IT-05-87-A
A387 - A383
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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:	14 September 2009
		Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Liu Daqun, Pre-Appeal Judge**

Registrar: **Mr. John Hocking**

Decision of: **14 September 2009**

PROSECUTOR

v.

NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ

PUBLIC

DECISION ON SRETEN LUKIĆ'S MOTION TO RECONSIDER 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 Mr. 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 in the case *Prosecutor v. Milan Milutinović et al.* Case No. IT-05-87-T, by Trial Chamber III on 26 February 2009;

NOTING the respective notices of appeal filed by the parties on 27 May 2009;[2]

NOTING the "Decision on Defence Motions for Extension of Word Limit" rendered on 8 September 2009 ("Decision of 8 September 2009") granting in part the motions of Nebojša Pavković, Vladimir Lazarević and Sreten Lukić ("Pavković", "Lazarević" and "Lukić", respectively) and allowing Pavković and Lazarević to file individual appellant's briefs of up to 45,000 words and Lukić to file his appellant's brief of up to 60,000 words;

BEING SEIZED OF "Sreten Lukic's [*sic*] Motion to Reconsider Decision on Word-Limit" filed on 11 September 2009 ("Motion") by Counsel for Sreten Lukić ("Lukić"), requesting the reconsideration of the Decision of 8 September 2009 and allow Lukić to file his appellant's brief of up to 90,000 words;[3]

NOTING the Office of Prosecutor ("Prosecution") has indicated that it does not intend to respond to Lukić's Motion;[4]

RECALLING that a Chamber has inherent discretionary power to reconsider its previous decision in exceptional cases if a clear error of reasoning has been demonstrated or if necessary to do so to prevent injustice,[5] and that the requesting party is under an obligation to satisfy the Chamber of the

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[1] *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Order Appointing the Pre-Appeal Judge, 19 March 2009.
[2] 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.
[3] Motion, paras 3, 9. Šainović, Ojdanić, Pavković, Lazarević and Lukić are herein jointly referred to as the "Defence".
[4] Internal correspondence, 11 September 2009.
[5] *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-Misc.1, Decision on Strugar's Request to Reopen Appeal Proceedings, 7 June 2007, para. 22, citing *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73, Decision on Application by Prosecution for Leave to Appeal, 14 December 2001, para. 13; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, *Décision relative à la Requête de l'Appelant Jean-Bosco Barayagwiza demandant l'examen de la Requête de la Défense datée du 28 juillet 2000 et réparation pour abus de procédure*, 23 June 2006 (with Corrigendum of 28 June 2006), para. 22 ; *Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-71-A, Decision on Defence "*Requête de l'Appelant en reconsidération de la Décision du 4 avril 2006 en raison*

existence of such error in reasoning, or of the existence of particular circumstances justifying reconsideration in order to prevent an injustice;[6]

CONSIDERING that the same legal standard applies for reconsideration of a decision rendered by the Pre-Appeal Judge;

NOTING that, pursuant to paragraph (C)(1)(a) of the Practice Direction on the Length of Briefs and Motions,[7] a "brief of an appellant on appeal from a final judgement of a Trial Chamber will not exceed 30,000 words";

RECALLING that the Pre-Appeal Judge may, in exceptional circumstances, grant an extension of the word limit set by the Practice Direction;[8]

NOTING that the Defence appellant's briefs are due to be filed no later than 23 September 2009;[9]

NOTING that Lukić submits his appellant's brief already exceeds 120,000 words and that a dramatic reduction of words to meet the 60,000 word limit imposed by the Decision of 8 September 2009 would "require additional time and resources well beyond that currently allocated, as essentially it would have to be written anew";[10]

NOTING that Lukić further submits that the "essence, focus, logic and strength of the appeal would be lessened and diluted if the existing sections of the brief would have to be cut up and stripped down to meet the word limit imposed";[11]

NOTING that Lukić avers that it is in the interests of justice to grant the requested extension "to provide him an opportunity to fully present his case to the Appeals Chamber, to aid the Chamber in appreciating and understanding the multiple grounds of appeal being raised";[12]

NOTING Lukić claims that his Counsel cannot professionally discharge their duties and address the judgement and give it the just attention and review it deserves within the 60,000 word limit;[13]

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d'une erreur matérielle", 14 June 2006, para. 2; *Juvénal Kajelijeli v. Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, para. 203.

[6] *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, p. 2.

[7] Practice Direction on the Length of Briefs and Motions, IT/184/Rev.2, 16 September 2005 ("Practice Direction").

[8] *Ibid.*, para. (C)(7).

[9] Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009, p. 5.

[10] Motion, para. 3(a).

[11] *Ibid.*, para. 3(b).

[12] *Ibid.*, para. 3(d).

[13] *Ibid.*, para. 3(c).

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;

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;[14]

RECALLING that the quality and effectiveness of an appellant's brief do 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;[15]

CONSIDERING that the Decision of 8 September 2009 allowed Lukić to file an appellant's brief of up to 60,000 words, which is the double of the word limit provided for in the Practice Direction;

CONSIDERING ALSO that the Defence were granted a considerable extension of time to file their appellant's briefs;[16]

FINDING therefore that Lukić has failed to identify the existence of a clear error in reasoning, or in the existence of particular circumstances justifying reconsideration in order to prevent an injustice;

HEREBY DISMISS Lukić's Motion;

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

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

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[14] *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; *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-A, Decision on Appellant's Motion for Extension of Time to File a Consolidated Brief and for Enlargement of Page Limit, 22 June, 2005, para. 11.

[15] Decision on 8 September 2009, citing *Orić* Decision, p. 3. See also *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Decision on Prosecution's Request for Authorisation to Exceed Prescribed Page Limits, 26 July 2002, p. 2; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Jean-Bosco Barayagwiza's Motion for Extension of the Page Limits to File a Motion for Additional Evidence, 26 May 2006, p. 4; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Jean-Bosco Barayagwiza's and Hassan Ngeze's Urgent Motions for Extension of Page and Time Limits for their Replies to the Consolidated Prosecution Response, 6 December 2005, p. 5; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on "Appellant Jean-Bosco Barayagwiza's Urgent Motion for Leave to Have Further Time to File the Appeals Brief and the Appeal Notice", 17 May 2005, p. 3; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Ferdinand Nahimana's Second Motion for an Extension of Page Limits for Appellant's Brief, 31 August 2004, p. 3; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Ferdinand Nahimana's Motion for an Extension of Page Limits for Appellant's Brief and on Prosecution's Motion Objecting to Nahimana's Appellant's Brief, 24 June 2004, p. 3.

[16] Decision on Joint Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009, p. 5.

Done this 14th day of September 2009

At The Hague,
The Netherlands.

Judge Liu Daqun, Pre-Appeal Judge

[Seal of the Tribunal]