts of the proceedings consist of 7268 pages; (ii) during trial, the Prosecution called 50 witnesses and the Defence 30 witnesses; and (iii) 620 exhibits were introduced at trial and must be analysed and considered in order to properly serve Lukić’s rights on appeal), 9 and 14.

<sup>6</sup> Motion, paras 2 (recalling that Lukić was found guilty on all counts of the Indictment and sentenced to the maximum penalty and arguing that Lukić was accused of 21 counts, which is far more counts of direct perpetration against an individual than faced by most other accused at the Tribunal), 9 and 14.

<sup>7</sup> Motion, para. 9.

<sup>8</sup> Motion, para. 5.

<sup>9</sup> Motion, para. 8.

<sup>10</sup> Motion, para. 5. Lukić limits his relief sought to an increase of the time limit to file the notice of appeal 15-20 days beyond the due date of 19 August 2009 (*ibid.*, para. 15).

<sup>11</sup> Motion, para. 14.

<sup>12</sup> Motion, paras 10-11. See also “Confidential Annex A” attached to the Motion.

<sup>13</sup> Motion, para. 12. See also “Confidential Annex B” attached to the Motion.

<sup>14</sup> Motion, para. 13.

7. The Prosecution responds that Lukić fails to show “good cause” pursuant to Rule 127(A)(i) and (B) of the Rules for a variation of the applicable time limit pertaining to the filing of his notice of appeal.<sup>15</sup>

### B. Analysis

8. When assessing a motion for extension of time for the filing of a notice of appeal, pursuant to Rule 127(A)(i) of the Rules, “good cause” must be shown by motion warranting such extension. The expeditiousness of proceedings forms part of the fundamental principle of a fair trial. Furthermore, the filing of a notice of appeal marks the very beginning of the appeal proceedings in a case and, since the time limits for the filing of the subsequent briefs are calculated as of the date on which the notice of appeal is filed, any delay at such an early stage will affect subsequent filings.<sup>16</sup>

9. Lukić does not substantiate his arguments that either (i) the length and seriousness of the Trial Judgement and the complexity of the litigated issues in this case or (ii) the size of the record to be reviewed in light of the Trial Judgement warrant an extension of time because the normal time limit would not suffice to prepare his notice of appeal.<sup>17</sup> Accordingly, he does not demonstrate that the Trial Judgement is unusually long or complex.

10. Where an accused seeks an extension of time for the filing of a notice of appeal based on the submission that a translation of the judgement into the language of the accused is not yet available, the Appeals Chamber has rejected such an application.<sup>18</sup> Both Counsel for Lukić can work in English, the language in which the Trial Judgement was pronounced. Furthermore, the

<sup>15</sup> Response, paras 1 and 8.

<sup>16</sup> *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on “Urgent Motion for Extension of Time for Filing Notice of Appeal Pending Translation of the Judgement into the Language of the Convicted Person”, 1 February 2007, p. 3.

<sup>17</sup> *Prosecutor v. Bošković and Tarčulovski*, Case No. IT-04-82-A, Decision on Johan Tarčulovski’s Motion for Extension of Time to File the Notice of Appeal, 5 August 2008 (“*Bošković* First Decision”), p. 2.

<sup>18</sup> *Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Decision on Callixte Kalimanzira’s Motion for an Extension of Time for the Filing of Notice of Appeal, 20 July 2009 (“*Kalimanzira* Decision”); *Prosecutor v. Milutinović et al.*, Case No. IT-05-87-A, Decision on Motions for Extension of Time to File Notices of Appeal, 23 March 2009 (“*Milutinović et al.* Decision of 23 March 2009”); *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on Request for Extension of Time to File Notice of Appeal, 26 October 2006; *Prosecutor v. Blagojević and Jokić*, Case No. IT-02-60-A, Decision on Defence Motion for Extension of Time in Which to File the Defence Notice of Appeal, 15 February 2005; *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Decision on Motion for Extension of Time, 4 October 2004; *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-08-34-A, Decision on Motions for Extension of Time, 25 April 2003. For an exception, see *Prosecutor v. Milan Babić*, Case No. IT-03-72-A, Decision on Motion to Extend Time for Filing of Notice of Appeal, 28 July 2004. In this sentencing case, the appeal was directed against a judgement of less than 50 pages of actual text requiring translation. The translation took less than two months and any delay in those proceedings was thus negligible (the *Babić* Sentencing Judgement was delivered on 29 June 2004 and the B/C/S translation was filed on 18 August 2004).

determination of potential grounds of appeal falls primarily within the purview of Defence Counsel.<sup>19</sup> Both Counsel are able to discuss the content of the Trial Judgement with Lukić as well as any possible grounds of appeal. Furthermore, pursuant to Rule 108 of the Rules, the Appeals Chamber may, after the filing of the notice of appeal by a party and on good cause being shown by motion, authorize a variation of grounds of appeal. Thus, Lukić will have the opportunity, if he so wishes, to request variation of his grounds of appeal after having read the B/C/S translation of the Trial Judgement, provided that he shows good cause under Rule 108 of the Rules.<sup>20</sup> Therefore, it would be unreasonable to delay the appellate proceedings until the filing of the B/C/S translation of the Trial Judgement.

11. Regarding Lead Counsel's other professional commitments, the Appeals Chamber has previously held that "counsel in a case before the Tribunal is under an obligation to give absolute priority to his commitments to the Tribunal and to observe the time limits in the Rules"<sup>21</sup> or in an order of a Chamber. The Appeals Chamber has also found that "Counsel assigned to represent accused at this Tribunal are expected to organise their work schedules in order to meet their obligation to respect the time limits for filing on appeals".<sup>22</sup> Furthermore, "other professional commitments of counsel should not have any bearing on the responsibilities of counsel towards their client and the International Tribunal".<sup>23</sup> Accordingly, Counsel's other professional commitments do not constitute "good cause" pursuant to Rule 127 of the Rules.

12. Lukić has not shown that Co-Counsel was unable to work during the time period he had to remain in the proximity of the hospital in Chicago. The fact that Co-Counsel was ill for part of the time needed for the preparation of the notice of appeal is therefore not a sufficient circumstance to establish a showing of good cause warranting an extension of time for the filing

<sup>19</sup> *Kalimanzira* Decision, para. 6; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Decision on Motion for Extension of Time, 15 August 2003.

<sup>20</sup> *Milutinović et al.* Decision of 23 March 2009, p. 3.

<sup>21</sup> *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on Momčilo Krajišnik's Motion for Permission for Nathan Z. Dershowitz to Act as Counsel with Alan M. Dershowitz and for Extension of Time, 5 September 2008, para. 10. See also *Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Clarification of Time Limits and on Appellant's Barayagwiza's Extremely Urgent Motion for Extension of Time to File his Notice of Appeal and his Appellant's Brief, 6 September 2005, p. 5; *Emmanuel Ndingabahizi v. The Prosecutor*, Case No. ICTR-01-71-A, Decision on "Requête urgente aux fins de prorogation de délai pour le dépôt du mémoire en appel", 1 April 2005, p. 3.

<sup>22</sup> *Prosecutor v. Rasim Delić*, Case No. IT-04-83-AR72, Decision on Interlocutory Appeal Challenging the Jurisdiction of the Tribunal, 8 December 2005, para. 3.

<sup>23</sup> *Prosecutor v. Momir Nikolić*, IT-02-60/1-A, Decision on Second Defence Motion to Enlarge Time for Filing of Replies, 1 April 2005, p. 4. See also *Prosecutor v. Bošković and Tarčulovski*, Case No. IT-04-82-A, Decision on Tarčulovski's Urgent Motion for Extension of Time to File his Reply Brief, 16 April 2009 ("*Bošković* Second Decision"), p. 2.

of a notice of appeal.<sup>24</sup> In any case, pursuant to Article 16(B) of the Directive on the Assignment of Defence Counsel, Lead Counsel shall be responsible for all aspects of the defence case. In the present case, Lead Counsel is familiar with the trial record. Finally, Lukić does not show that staffing and budgetary issues were affected by the judicial summer recess and the “midst of previously planned summer holidays”.<sup>25</sup> Previously planned holidays do not constitute good cause for an exception to the time limits provided by the Rules.<sup>26</sup>

13. In light of the above, Lukić has not shown good cause for the extension of time sought pursuant to Rule 127(A)(i) and (B) of the Rules.

#### IV. DISPOSITION

14. For the foregoing reasons, I **DISMISS** the Motion.

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

Dated this 19<sup>th</sup> day of August 2009  
At The Hague,  
The Netherlands



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Judge Mehmet Güney  
Pre-Appeal Judge

[Seal of the Tribunal]

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<sup>24</sup> Cf. *Bošković* First Decision, p. 2 (“[f]inding that the fact that the defence of Applicant is currently only composed of lead counsel as opposed to lead and co-counsel is not a sufficient circumstance to establish a showing of good cause warranting the grant of an extension of time for the filing of a notice of appeal”).

<sup>25</sup> Motion, para. 13.

<sup>26</sup> *Bošković* Second Decision, p. 2; *Prosecutor v. Međaković et al.*, Case No. IT-02-65-AR11bis.1, Decision on Joint Defense Motion for Leave to File Supplemented Appeals Brief, 16 November 2005, p. 4.