



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: 11 September 2009
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision: 11 September 2009

PROSECUTOR

v.

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

PUBLIC

**DECISION ON NIKOLA ŠAINOVIĆ'S AND DRAGOLJUB
OJDANIĆ'S JOINT MOTION 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

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) allowing Pavković and Lazarević to file appeal briefs of up to 45,000 words and allowing Lukić to file his appeal brief of up to 60,000 words;

NOTING that the Decision of 8 September 2009 also granted the Office of the Prosecutor (“Prosecution”) the same maximum number of words for each of its respective respondent’s briefs;

BEING SEIZED OF “General Ojdanic’s [sic] and Nikola Sainovic’s [sic] Joint Motion for Extension of Word Limit” filed on 9 September 2009 (“Joint Motion”) by Counsel for Nikola Šainović and Dragoljub Ojdanić (respectively, “Šainović” and “Ojdanić”) requesting leave to exceed the word limit of their respective appeal briefs by 15,000 words;⁴

NOTING the “Prosecution Response to “General Ojdanic’s and Nikola Sainovic’s Joint Motion for Extension of Word Limit” filed by the Prosecution on 10 September 2009 (“Response”), does not oppose the Joint Motion and requests, in the event that an extension be granted, the same maximum number of words for each of its response briefs;⁵

NOTING that neither Šainović nor Ojdanić filed a reply to the Response;

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 Joint Motion, paras 5, 7. Šainović, Ojdanić, Pavković, Lazarević and Lukić are herein jointly referred to as the “Defence”.

⁵ Response, para.1.

NOTING that, pursuant to paragraph (C)(1)(a) of the Practice Direction on the Length of Briefs and Motions,⁶ a “brief of an appellant on appeal from a final judgement of a Trial Chamber will not exceed 30,000 words”;

NOTING that the Defence appeal briefs are due to be filed no later than 23 September 2009;⁷

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 Šainović and Ojdanić 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 appeal⁹ and that it is in the interests of justice to increase the word limit;¹⁰

NOTING that Šainović and Ojdanić further submit that an extension of the word limit is required to: (i) enable them to set out the substance of their grounds of appeal and the underlying errors of fact and law; (ii) allow them to elaborate the numerous grounds and sub-grounds in their respective appeals briefs;¹¹ and (iii) give them the opportunity to fully and adequately present their cases on appeal;¹²

NOTING that Šainović and Ojdanić aver that they will draft their respective appeal briefs with precision and clarity but that the limitation of 30,000 words may compromise many of their arguments;¹³

NOTING that the Prosecution does not oppose the sought extension of the word limit;

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

⁶ Practice Direction on the Length of Briefs and Motions, IT/184/Rev.2, 16 September 2005 (“Practice Direction”).

⁷ Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009, p. 5.

⁸ Practice Direction, para. (C)(7).

⁹ Joint Motion, paras 4, 7.

¹⁰ *Ibid.*, para. 6.

¹¹ *Ibid.*, para. 7.

¹² *Id.*

¹³ *Ibid.*, para. 6.

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.

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 excessively long briefs do not necessarily facilitate the efficient administration of justice;¹⁵

RECALLING however, that "the length of the Trial Judgement is unprecedented" and that "this case raises issues of significant complexity";¹⁶

CONSIDERING 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;

CONSIDERING the extension of the word limit granted to Pavković, Lazarević and Lukić in the Decision of 8 September 2009;

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,

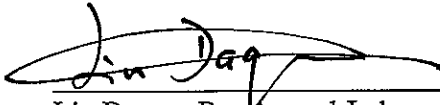
HEREBY GRANT the Joint Motion;

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

ALLOW the Prosecution to file respective respondent's briefs of up to 45,000 words.

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

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


Liu Daqun, Pre-Appeal Judge

[Seal of the Tribunal]

¹⁵ *Id.*

¹⁶ *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Decision on Extension of Time to File Notices of Appeal, 23 March 2009, p. 3.