



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: 22 September 2010
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision: 22 September 2010

PROSECUTOR

v.

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

PUBLIC

**DECISION ON THE PROSECUTION'S MOTION SEEKING
CLARIFICATION AND AN ORDER REGARDING THE TIME-
LIMIT FOR THE DEFENCE TO FILE POTENTIAL MOTIONS
TO VARY GROUNDS OF APPEAL**

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for the Defence:

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 (“Tribunal”), and Pre-Appeal Judge in this case,¹

BEING SEISED OF the “Prosecution’s Motion Seeking Clarification and an Order Regarding the Time-Limit for the Defence to File Potential Motions to Vary Grounds of Appeal” filed by the Office of the Prosecutor (“Prosecution”) on 17 September 2010 (“Motion”);

NOTING that Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić (collectively, “Defence”) have not yet responded to the Motion;

CONSIDERING that this decision should be rendered prior to the expiration of the time-limit for responses to the Motion,² given that the Defence will not be prejudiced by the outcome of this decision and that it is in the interests of justice to render this decision as soon as possible;

NOTING that the Prosecution seeks clarification of my comments at the status conference held on 14 September 2010 (“Status Conference”) on the issue of deadlines for potential motions from the Defence seeking variation of their grounds of appeal following the filing of the translation of the Trial Judgement³ into Bosnian/Croatian/Serbian (“B/C/S”);⁴

NOTING FURTHER that the Prosecution also requests an order directing the Defence to file any motion seeking variation of their grounds of appeal as soon as possible, and in any event, by 6 December 2010;⁵

RECALLING my Decisions of 23 March 2009 and 29 June 2009, whereby the Defence requests to extend the time-limits for filing their notices of appeal and appeal briefs until after the filing of the B/C/S translation of the Trial Judgement were dismissed with the caveat that the Defence “will have the opportunity, if they so wish, to request variation of their grounds of appeal after having read the B/C/S translation of the Trial Judgement, provided that they show good cause under Rule 108 of the [Tribunal’s] Rules [of Procedure and Evidence (“Rules”)]”;⁶

¹ *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Order Appointing the Pre-Appeal Judge, 19 March 2009.

² Pursuant to the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal, IT/155 Rev.3, 16 September 2005 (“Practice Direction”), para. 13, the responses to the Motion can be filed until 27 September 2010.

³ *Prosecutor v. Milan Milutinović et al.*, IT-05-87-T, Judgement, 26 February 2009 (“Trial Judgement”). The B/C/S translation of the Trial Judgement was filed on 13 September 2010.

⁴ Motion, para. 1.

⁵ *Ibid.*; para. 5.

⁶ *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Decision on Motions for Extension of Time to File Notices of Appeal, 23 March 2009, p. 3; Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009, p. 4.

RECALLING that at the Status Conference the Defence teams were strongly encouraged to seek leave to vary their grounds of appeal “as soon as possible so that their motions may be decided upon and the supplemental briefing completed, where applicable, before the end of the year”;⁷

CONSIDERING that this encouragement cannot be construed as imposing any specific deadline for the filing of motions seeking a variation of the grounds of appeal;

NOTING that the Defence submitted that they would need at least three months to review the B/C/S translation of the Trial Judgement, while the Prosecution argued that a reasonable time for such a review should not exceed 30 days;⁸

RECALLING that no ruling was made at the Status Conference with respect to these submissions;

RECALLING FURTHER that neither the Rules nor the Tribunal’s jurisprudence impose any time-limit for requesting a variation of grounds of appeal,⁹ but that any motion to do so should be submitted “as soon as possible after identifying the new alleged error”;¹⁰

CONSIDERING that there is, at present, no reason to impose on the Defence a fixed deadline for filing their requests to vary grounds of appeal;

RECALLING that pursuant to paragraphs 13 and 14 of the Practice Direction, the Prosecution will have 10 days to respond to motions seeking variation of grounds of appeal, if any, and the Defence will have 4 days to reply thereto; and that the schedule for any supplemental briefing, if applicable, will be ordered by the Appeals Chamber in its respective decisions on such motions;

FINDING, therefore, that no clarification or order requested by the Motion is necessary in these circumstances;

RECALLING FURTHER that pursuant to Rule 108 of the Rules, the Appeals Chamber will authorize the variation of grounds of appeal only where the moving party has demonstrated by motion the existence of “good cause”;

CONSIDERING that because all the Defence counsel in this case are fluent in English and they are the ones “primarily responsible for the identification of potential legal errors in a trial

⁷ Status Conference, 14 Sep 2010, AT. 78; see also *ibid.*, AT. 81, 83.

⁸ *Ibid.*, AT. 81-82.

⁹ See *ibid.*, AT. 81.

¹⁰ Decision on Dragoljub Ojdanić’s Motion to Amend Ground 7 of his Notice of Appeal, 2 September 2009, para. 4 and references cited therein.

judgement”,¹¹ all such errors should have already been included in the existing grounds of appeal irrespective of the Trial Judgement being translated into B/C/S;

CONSIDERING, therefore, that the requests to amend grounds of appeal following the filing of the B/C/S translation of the Judgement should concern matters which require direct input from the convicted appellants rather than their counsel;

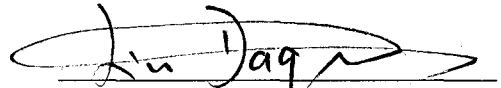
FOR THE FOREGOING REASONS,

HEREBY DISMISS the Motion;

ENCOURAGE the Defence to file any motion to vary their grounds of appeal as soon as possible.

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

Dated this twenty-second day of September 2010,
At The Hague, The Netherlands.


Judge Liu Daqun, Pre-Appeal Judge

[Seal of the Tribunal]

¹¹ Decision on Nebojša Pavković’s Second Motion to Amend his Notice of Appeal, 22 September 2009, para. 15.