



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-05-88/2-A
Date: 17 May 2013
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision of: 17 May 2013

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON MOTION FOR SETTING A TIME LIMIT FOR
FILING AN APPELLANT'S BRIEF AND FOR AN EXTENSION
OF WORD LIMIT**

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Paul Rogers

The Accused:

Mr. Zdravko Tolimir

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

BEING SEISED OF the “Motion for Setting a Time Limit for Filing an Appellant’s Brief and for an Extension of Word Limits”, filed by Zdravko Tolimir (“Tolimir”) on 2 May 2013 (“Motion”), by which Tolimir seeks (i) leave to exceed the word limit for his appeal brief by 112,000 words, and (ii) an extension of time for the filing of his appeal brief no later than 135 days from the day of the filing of the translation of the Judgement;²

NOTING the “Prosecution’s Response to Tolimir’s Motion for Setting a Time Limit for Filing Appellant’s Brief and for an Extension of Word Limits” filed by the Office of the Prosecutor of the Tribunal (“Prosecution”) on 10 May 2013 (“Response”), in which the Prosecution opposes the Motion,³ but requests that if the Motion is granted, the Appeals Chamber (i) grant the Prosecution an equivalent leave to exceed the word limit for its response brief; (ii) limit the extension of time for Tolimir to file his appeal brief to no later than 14 June 2013;⁴ (iii) and grant an extension of time for the filing of the Prosecution response brief equivalent to that granted to Tolimir;⁵

NOTING the “Reply to the Prosecution’s Response to Tolimir’s Motion for Setting a Time Limit for Filing Appellant’s Brief and for an Extension of Word Limits” filed by Tolimir on 14 May 2013 (“Reply”), in which Tolimir, *inter alia*, requests that certain new circumstances be taken into consideration;⁶

NOTING Tolimir’s submission that good cause and exceptional circumstances exist for granting the Motion in light of, *inter alia*, (i) the size and complexity of the case,⁷ (ii) the length of the Judgement, and the fact that, as a single accused, the entire judgement relates exclusively to him;⁸ (iii) the large number of legal and factual findings identified, which he is required to address “in a

¹ Order Designating a Pre-Appeal Judge, 27 December 2012

² Motion, para 28. *See also Prosecutor v Zdravko Tolimir*, Case No IT-05-88/2-T, Judgement, 12 December 2012 (public with confidential Annex C) (“Judgement”)

³ Response, paras 1-10

⁴ Response, paras 9-12

⁵ Response, paras 11-12

⁶ Reply, paras 11-13 It is submitted in particular that the new circumstances include an unpredictable amount of time that will have to be spent on legal work in relation to a decision on a motion to subpoena Tolimir for testimony in the case against Radovan Karadžić (Reply, para 12, referring to *Prosecutor v Radovan Karadžić*, Case No IT-95-5/18-T, Decision on Accused’s Motion to Subpoena Zdravko Tolimir, 9 May 2013) and the unexpected inability of Tolimir’s legal adviser to attend planned meetings with him and to temporarily work on the case (Reply, para 13)

⁷ Motion, para 8 *See also* Motion, paras 13-16, 18, 22-23, Reply, paras 8, 17-20, 22

⁸ Motion, paras 11-12.

clear and unambiguous manner”;⁹ (iv) the unavailability of the Judgement in a language that he understands as of the date of the filing of the Motion, the fact that he is self represented and the presence of only one legal advisor to assist him in the understanding of the Judgement;¹⁰ (v) the need to submit his appeal brief simultaneously in English and B/C/S;¹¹ (vi) and the continuous obligation on his part to review “new materials”, including “disclosure from other cases”;¹²

NOTING the Prosecution’s submission that Tolimir has failed to demonstrate that exceptional circumstances and good cause exist because: (i) neither the length of the Judgement, number of grounds of appeal, or size of the evidence at trial constitute exceptional circumstances;¹³ (ii) the translation of the Judgement is expected to be filed at the end of May 2013;¹⁴ (iii) Tolimir was able to file a sophisticated notice of appeal without the B/C/S translation of the Judgement;¹⁵ (iv) and Tolimir will have an opportunity, pursuant to Rule 108 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) to seek an amendment of his notice of appeal or appeal brief;¹⁶

NOTING that, pursuant to Section (C)(1)(a) of the Practice Direction on the Length of Briefs and Motions,¹⁷ an appellant’s brief on appeal from a final judgement of a Trial Chamber shall not exceed 30,000 words;

NOTING that, pursuant to Section C(7) of the Practice Directions, a party must seek authorization in advance from the Chamber to exceed the word limits in the Practice Direction and must provide an explanation of the exceptional circumstances that necessitate the oversized filing;

RECALLING that unlike a trial brief, which must address all issues in a case, an appellant’s brief deals only with the narrow range of matters that fall within Article 25 of the Statute of the Tribunal (“Statute”);¹⁸

RECALLING that the quality and effectiveness of an appellant’s brief does not depend on the length, but on the clarity and cogency of the arguments presented and that, therefore, excessively long briefs do not necessarily facilitate the efficient administration of justice;¹⁹

⁹ Motion, paras 14-17

¹⁰ Motion, paras 21-24 *See also* Reply, paras 4-7

¹¹ Motion, paras 22, 25

¹² Motion, para 22.

¹³ Response, paras 1, 3-5

¹⁴ Response, para. 2

¹⁵ Response, para 2.

¹⁶ Response, paras 2, 7-8.

¹⁷ IT/184 Rev 2, 16 September 2005 (“Practice Direction”)

¹⁸ *Prosecutor v Nikola Šainović et al.*, Case No IT-05-87-A, Decision on Sreten Lukić’s Motion to Reconsider Decision on Defence Motions for Extension of Word Limit, 14 September 2009 (“Šainović Appeal Decision”), p 2

CONSIDERING that the length of the trial judgement, the number of exhibits admitted at trial,²⁰ and the number of grounds and sub-grounds of appeal²¹ do not *per se* provide sufficient reason to enlarge the word limits prescribed by the Practice Direction;

CONSIDERING, however, that it is in the interests of justice to ensure that the parties have sufficient space to prepare meaningful appeal briefs in full conformity with the relevant provisions;

CONSIDERING the length and the complexity of the Judgement,²²

FINDING therefore that exceptional circumstances exist which justify increasing the word limit for Tolimir's appeal brief, not exceeding 10,000 words;

CONSIDERING that the Practice Direction permits the respondent to file a brief of the same length as the appellant's brief;²³

FINDING that it is in the interests of justice to grant the Prosecution an equivalent increase in the word limit for its response brief, not exceeding 10,000 words;

NOTING that, pursuant to Rule 111 of the Rules, an appellant's brief shall be filed within 75 days of the filing of the notice of appeal:

NOTING that, pursuant to Rules 127(A)(i) and 127(B) of the Rules, the Pre-Appeal Judge may, on good cause being shown, enlarge the time limits prescribed under the Rules;

RECALLING further that a Chamber must ensure that the proceedings before it are fair and expeditious pursuant to Article 20(1) of the Statute;

RECALLING that, pursuant to Rule 108 of the Rules and the Appeals Chamber's jurisprudence,²⁴ the Appeals Chamber may, on good cause being shown, authorize a variation of the grounds of appeal and subsequent amendments to the notice of appeal and the appellant's brief;

¹⁹ *Šamović* Appeal Decision, p 3. See also *Prosecutor v Momčilo Perišić*, Case No IT-04-81-A. Decision on Momčilo Perišić's Motion for Leave to Exceed the Word Limit for the Appeal Brief, 30 January 2012 ("*Perišić* Appeal Decision"), p 3. *Prosecutor v Naser Orić*, Case No IT-03-68-A. Decision on Defence Motion for Extension of Word Limit for Defence Appellant's Brief, 6 October 2006, p 3.

²⁰ *Prosecutor v Enver Hadžihasanović and Amir Kubura*, Case No IT-01-47-A. Decision on Defence Motion on Behalf of Enver Hadžihasanović Seeking Leave to Exceed the Word Limit for the Appeal Brief, 22 January 2007, p 3.

²¹ *Prosecutor v Vujadin Popović et al.*, Case No IT-05-88-A. Decision on Motion for Extension of Time and for Permission to Exceed Word Limitations, 20 October 2010 ("*Popović* Appeal Decision"), p 5. *Prosecutor v Nikola Šamović et al.*, Case No IT-05-87-A. Decision on Nikola Šamović's and Dragoljub Ojđanić's Joint Motion for Extension of Word Limit, 11 September 2009, p 3.

²² See generally: Judgement

²³ Practice Direction, para (C)(1)(b) See also *Perišić* Appeal Decision, p 3

²⁴ *Popović* Appeal Decision, p 4.

CONSIDERING therefore that Tolimir will have the opportunity pursuant to Rule 108 of the Rules, if he so wishes, to request any variation or amendment to his notice of appeal or his appeal brief after receiving the B/C/S translation of the Judgement:

FINDING that the length and complexity of the Judgement constitute good cause for granting both Tolimir and the Prosecution an extension of four weeks beyond the time allotted by Rules 111 and 112 of the Rules in which to file the appeal briefs;

FINDING that the new circumstances advanced by Tolimir in his Reply²⁵ do not necessitate an extension beyond the four weeks granted;

PURSUANT to Rules 111, 112, 113, 127 of the Rules and Sections (C)(1) and (C)(7) of the Practice Direction;

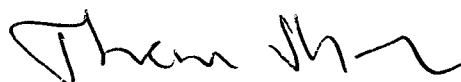
HEREBY GRANT the Motion, in part, and

ALLOW:

- (1) Tolimir to file an appeal brief totalling no more than 40,000 words, no later than 21 June 2013;
- (2) The Prosecution to file a response brief totalling no more than 40,000 words no later than 26 August 2013;
- (3) Tolimir to file a reply brief totalling no more than 12,000 words, if any, no later than 13 September 2013.

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

Done this seventeenth day of May 2013.
At The Hague,
The Netherlands.



Judge Theodor Meron
Pre-Appeal Judge

[Seal of the Tribunal]

²⁵ See *supra*, footnote 6