

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: 04 December 2009  
Original: English

**IN THE APPEALS CHAMBER**

**Before:**                   **Judge Liu Daqun, Presiding**  
                                **Judge Mehmet Güney**  
                                **Judge Fausto Pocar**  
                                **Judge Andrésia Vaz**  
                                **Judge Theodor Meron**

**Registrar:**               **Mr. John Hocking**

**Decision of:**             **04 December 2009**

**PROSECUTOR**

v.

NIKOLA ŠAINOVIĆ  
DRAGOLJUB OJDANIĆ  
NEBOJŠA PAVKOVIĆ  
VLADIMIR LAZAREVIĆ  
SREȚEN LUKIĆ

**PUBLIC**

**DECISION ON DRAGOLJUB OJDANIĆ'S SECOND MOTION  
TO AMEND HIS NOTICE OF APPEAL**

**The Office of the Prosecutor:**

Mr. Peter Kremer QC

**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

1. 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) is seised of “General Ojdanic’s [sic] Motion to Amend his Amended Notice of Appeal of 29 July 2009” (“Motion”), filed by Counsel for Dragoljub Ojdanić (“Ojdanić”) on 16 October 2009.<sup>1</sup> The Office of the Prosecutor (“Prosecution”) responded on 22 October 2009.<sup>2</sup> Ojdanić filed a reply on 29 October 2009.<sup>3</sup>

## I. BACKGROUND

2. On 26 February 2009 Trial Chamber III (“Trial Chamber”) convicted Ojdanić pursuant to Article 7(1) of the Statute of aiding and abetting the crimes of deportation and other inhumane acts (forcible transfer) charged as crimes against humanity under Article 5 of the Statute,<sup>4</sup> and sentenced him to 15 years of imprisonment.<sup>5</sup>

3. Ojdanić filed his Notice of Appeal on 27 May 2009, challenging the Trial Judgement on eight grounds.<sup>6</sup> The Trial Judgement has also been appealed by Nikola Šainović, Nebojša Pavković, Vladimir Lazarević, Sreten Lukić and the Prosecution.<sup>7</sup>

<sup>1</sup> Noting the irregular numbering of some paragraphs in the Motion, the Appeals Chamber will refer to the relevant submissions as if the paragraphs had sequential numbering.

<sup>2</sup> Prosecution’s Response to Ojdanić’s Second Motion to Amend his Notice of Appeal, 22 October 2009 (“Response”).

<sup>3</sup> General Ojdanic’s [sic] Reply to the Prosecution’s Response to his Second Motion to Amend his Notice of Appeal, 29 October 2009 (“Reply”). Ojdanić submits that the Response was notified to him by the Registry in the morning of 26 October 2009 (Reply, fn. 1). The Appeals Chamber notes that the time limit for the filing of a reply starts running from the filing of a response with the Registry and not from the date of its receipt by the other party. The Appeals Chamber thus finds that the Reply was filed out of time. However, the Appeals Chamber notes that the Response was filed on 22 October 2009 after office hours and served on Ojdanić only on 26 October 2008. The Appeals Chamber finds that these circumstances constitute good cause for the delayed filing of the Reply and accepts it as validly filed (*cf. Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR.73.14, Decision on the Prosecution’s Motion for Extension of Time, 23 January 2009, pp. 2-3; *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-R, Decision on Georges Rutaganda’s Appeal Concerning Access to Closed Session Testimony and Sealed Exhibits, 11 November 2008, fn. 2).

<sup>4</sup> *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Judgement, 26 February 2009 (“Trial Judgement”), vol. III, paras 630, 635; see also Trial Judgement, vol. I, para. 6.

<sup>5</sup> Trial Judgement, vol. III, para. 1209.

<sup>6</sup> General Ojdanic’s [sic] Notice of Appeal, 27 May 2009 (“Notice of Appeal”).

<sup>7</sup> Defence Submission Notice of Appeal, 27 May 2009, and Defence Appeal Brief, 23 September 2009 (filed by Counsel for Nikola Šainović); Notice of Appeal from the Judgement of 26 February 2009 (filed by Counsel for Nebojša Pavković as Annex A to General Pavković Submission of his Amended Notice of Appeal, 29 September 2009), and General Pavković’s Amended Appeal Brief, 30 September 2009 (filed as Annex A to General Pavković’s Submission of his Amended Appeal Brief, 30 September 2009); Vladimir Lazarević’s [sic] Defence Notice of Appeal, 27 May 2009 (confidential) and Defence Submission: Lifting Confidential Status of the Notice of Appeal, 29 May 2009, and General Vladimir Lazarević’s Refiled Appeal Brief (confidential), 2 October 2009; public redacted version was filed on 20 October 2009; Sreten Lukic’s [sic] Notice of Appeal from Judgement and Request for Leave to Exceed the Page Limit, 27 May 2009, and Defense Appellant’s [sic] Brief Refiled, 7 October 2009 (public with confidential annexes) (filed by Counsel for Sreten Lukic); Prosecution Notice of Appeal, 27 May 2009, and Prosecution Appeal Brief, 10 August 2009 (confidential). The public redacted version was filed on 21 August 2009. The Corrigendum to Prosecution Appeal Brief was filed on 24 August 2009.

4. Pursuant to Rule 108 of the Tribunal's Rules of Procedure and Evidence ("Rules"), on 29 July 2009 Ojdanić requested authorization from the Appeals Chamber to amend the seventh ground of his appeal.<sup>8</sup> The Appeals Chamber granted this request on 2 September 2009 and accepted the Amended Notice of Appeal attached as Annex B to Ojdanić's First Motion to Amend Notice of Appeal ("Amended Notice of Appeal").<sup>9</sup> In accordance with the Appeals Chamber Decision extending the time for the filing of the appellants' briefs,<sup>10</sup> Ojdanić filed his Appellant's Brief on 23 September 2009.<sup>11</sup>

## II. APPLICABLE LAW

5. Pursuant to Rule 108 of the Rules, the Appeals Chamber "may, on good cause being shown by motion, authorize a variation of the grounds of appeal" contained in the notice of appeal. Such motion should be submitted as soon as possible after identifying the new alleged error or after discovering any other basis for seeking a variation of the notice of appeal.<sup>12</sup> It is the appellant's burden to explain precisely what amendments are sought and to demonstrate that each proposed amendment meets the "good cause" requirement of Rule 108.<sup>13</sup>

6. The concept of "good cause" encompasses both good reason for including the new or amended grounds of appeal sought and good reason showing why those grounds were not included (or were not correctly articulated) in the original notice of appeal.<sup>14</sup> The Appeals Chamber has considered, *inter alia*, the following factors in determining whether "good cause" exists: (i) the variation is minor and it does not affect the content of the notice of appeal; (ii) the opposing party would not be prejudiced by the variation or has not objected to it; and (iii) the variation would bring the notice of appeal into conformity with the appellant's brief.<sup>15</sup> Where an appellant seeks a substantive amendment broadening the scope of the appeal, "good cause" might also, under certain circumstances, be established. The Appeals Chamber recalls that no cumulative list of requirements has been established for a substantive amendment to be granted. Rather, each proposed amendment is to be considered in light of the particular circumstances of the case.<sup>16</sup>

<sup>8</sup> General Ojdanic's [sic] Motion to Amend Ground 7 of his Notice of Appeal, 29 July 2009 ("Ojdanic's First Motion to Amend Notice of Appeal").

<sup>9</sup> Decision on Dragoljub Ojdanić's Motion to Amend Ground 7 of his Notice of Appeal, 2 September 2009 ("Ojdanić Decision of 2 September 2009").

<sup>10</sup> Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009, p. 5.

<sup>11</sup> General Ojdanić's Appeal Brief (public with confidential annex), 23 September 2009 ("Appellant's Brief").

<sup>12</sup> Decision on Nebojša Pavković's Second Motion to Amend his Notice of Appeal, 22 September 2009 ("Pavković Decision of 22 September 2009"), para. 6; *Ojdanić* Decision of 2 September 2009, para. 4, and references cited therein.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Pavković* Decision of 22 September 2009, para. 7; *Ojdanić* Decision of 2 September 2009, para. 5.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

7. In certain exceptional cases, notably where failure to include new or amended grounds of appeal resulted from counsel's negligence or inadvertence, the Appeals Chamber has allowed variations although "good cause" was not shown by the appellant. Such cases have required a showing that the variation sought is of substantial importance to the success of the appeal such as to lead to a miscarriage of justice if excluded.<sup>17</sup> In such limited circumstances, the interests of justice require that an appellant not be held responsible for the failures of his counsel.<sup>18</sup> However, it must be shown that the previous pleadings failed to address the issue adequately and that the amendments sought would correct that failure.<sup>19</sup>

8. The jurisprudence of the Tribunal establishes that the criteria for variation of grounds of appeal should be interpreted restrictively at the stages in the appeal proceedings when amendments would necessitate a substantial slowdown in the progress of the appeal – for instance, when they would require briefs to be revised and re-filed.<sup>20</sup> To hold otherwise would leave appellants free to change their appeal strategy and essentially restart the appeal process at will, interfering with the expeditious administration of justice and prejudicing the other parties to the proceedings.<sup>21</sup>

### III. DISCUSSION

#### A. Submissions of the parties

9. Ojdanić requests leave to vary his Amended Notice of Appeal in order to introduce a new sub-ground 3(D).<sup>22</sup> The sought amendment alleges an error of law in the Trial Chamber's reasoning concerning the *mens rea* element of aiding and abetting, which, in Ojdanić's view, warrants a reversal of his convictions.<sup>23</sup> In particular, Ojdanić argues that the Trial Chamber erred in holding that the *mens rea* of aiding and abetting requires "knowledge that the act would lend practical assistance, encouragement, or moral support to the underlying crime(s)".<sup>24</sup> According to Ojdanić, the correct legal standard requires it to be shown that an accused's purpose is to facilitate the underlying crimes.<sup>25</sup> Whereas the Trial Chamber established Ojdanić's knowledge about the crimes, it failed to establish that he acted with the purpose of facilitating those crimes.<sup>26</sup> As such, Ojdanić

<sup>17</sup> *Pavković* Decision of 22 September 2009, para. 8; *Ojdanić* Decision of 2 September 2009, para. 6.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ojdanić* Decision of 2 September 2009, para. 6.

<sup>20</sup> *Pavković* Decision of 22 September 2009, para. 9, and references cited therein.

<sup>21</sup> *Ibid.*

<sup>22</sup> Motion, paras 4, 11. Ojdanić submits that the amendment would require that the paragraphs subsequent to the newly introduced sub-ground 3(D) of his Amended Notice of Appeal be renumbered, and that "[m]inor corrections" be made to the content pages (*ibid.*, para. 12).

<sup>23</sup> *Ibid.*, para. 4.

<sup>24</sup> *Ibid.*, para. 11.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*, paras 13-14.

submits that the approach of the Trial Chamber contradicts that of an intermediate United States federal appellate court which recently held that the *mens rea* of aiding and abetting in international law requires purpose rather than knowledge alone.<sup>27</sup> Concluding that the alleged error has a direct implication on his criminal responsibility, Ojdanić submits that the interests of justice require that the proposed amendment be granted.<sup>28</sup>

10. Regarding the reasons for not advancing the newly proposed sub-ground earlier, Ojdanić submits that the US Court Ruling was rendered on 2 October 2009, after he had filed his Amended Notice of Appeal and Appellant's Brief.<sup>29</sup> He further argues that although the issue in question had arisen in an earlier US case,<sup>30</sup> the recent US Court Ruling was the first time that an appellate court decided on the *mens rea* requirement of aiding and abetting under international law.<sup>31</sup> Ojdanić emphasizes that the Motion was submitted as soon as possible upon counsel identifying the alleged error in the Trial Judgement.<sup>32</sup>

11. Ojdanić further submits that allowing the variation would neither prejudice any other appellant nor delay the appeal proceedings.<sup>33</sup> In particular, he submits that he is not seeking any advantage in the proceedings, as he would not have seen the Prosecution's Response Brief before filing submissions in support of his newly proposed sub-ground of appeal.<sup>34</sup> Finally, Ojdanić requests, in the event that the Appeals Chamber authorizes the variation of his Amended Notice of Appeal, an increase by 3000 words in the word limit for his Appellant's Brief and a deadline of 14 days for filing an amended appellant's brief.<sup>35</sup> He has no objection to an equivalent extension of the word limit being granted to the Prosecution for its respective respondent's brief.<sup>36</sup>

12. The Prosecution opposes the Motion, arguing that Ojdanić does not show good cause for the failure to include the proposed new sub-ground in his original Notice of Appeal.<sup>37</sup> It submits that a ruling of a national court endorsing a legal approach different from that of the Trial Chamber does not constitute in itself a good cause for amending a Notice of Appeal. Rather, it constitutes an argument in support of the alleged error.<sup>38</sup> In addition, the Prosecution contends that the holding of

<sup>27</sup> *Ibid.*, para 3, citing *Presbyterian Church of Sudan and Others v. Talisman Energy Inc.*, 582 F.3d 244 (2d Cir.), 2 October 2009 ("US Court Ruling"), p. 259; see also Motion, paras 14-15.

<sup>28</sup> *Ibid.*, para. 14.

<sup>29</sup> *Ibid.*, para. 16

<sup>30</sup> *Ibid.*, referring to Judge Katzmann's concurring opinion in *Khulumani v. Barclay National Bank Ltd.*, 504 F.3d 254, (2d Cir.), 12 October 2007 ("2007 Case"), p. 277.

<sup>31</sup> *Ibid.*, para. 17.

<sup>32</sup> *Ibid.*, para. 18.

<sup>33</sup> *Ibid.*, para. 20.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*, paras 22-24.

<sup>36</sup> *Ibid.*, para. 23.

<sup>37</sup> Response, para. 1.

<sup>38</sup> *Ibid.*, paras 3-4.

the recent US Court Ruling was not novel and had been extensively discussed in a concurring opinion in the 2007 Case.<sup>39</sup> The fact that this concurring opinion was not binding precedent under United States law, and therefore could not have been relied upon earlier by Ojdanić, is irrelevant in the context of the proceedings before the Tribunal in which a Chamber is not bound by national jurisprudence.<sup>40</sup> Further, the Prosecution submits that the legal sources underlying the recent US Court Ruling were available before the filing of Ojdanić's original Notice of Appeal.<sup>41</sup> Nonetheless, should the Appeals Chamber grant the Motion, the Prosecution requests an equivalent extension of the word limit for the respondent's brief.<sup>42</sup>

13. In reply, Ojdanić submits that he could not have relied upon the 2007 concurring opinion since it represents a single judge and is therefore insufficient support in challenging the Tribunal's jurisprudence.<sup>43</sup> Referring to the Tribunal's duty to apply customary international law, Ojdanić emphasizes the relevance of the recent US Court Ruling that the *mens rea* of aiding and abetting based upon knowledge has no basis in customary international law.<sup>44</sup> He argues that denying him the opportunity to challenge his conviction on the basis of a "recent and unequivocal holding as to the content of customary international law" would result in unfairness,<sup>45</sup> and asserts the significance that the resolution of this matter has for the jurisprudence of the Tribunal.<sup>46</sup> Finally, should the Appeals Chamber find that good cause has not been shown, Ojdanić requests that he not be held responsible for the failure of his counsel to include this argument in the original Notice of Appeal.<sup>47</sup>

## B. Analysis

### 1. Variation of the grounds of appeal

14. The Appeals Chamber recalls that it has been the consistent practice of this Tribunal to have recourse to customary international law in ascertaining the elements of crimes and the modes of criminal liability.<sup>48</sup> The jurisprudence of national courts may certainly be instrumental in this respect,<sup>49</sup> although "a single decision from a national court does not [...] constitute any kind of definitive code for matters arising in the unique context of this international Tribunal".<sup>50</sup>

<sup>39</sup> *Ibid.*, paras 5-6.

<sup>40</sup> *Ibid.*, para. 6.

<sup>41</sup> *Ibid.*, para. 7.

<sup>42</sup> *Ibid.*, para. 9.

<sup>43</sup> Reply, para. 5.

<sup>44</sup> *Ibid.*, paras 6-11.

<sup>45</sup> *Ibid.*, para. 12.

<sup>46</sup> *Ibid.*, para. 14.

<sup>47</sup> *Ibid.*, para. 15.

<sup>48</sup> *Prosecutor v. Stanislav Galic*, Case No. IT-98-29-A, Judgement, 30 November 2006, para. 84.

<sup>49</sup> Cf. *Prosecutor v. Duško Tadić a/k/a "Dule"*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 99. See also, with respect to other legal issues, *Prosecutor*

15. In any event, the Appeals Chamber is not persuaded by Ojdanić's argument that he could not have advanced the proposed sub-ground of appeal earlier due to the lack of a binding national precedent concerning the *mens rea* element of aiding and abetting in international law.<sup>51</sup> An appellant's capacity to identify errors in a Trial Judgement is not limited by the existence of any domestic court ruling supporting his argument. If an appellant wishes to argue that a Trial Chamber applied an erroneous legal standard departing from the standard established in customary international law or in the jurisprudence of this Tribunal,<sup>52</sup> he may do so without regard to whether a national court has ruled on the issue. Thus, Ojdanić's assertion that the US Court Ruling was only recently rendered,<sup>53</sup> as well as his argument with reference to reliance upon the concurring opinion in the 2007 Case,<sup>54</sup> are without merit. The Appeals Chamber agrees with the Prosecution that the legal sources relied upon in the recent US Court Ruling were available to Ojdanić long before the Notice of Appeal and Appellant's Brief were filed.<sup>55</sup> The Appeals Chamber therefore finds that Ojdanić fails to demonstrate good cause for not having alleged this error in his Notice of Appeal.

16. The Appeals Chamber nonetheless recalls that in certain exceptional circumstances, it has allowed amendments in the absence of good cause being shown.<sup>56</sup> The Appeals Chamber notes Ojdanić's submission that in the event it finds that good cause has not been shown, "counsel apologises to the Appeal Chamber for failing to include the proposed ground in the original Notice of Appeal and ask that their failing not be held against General Ojdanić."<sup>57</sup> Such submission is of little assistance in finding exceptional circumstances, considering that Ojdanić merely claims that the newly alleged error has "direct implication on [...] Ojdanić's criminal responsibility" and invalidates the Trial Judgement,<sup>58</sup> without substantiating why his convictions could not be upheld in the context of the Trial Judgement read in its entirety, even if the Appeals Chamber were to grant this specific sub-ground of appeal.<sup>59</sup>

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<sup>51</sup> *Pavle Strugar*, Case No. IT-01-42-A, Judgement, 17 July 2008, para. 44; *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-AR73.2, Decision on Ivan Čermak's Interlocutory Appeal Against Trial Chamber's Decision on Conflict of Interest of Attorneys Čedo Prodanović and Jadranka Sloković, 29 June 2007, para. 44.

<sup>52</sup> *Prosecutor v. Zeljko Delalić et al.*, Case No. IT-96-21-A, Judgement, 20 February 2001, para. 703. The Appeals Chamber further notes that the decision at stake was rendered by a national court which is not the highest appellate court and is therefore not binding even upon all courts in that nation.

<sup>53</sup> Motion, paras 16-17; Reply, para. 5.

<sup>54</sup> Cf. *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgement, 22 March 2006, para. 62.

<sup>55</sup> Motion, paras 16-17.

<sup>56</sup> Reply, para. 5.

<sup>57</sup> See US Court Ruling, pp. 258-259; 2007 Case, Judge Katzmann's concurring opinion, pp. 270-281.

<sup>58</sup> See *supra*, para. 7. See also *Ojdanić* Decision of 2 September 2009, paras 15 *et seq.*

<sup>59</sup> Reply, para. 15.

<sup>58</sup> Motion, paras 14, 17.

<sup>59</sup> The Appeals Chamber further notes its previous decision on Ojdanić's request for variation of the grounds of appeal, where it also concluded that the omission to include the newly alleged error in the original Notice of Appeal resulted from Counsel's negligence and granted the sought amendment in order to avoid a miscarriage of justice (*Ojdanić* Decision of 2 September 2009, para. 15). As in the present Motion, Ojdanić submitted the negligence argument as an

17. That said, the Appeals Chamber recalls that Ojdanić's convictions for deportation and other inhumane acts (forcible transfer) as crimes against humanity rest solely upon the mode of liability of aiding and abetting.<sup>60</sup> Under his newly advanced sub-ground of appeal, Ojdanić alleges that in failing to require that the accused had the purpose to facilitate the underlying crimes, the Trial Chamber adopted an erroneous legal standard with respect to the *mens rea* element of aiding and abetting.<sup>61</sup> Without passing on the merits of this alleged error, the Appeals Chamber agrees that if Ojdanić prevails on this ground, it would indeed mean that his conviction relies on a *mens rea* standard of aiding and abetting with no basis in customary international law. In turn, this could render Ojdanić's convictions invalid, provided that he demonstrates that the evidence on the record does not support the finding of guilt based on his purpose to facilitate the underlying crimes.<sup>62</sup> Thus, the Appeals Chamber finds that the newly alleged error is of substantial importance to the success of Ojdanić's appeal, such as to lead to a potential miscarriage of justice if denied. The omission to include this sub-ground in the original Notice of Appeal must therefore be considered as inadvertence or negligence on the part of Ojdanić's Counsel who was obligated to conduct a comprehensive review of the Trial Judgement within the timeframe provided under Rule 108 of the Rules.<sup>63</sup>

18. The Appeals Chamber further recalls that the question of prejudice to an opposing party is an important factor to be considered when assessing a request for variation of grounds of appeal.<sup>64</sup> In the present case, it is satisfied that allowing Ojdanić to further amend his grounds of appeal will not cause any prejudice to the other Defence appellants because it will have no impact on the current briefing schedule and, concomitantly, the expeditious resolution of their respective appeals. Furthermore, any potential prejudice to the Prosecution case by this variation is minimized by the fact that it has the possibility and ample time to present arguments in response to this sub-ground within its respondent's brief due by 16 January 2009.<sup>65</sup> Finally, the Appeals Chamber notes that by

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alternative to showing good cause. This is not helpful advocacy and effectively aims at substituting the appellant's arguments with the Appeals Chamber's reasoning.

<sup>60</sup> Trial Judgement, vol. III, para. 630.

<sup>61</sup> Motion, para 11.

<sup>62</sup> In this sense, if the Appeals Chamber were to find that Ojdanić is right in claiming that the Trial Chamber relied on the wrong legal standard, it would articulate the correct legal standard and review the relevant factual findings of the Trial Chamber accordingly. In the absence of such findings, the Appeals Chamber would have the discretion to apply the correct legal standard to the evidence contained in the trial record and determine whether it is itself convinced beyond reasonable doubt that this evidence supports the findings of guilt (e.g., *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Judgement, 12 November 2009, para. 14, and references cited therein).

<sup>63</sup> See *Aloys Simba v. The Prosecutor*, Case No. ICTR-01-76-A, Decision on "Prosecutor's Motion for Variation of Notice of Appeal Pursuant to Rule 108", 17 August 2006 ("Simba Decision of 17 August 2006"), para. 9.

<sup>64</sup> Cf. Simba Decision of 17 August 2006, para. 11; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Prosecution's Request for Leave to Amend Notice of Appeal in Relation to Vidoje Blagojević, 20 July 2005, p. 5 and Separate Opinion of Judge Shahabuddeen, paras 12-17.

<sup>65</sup> Decision on the Prosecution's Motion for an Extension of Time to File Respondent's Briefs, 1 October 2009 ("Decision of 1 October 2009"), p. 4. See *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A,

the time of filing his amended appellant's brief, Ojdanić would not have had the advantage of reviewing the arguments of the Prosecution in its respondent's brief.

## 2. Further briefing and request to exceed word limit

19. With regard to Ojdanić's request for leave to exceed the limit for his amended appellant's brief by 3000 words, the Appeals Chamber finds that limited additional briefing is required by the authorized incorporation of the new sub-ground of appeal, and further that it is appropriate to allow the Prosecution the same maximum number of words for its respondent's brief.<sup>66</sup>

20. Ojdanić also requests authorization to file his amended appellant's brief no later than 14 days following the rendering of the present decision.<sup>67</sup> The Appeals Chamber observes in this respect that the Motion was submitted at a relatively advanced stage of the appeal proceedings after the filing of all the appellants' briefs. It further notes that the Prosecution has not requested a further extension of time to file its respondent's brief in the event the Motion is granted. The Appeals Chamber finds, however, that Ojdanić had considerable time to familiarize himself with the alleged error and refine the arguments he finds suitable to support the newly advanced sub-ground of appeal. Accordingly, and in light of the limited briefing that is required,<sup>68</sup> the Appeals Chamber finds that the sought extension of 14 days is unduly excessive. A deadline of seven days following the rendering of the present decision is appropriate in these circumstances.

21. The Appeals Chamber emphasizes that the amendments to the Appellant's Brief must be clearly identified and strictly limited to the incorporation of the newly advanced ground of appeal authorized by the present decision.

## **IV. DISPOSITION**

22. For the foregoing reasons, the Appeals Chamber by majority, Judge Pocar dissenting, (i) **GRANTS** the Motion **IN PART**; (ii) **ACCEPTS AS VALIDLY FILED** the Second Amended Notice of Appeal attached to the Motion as Annex C; (iii) **ORDERS** Ojdanić to file an amended appellant's brief consisting of no more than 48,000 words no later than 11 December 2009; (iv) **ALLOWS** the Prosecution to file a respective respondent's brief of up to 48,000 words; and (v) **AFFIRMS** the time limit for the Prosecution respondent's briefs set by the Decision of 1 October 2009.

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Decision on Motion of Dragan Jokić for Leave to File Third Amended Notice of Appeal and Amended Appellate Brief, 26 June 2006 ("Blagojević Decision of 26 June 2006"), paras 21, 40.

<sup>66</sup> Cf. Decision on Defence Motions for Extension of Word Limit, 8 September 2009, p. 5.

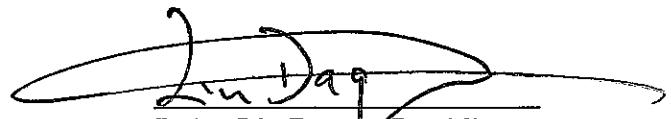
<sup>67</sup> Motion, paras 19, 22, 24.

<sup>68</sup> Cf. Blagojević Decision of 26 June 2006, para. 41.

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

Done this fourth day of December 2009

At The Hague,  
The Netherlands.



Judge Liu Daqun, Presiding

[Seal of the Tribunal]