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08 September 2009

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UNITED
NATIONS



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: 8 September 2009
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision: 8 September 2009

PROSECUTOR

v.

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

PUBLIC

**DECISION ON DEFENCE MOTIONS FOR EXTENSION OF
WORD LIMIT**

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 “General Pavković Request to Exceed the Word Limit for Appeal Brief” filed on 24 August 2009 (“Pavković’s Motion”) by Counsel for Nebojša Pavković (“Pavković”), requesting leave to exceed the word limit of his appeal brief by 30, 000 words;⁴

BEING SEIZED OF “Lazarevic [sic] Defence Request to Exceed the Word Limit for Appeal Brief” filed on 25 August 2009 (“Lazarević’s Motion”) by Counsel for Vladimir Lazarević (“Lazarević”), also seeking authorisation to exceed the word limit of his appeal brief by 30, 000 words;⁵

BEING SEIZED OF “Sreten Lukic’s [sic] Motion for Leave to Exceed the Word Limit for Filing the Appeal from Judgment” filed on 26 August 2009 (“Lukić’s Motion”) by Counsel for Sreten Lukić (“Lukić”), requesting permission to exceed the word limit of his appeal brief by up to 120, 000 words.⁶

NOTING the “Prosecution Consolidated Response to Requests to Exceed the Word Limit for Appeal Briefs” filed by the Office of the Prosecutor (“Prosecution”) on 28 August 2009

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, 27 May 2009.

⁴ Pavković’s Motion, para. 4.

⁵ Lazarević’s Motion, paras 2, 6.

⁶ Lukić’s Motion, para. 9. Šainović, Ojdanić, Pavković, Lazarević and Lukić are herein jointly referred to as the “Defence”.

(“Response”), opposing the motions of Pavković, Lazarević and Lukić⁷ and requesting, in the event that an extension be granted, the same maximum number of words for each of its response briefs;⁸

NOTING that Pavković, Lazarević and Lukić have not filed a reply;

NOTING that, pursuant to paragraph (C)(1)(a) of the Practice Direction on the Length of Briefs and Motions,⁹ an appellant’s brief on appeal from a final judgement of a Trial Chamber should not exceed 30, 000 words;

NOTING that the Defence appeal briefs are due to be filed no later than 23 September 2009;

RECALLING that the Pre-Appeal Judge may, in exceptional circumstances, grant an extension of the word limit set by the Practice Direction;¹⁰

NOTING that Pavković, Lazarević and Lukić submit that exceptional circumstances exist in this case due to the exceptional length of the Trial Judgement, the voluminous trial record and the issues of significant complexity raised on appeal¹¹ and that it is in the interests of justice to increase the word limit;¹²

NOTING that Lazarević and Lukić further submit that, should an extension of the word limit be granted, the Prosecution would not be prejudiced in any way;¹³

NOTING that Lukić further argues that he has 34 main grounds of appeal and 94 sub-grounds of appeal, more than any other member of the Defence, and that a variation of the word limit is justified and appropriate on that basis;¹⁴

NOTING that the Prosecution opposes the grant of an extension of words, submitting that Pavković, Lazarević and Lukić have neither demonstrated the existence of “exceptional circumstances” to warrant such an extension¹⁵ nor advanced a persuasive explanation as to why they cannot successfully make their arguments within the word limits allotted to them;¹⁶

⁷ Response, paras 1-6.

⁸ Response, para. 6.

⁹ Practice Direction on the Length of Briefs and Motions, IT/184/Rev.2, 16 September 2005 (“Practice Direction”).

¹⁰ Practice Direction, para. (C)(7).

¹¹ Pavković’s Motion, paras 3, 4; Lazarević’s Motion, para. 3; Lukić’s Motion, paras 2-5.

¹² Pavković’s Motion, para. 5; Lazarević’s Motion, para. 4; Lukić’s Motion, para. 9.

¹³ Lazarević’s Motion, para. 4; Lukić’s Motion, para. 9.

¹⁴ Lukić’s Motion, para. 8.

¹⁵ Response, paras 1, 2.

¹⁶ Response, paras 2, 6.

NOTING the Prosecution contends the unprecedented length of the Trial Judgement and the issues of significant complexity raised in this case are factors which have already been addressed in the extension of the Defence time limits for filing the Notice of Appeal¹⁷, Appeal Brief¹⁸ and Response Brief;¹⁹

NOTING that the Prosecution submits that the 30,000 word limit does not compromise the efficacy of the appeals brief and that “the clarity and coherence of the argument” is “aided more by succinct reference to legal and evidentiary issues [...] than by an excessive level of detail”;²⁰

CONSIDERING that unlike a trial brief, which must address all issues in a case, an appeal brief deals only with the narrow range of matters that fall within Article 25 of the Statute of the Tribunal;²¹

RECALLING that the number of grounds or sub-grounds on appeal is not a factor that in itself provides sufficient reason to enlarge the word limits prescribed by the Practice Direction;²²

RECALLING that the quality and effectiveness of an appellant’s brief does not depend on 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;²³

RECALLING however, that “the length of the Trial Judgement is unprecedented” and that “this case raises issues of significant complexity”;²⁴

CONSIDERING the unprecedented length of the trial judgement, the fact that the convictions subject to appeal concern numerous criminal incidents, covering diverse geographical locations;

FINDING therefore that exceptional circumstances exist which necessitate oversized filing;

¹⁷ *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Decision on Motions for Extension of Time to File Notices of Appeal (“Decision on Extension of Time to File Notices of Appeal”), 23 March 2009, pp. 3-4.

¹⁸ *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Joint Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009, p. 5.

¹⁹ *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Sreten Lukić’s and Nebojša Pavković’s Requests for Extension of Time to File Respondent’s Briefs and Sreten Lukić’s Request for a Further Extension of Time to file Appellant’s Brief, 7 August 2009, p.4; *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Joint Request for Extension of Time to File Respondent’s Brief, 27 July 2009, p. 4.

²⁰ *Prosecution v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on “Motion by Momcilo Krajisnik for Reconsideration of the Appellate Chamber’s Decision of September 11”, 27 September 2007, p. 2. *See* Response, para. 3.

²¹ *See* Response, para. 4.

²² *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Decision on Defence Motion for Extension of Word Limit for Defence Appellant’s Brief (“Orić Decision”), 6 October 2006, p. 3.

²³ *Ibid.*

²⁴ Decision on Extension of Time to File Notices of Appeal, p. 3.

CONSIDERING however that the extension of the word limit requested by Pavković, Lazarević and Lukić for filing their respective appeals briefs is excessive;

CONSIDERING that the scope of Lukić's appeal would appear to be broader than those of Pavković and Lazarević;

CONSIDERING that the Practice Direction follows the principle of allowing the respondent to file a brief of the same length as the appellant's brief and therefore in granting an extension of the word limit the Prosecution will not be prejudiced;

PURSUANT to Paragraph (C)(7) of the Practice Direction,

HEREBY GRANT Pavković's Motion **IN PART** and **DISMISS** the remainder of Pavković's Motion;

HEREBY GRANT Lazarević's Motion **IN PART** and **DISMISS** the remainder of Lazarević's Motion;

HEREBY GRANT Lukić's Motion **IN PART** and **DISMISS** the remainder of Lukić's Motion;

ORDER Pavković and Lazarević to file their respective appeal briefs consisting of no more than 45, 000 words no later than 23 September 2009;

ORDER Lukić to file his appeal brief consisting of no more than 60, 000 words no later than 23 September 2009;

ALLOW the Prosecution to file a respondent's brief of up to 45,000 words in response to the appeal briefs of Pavković and Lazarević and file a respondent's brief of up to 60,000 words in response to the appeal brief of Lukić.

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

Done this eighth day of September 2009,
At The Hague, The Netherlands.



Liu Daqun, Pre-Appeal Judge

[Seal of the Tribunal]