

UNITED
NATIONS

IT-98-29-A
A 2765- A 2761
21 February 2005

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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: IT-98-29-A
Date: 21 February 2005
Original: English

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Florence Ndepele Mwachande Mumba, Pre-Appeal Judge
Registrar: Mr. Hans Holthuis
Decision of: 21 February 2005

PROSECUTOR

v.

Stanislav GALIĆ

**DECISION ON PROSECUTION'S REQUESTS FOR EXTENSIONS OF TIME AND
OF PAGE LIMIT FOR THE RESPONSE**

Counsel for the Prosecutor:

Mr. Norman Farrell

Counsel for the Appellant:

Ms. Mara Pilipović
Mr. Stéphane Pilleta-Zanin

I, Florence Ndepele Mwachande Mumba, 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 (“Tribunal”) and Pre-Appeal Judge in this case;¹

BEING SEISED OF a “Request for Extension of Time to Respond to Stanislav Galić’s Re-filed Motion for Additional Evidence and Request For Extension of Page-Limit for the Prosecution Response” (“Request”), filed on 16 February 2005, in which the Office of the Prosecutor (“Prosecution”) seeks an extension of time of seven days to file its response to the “Defence Motion to Present Before the Appeals Chamber Additional Evidence”, (“Re-filed Motion”) filed confidentially on 11 February 2005 by Stanislav Galić (“Appellant”), and also an increase in the page limit by 25 pages for its response to the Re-filed Motion;

NOTING the “Defence Response to Prosecution’s Motion Dated 16 February 2005” (“Response”), filed on 21 February 2005, in which the Appellant opposes the Request;

NOTING that paragraph 11 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal, IT/155/Rev.1 (“Practice Direction IT/155/Rev.1”)² provides that where a motion has been filed by a party wishing to move the Appeals Chamber for a specific ruling or relief, “[t]he opposite party shall file a response within ten days of the filing of the motion”;

NOTING that the Prosecution seeks an extension of time for the following reasons:

- a. the Re-filed Motion contains 90 pages, so that its volume justifies the extension of time;³
- b. reviewing each of the new translations proffered by the Appellant, comparing them to the Prosecution’s previous understanding of the documents and identifying any new arguments made by the Appellant requires additional time;⁴

¹ Order Assigning Judges to a Case before the Appeals Chamber and Designating a Pre-Appeal Judge, 18 December 2003.

² Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the International Tribunal, IT/155/Rev.1, 7 March 2002.

³ Request, para. 9.

⁴ Request, paras 10-11.

- c. the ten-day time limit, which effectively started to run from late on Friday 11 February 2005, would run until Monday 21 February 2005, giving the Prosecution only 6 working days to respond;⁵
- d. the Prosecution has a substantial workload and did not originally factor an additional response in its planning of resources because it did not expect that it would need to respond to the Appellant's original motion for additional evidence a second time;⁶

NOTING that the Appellant opposes the Request for, *inter alia*, the following reasons:

- a. the Re-filed motion contains 10 pages with the annexes containing both the originals and official translated documents, which amounts to far fewer pages that need to be reviewed by the Prosecution than it argues;⁷
- b. the Appellant retained all its arguments and substance from the Original Motion in the Re-filed Motion, and only re-formulated some of its arguments, which fact the Prosecution was able to establish by reading the Re-filed Motion in a maximum of two hours;⁸
- c. the Prosecution already filed a detailed response to the Original Motion, so there is no need for the Prosecution to respond again in 17 days and in 35 pages;⁹
- d. the Prosecution's argument concerning workload is completely irrelevant since the Prosecution has an organised workload and a number of employees to enable it to abide by the time limit;¹⁰
- e. although a one-week extension would not appear to cause any prejudice, the Prosecution cannot request an extension of time in situations where such requests are unnecessary and unfounded;¹¹

CONSIDERING that the Prosecution's argument regarding its workload does not in itself constitute good cause, since this workload is common to any prosecutor's office even at the

⁵ Request, para.12.

⁶ Request, paras 13-14; Defence Motion to Present before the Appeals Chamber Additional Evidence ("Original Motion"), 18 June 2004 (filed confidentially).

⁷ Response, para. 6.

⁸ Response, paras 9 and 10.

⁹ Response, para. 11.

¹⁰ Response, para. 12.

¹¹ Response, para. 13.

national jurisdiction level, but that the circumstances of this case are such that they warrant an extension of time in the interest of clear and precise pleadings and, in addition, this extension would not result in prejudice to the Appellant;

NOTING that paragraph 5 of the Practice Direction on the Lengths of Briefs and Motions, IT/184/Rev.1 (“Practice Direction IT/184/Rev.1”)¹² provides that responses before a Chamber will not exceed 10 pages or 3000 words, whichever is greater;

NOTING that the Prosecution seeks an increase in the page limit on the grounds that in its response to the Original Motion, it had requested and had been granted 30 pages in which to respond, and that it may have to re-submit those arguments;¹³

NOTING the “Decision on Prosecution’s Request for an Extension of Pages”, filed on 21 July 2004, in which the Prosecution was allowed an extension of page limits for its response to the Original Motion upon filing the former;

CONSIDERING that Paragraph 7 of Practice Direction IT/184/Rev.1 provides that a party must seek authorisation in advance from the Chamber to exceed the page limit and must provide an explanation of the exceptional circumstances that necessitate the oversized filing;

FINDING that the volume of the Re-filed Motion constitutes exceptional circumstances that justify an increase in the page limit;

NOTING the Appellant’s request for a proportional extension of time and page limits within which to file his reply in the event that the Prosecution’s Request is granted;¹⁴

FINDING that no explanation has been provided which would justify an extension of time or page limits to the Appellant for the filing of his reply, and that a request by a party for extension of time does not automatically amount to a showing of good cause by the opposing party;

¹² Practice Direction on the Lengths of Briefs and Motions, IT/184/Rev.1, 5 March 2002.

¹³ Request, para. 26.

CONSIDERING that, as a result of the “Order on Appellant’s Confidential Motion to Present Additional Evidence Before the Appeals Chamber Under Rule 115”, filed on 2 February 2005, the “Defence Motion to Present before the Appeals Chamber Additional Evidence”, filed confidentially on 18 June 2004, and all subsequent pleadings thereto, by both parties are no longer under consideration;

HEREBY GRANT the Request and,

ORDER the extension of the page limit sought to 35 pages or 10,500 words, whichever is greater;

FURTHER ORDER the Prosecution to file its response to the Re-filed Motion, if any, no later than 28 February 2005;

AND DENY the Appellant’s request for extension of time and page limits.

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

Dated this 21st day of February 2005,

At The Hague,
The Netherlands.



Judge Florence Ndepele Mwachande Mumba
Pre-Appeal Judge

[Seal of the Tribunal]

¹⁴ Response, para. 16.