

**THE MECHANISM FOR
INTERNATIONAL CRIMINAL TRIBUNALS**

CASE No. MICT-13-55-A

THE APPEALS CHAMBER

**Before: Judge Theodor Meron
Judge William Hussein Sekule
Judge Vagn Prüsse Joensen
Judge José Ricardo de Prada Solaesa
Judge Graciela Susana Gatti Santana**

Registrar: Mr. John Hocking

Date: 29 July 2016

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

Public

**JOINT MOTION FOR EXTENSION
OF TIME TO FILE APPEAL AND RESPONSE BRIEFS**

The Office of the Prosecutor:

Ms. Laurel Baig
Ms. Barbara Goy
Ms. Katrina Gustafson

Counsel for Radovan Karadzic:

Mr. Peter Robinson

I. Introduction

1. The Prosecution and Defence for Radovan Karadžić (“the Parties”) jointly move for extensions of time to file their appeal and response briefs in this case. The breadth and complexity of the issues, the length of the Judgement and scope of the record on which it is based, and other relevant considerations provide good cause for granting such an extension.¹ The Parties request 135 days for the filing of each brief,² such that the appeal briefs be filed on 5 December 2016³ and the response briefs on 19 April 2017. To the extent that comparable cases exist, similar extensions have been granted.

II. Good cause exists to grant the requested extensions

2. The requested extensions are warranted by this case’s unprecedented breadth and complexity. This Chamber has recognized these attributes and already found them to constitute good cause for two filing extensions in this case for the Parties’ notices of appeal.⁴ The Trial Chamber itself noted the “prodigious amount of evidence” in this case, which includes the evidence of 586 witnesses; 11,469 exhibits, totaling 191,040 pages; 48,121 transcript pages of proceedings; and 94,917 pages of filings.⁵ The President similarly observed that the 2,538-page Judgement (excluding dissenting opinions and annexes) is the “longest judgement ever issued by the ICTY or any other international criminal tribunal”.⁶ The Parties will have to delve into this information in even greater depth as they draft appeal and response briefs. Thus, significant extensions for these filings are also warranted.

¹ Rules of Procedure and Evidence, 17 August 2012 (“Rules”), Rule 154 (“a Chamber may, on good cause being shown by motion [...] enlarge or reduce any time prescribed by or under these Rules”).

² The Parties’ Notices of Appeal were filed on 22 July 2016. These proposals constitute extensions of 60 days for the appeal briefs and 95 days for the response briefs. Any extension of time for the reply briefs would be sought once the contents of the response briefs are known.

³ 135 days from the filing of the Notices of Appeal falls on a Sunday. The following Monday is 5 December 2016.

⁴ *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on Motion for Extension of Time to File Notice of Appeal, 21 April 2016 (“First Notice of Appeal Extension Decision”), pp.1-2; Decision on a Motion for a Further Extension of Time to File a Notice of Appeal, 15 June 2016 (“Second Notice of Appeal Extension Decision”), p.3. All references herein, unless otherwise specified, are to *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A.

⁵ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Trial Judgement, 24 March 2016 (“Judgement”), para.6.

⁶ Decision on Request for Review of Registrar’s Remuneration Decision for Appeal Phase I, 15 June 2016, para.22.

3. The legal issues on appeal in this case are also complex and wide-ranging. The Defence Notice of Appeal consists of 50 grounds. The Parties appeals raise legal issues such as a challenge to the propriety of taking judicial notice of adjudicated facts;⁷ the alleged denial of self-representation in connection with Karadžić’s trial testimony;⁸ the Trial Chamber’s treatment of disclosure violations;⁹ the admissibility of intercepted telephone conversations;¹⁰ the application of war correspondent privilege and the waiver thereof;¹¹ the applicability of parliamentary privilege under international law;¹² the *mens rea* requirement for unlawful attacks;¹³ the *mens rea* requirement for genocide;¹⁴ the required elements for joint criminal enterprise (“JCE”) liability;¹⁵ and issues relating to the elements of the offence of hostage taking.¹⁶ Addressing these issues will require both Parties—primarily, the Defence in its appeal brief and the Prosecution in its response—to conduct research over a broad spectrum of procedural and substantive law, necessitating resort to varied sources such as international instruments, regional courts’ and domestic jurisdictions’ decisions, and scholarly articles and books.

4. Factual issues in this case, which comprise portions of both Parties’ appeals,¹⁷ are similarly complex. They involve the responsibility of the Accused under four separate alleged JCEs. The Chamber’s findings on these issues alone encompass well over a thousand paragraphs of the Judgement.¹⁸

5. Although parties are generally provided less time for their response briefing,¹⁹ the Parties agree that an equal amount of time should be granted for the preparation of the

⁷ Radovan Karadžić’s Notice of Appeal, 22 July 2016 (“Defence Notice of Appeal”), Grounds of Appeal, para.7.

⁸ Defence Notice of Appeal, Grounds of Appeal, paras.1-2.

⁹ Defence Notice of Appeal, Grounds of Appeal, para.6.

¹⁰ Defence Notice of Appeal, Grounds of Appeal, para.22.

¹¹ Defence Notice of Appeal, Grounds of Appeal, para.23.

¹² Defence Notice of Appeal, Grounds of Appeal, para.24.

¹³ Defence Notice of Appeal, Grounds of Appeal, para.32.

¹⁴ Prosecution’s Notice of Appeal, 22 July 2016 (“Prosecution Notice of Appeal”), paras.16-22. *See also* Defence Notice of Appeal, Grounds of Appeal, para.41.

¹⁵ Defence Notice of Appeal, Grounds of Appeal, para.29; Prosecution Notice of Appeal, para.6.

¹⁶ Defence Notice of Appeal, Grounds of Appeal, paras.44-46.

¹⁷ Prosecution Notice of Appeal, paras.3, 7, 9, 14, 16, 22; Defence Notice of Appeal, Grounds of Appeal, paras.10-14, 19-22, 25-29, 31, 33-43, 45.

¹⁸ Judgement, paras.2627-3525 (overarching JCE), 4636-4940 (Sarajevo JCE), 5674-5851 (Srebrenica JCE), 5952-5994 (hostages JCE).

¹⁹ *See e.g.* Rules 138(A), 139(A) (providing less time for the filing of response briefs than for appeal briefs).

appeal and response briefs in this case. In addition to the complexity and the scope of the appeals to which the Parties must respond, the Parties note the effect of the intervening winter recess, a recognized factor to consider in granting filing extensions.²⁰ Moreover, the *Stanišić and Simatović* re-trial proceedings are scheduled to commence during the response briefing,²¹ and the Prosecution anticipates that the *Prlić et al.* appeal hearing will also occur during this same period.²² Although the Prosecution makes every effort to plan and allocate its resources effectively, the size and complexity of the *Karadžić* and *Prlić et al.* proceedings—the two largest in the Tribunal’s history²³—complicate the Prosecution’s ability to simultaneously allocate sufficient resources to both these appeal proceedings together with its trial work.²⁴ Granting the requested extension would greatly facilitate this effort.

III. Similar extensions have been granted in complex cases

6. In the closest comparable cases before the *ad hoc* tribunals, similar extensions have been granted. In the *Prlić et al.* appeal, the case most comparable in size, and the *Popović et al.* appeal, lengthy extensions were granted for the appeal briefs.²⁵ In neither of these cases did a single appellant brief 50 grounds of appeal. Likewise, lengthy extensions for response briefs were granted in *Prlić et al.*,²⁶ *Šainović et al.*,²⁷ *Kupreškić et*

²⁰ *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 (holiday recess presents a planning difficulty that is “not attributable to the Prosecution”).

²¹ *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96-PT, Order Establishing a Pretrial Work Plan, 3 June 2016, Annex (pre-trial conference scheduled for February 2017).

²² As of the date of filing, the *Prlić et al.* appeal hearing has not yet been scheduled, but it is currently anticipated to take place in early 2017.

²³ The *Prlić et al.* case involved 206 witnesses, approximately 10,000 exhibits and 52,975 transcript pages and resulted in a judgement of 2,629 pages, including annexes and dissenting and separate opinions. *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Judgement Summary, 29 May 2013, p.1; T.52975 (Closing Arguments). See also above para.2 (comparative figures for this case).

²⁴ *Prosecution v. Radoslav Brdanin*, Case No. IT-99-36, Decision on Motion for Extension of Time for the Filing of Prosecution Response Brief, 20 July 2005 (although overlapping cases and recesses alone are not good cause for granting extensions, taken together with complex cases and previously modified case schedules, good cause may be established).

²⁵ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-A, Decision on Appellants’ Requests for Extension of Time and Word Limits, 9 October 2014 (“*Prlić* Extension Decision”) (appeal brief deadline extended to 160 days from the filing of the last notice of appeal (85-day extension)); *Prosecutor v. 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 (“*Popović* Extension Decision”) (appeal brief deadline extended to 135 days from the filing of the last notice of appeal (60-day extension)).

²⁶ *Prlić* Extension Decision (response brief deadline extended to 115 days from the filing of the appeal briefs (75-day extension)). See also above fn.23 (concerning size of case).

al.,²⁸ *Popović et al.*²⁹ and the *Butare* case.³⁰ Each of these examples are multi-Accused cases because no single-Accused case matches this one in size and complexity. Although the Parties recognize that the requested extensions would result in a slightly longer overall briefing period than in previous large cases, this would be commensurate with the unprecedented length and scope of the Judgement and the number and breadth of issues on appeal.

IV. A synchronized briefing schedule should be maintained

7. The Parties understand that the time and resources that each will need to devote to their two major briefs will likely differ. In light of the narrower scope of the Prosecution appeal relative to the Defence appeal,³¹ the Prosecution appeal brief and Defence response brief are anticipated to consume relatively fewer resources. However, for the reasons already accepted by this Chamber,³² the Parties should continue with a synchronized briefing schedule.

V. Conclusion

8. The Parties recognize the significance of this high profile case. It is in the interests of justice for the Parties to have sufficient time to prepare meaningful briefs that are of assistance to this Chamber³³ while respecting the need for the expeditious conduct

²⁷ *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Motion for an Extension of Time to File Respondent's Briefs, 1 October 2009 (response brief deadline extended to 115 days from filing of appeal briefs (75-day extension)). The *Šainović et al.* Trial Judgement comprised 1,743 pages. The JCE in that case roughly corresponds to one of the four *Karadžić* JCEs.

²⁸ *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16, Order on Motions for Extension of Time, 1 August 2000 (response brief deadline extended to 93 days from the filing of the appeal briefs (53-day extension)).

²⁹ *Popović* Extension Decision (response brief deadline extended to 73 days from the filing of the appeal briefs (33-day extension)). The *Popović et al.* Trial Judgement comprised 910 pages. The JCE in that case corresponds to one of the four *Karadžić* JCEs.

³⁰ *Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Decision on Prosecution's Motion for Extension of Time to File its Response Brief, 22 April 2013, p.3; Decision on Prosecution's Motion for Order *Nunc Pro Tunc* and on Ntahobali's Motion to Reject the Prosecution Response Brief, 19 July 2013. The Chamber clarified that if the Prosecution chose to file a consolidated response, it could file following the filing of the last Defence appeal brief.

³¹ Compare Prosecution Notice of Appeal (four grounds of appeal) with Defence Notice of Appeal (50 grounds of appeal).

³² First Notice of Appeal Extension Decision, p.2; Second Notice of Appeal Extension Decision, p.4.

³³ See First Notice of Appeal Extension Decision, p.2; Second Notice of Appeal Extension Decision, p.3.

of appeals.³⁴ The proposed extensions appropriately balance those interests.

9. For the above reasons, the Parties respectfully submit that there is good cause for enlarging the time limits for filing the appeal and response briefs as jointly proposed.

Word count: 1,895

Respectfully submitted,



PETER ROBINSON
Counsel for Radovan Karadžić



Katrina Gustafson
Senior Appeals Counsel
Office of the Prosecutor

Dated this 29th day of July 2016
At The Hague, The Netherlands.

³⁴ See e.g. *Popović* Extension Decision, p.4; *Prlić* Extension Decision, p.3.