

**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-05-88-A
Date: 26 May 2011
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Pre-Appeal Judge

Registrar: Mr. John Hocking

Decision: 26 May 2011

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ**

PUBLIC

**DECISION ON DRAGO NIKOLIĆ'S MOTION FOR LEAVE TO FILE A
MODIFIED REPLY BRIEF**

The Office of the Prosecutor:

Mr. Peter Kremer QC

Counsel for the Defence:

Mr. Zoran Živanović and Ms. Mira Tapušковиć for Mr. Vujadin Popović

Mr. John Ostojić for Mr. Ljubiša Beara

Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Mr. Drago Nikolić

Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić for Mr. Radivoje Miletić

Mr. Dragan Krgović and Mr. David Josse for Mr. Milan Gvero

Mr. Peter Haynes and Mr. Simon Davis for Mr. Vinko Pandurević

I, Patrick Robinson, Presiding 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;

NOTING the Judgement rendered by Trial Chamber II on 10 June 2010;¹

NOTING the respective notices of appeal filed by the parties on 8 September 2010;²

BEING SEISED OF the “Motion on Behalf of Drago Nikolić Seeking Leave to File a Modified Brief in Reply” (“Motion”), filed by Counsel for Drago Nikolić (“Nikolić”) on 9 May 2011, in which Nikolić requests the Appeals Chamber to recognize his appeal brief³ as validly filed, seeks leave to file a modified version of his reply brief,⁴ and requests the Appeals Chamber to recognize the modified version as validly filed;⁵

NOTING the submission by Nikolić that he learnt from the Prosecution after filing his reply brief that the absence of spaces between the references included in the footnotes was not in compliance with the applicable rules regarding word count;⁶

NOTING further the submission by Nikolić that while his appeal brief, response brief and reply brief all lacked spaces between the references included in the footnotes, only the first and last of these briefs exceeded the word limit when spaces were added to the footnotes;⁷

NOTING that no party has filed a response or motion to strike regarding the number of words included in either of the two Nikolić briefs in issue;

CONSIDERING that, pursuant to paragraph (C)(1)(c) of the Practice Direction on the Length of Briefs and Motions (“Practice Direction”),⁸ a reply brief from a final judgement of a Trial Chamber will not exceed 9,000 words;

¹ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Judgement, 10 June 2010 (public redacted version).

² Prosecution’s Notice of Appeal, 8 September 2010; Vujadin Popovic’s [*sic*] Notice of Appeal, 8 September 2010 (confidential); Appellant, Ljubisa [*sic*] Beara’s Notice of Appeal, 8 September 2010; Notice of Appeal on Behalf of Drago Nikolić, 8 September 2010 (confidential); Notice of Appeal by the Radivoje Miletić Defence, 8 September 2010 (French original); 24 September 2010 (English translation); Notice of Appeal on Behalf of Vinko Pandurević Against the Judgment of the Trial Chamber Dated 10th June 2010, 8 September 2010 (confidential).

³ Appellant’s Brief on Behalf of Drago Nikolić, 21 January 2011 (confidential); Corrigendum to Appellant’s Brief on Behalf of Drago Nikolić, 9 February 2011 (confidential).

⁴ Corrigendum to Brief in Reply on Behalf of Drago Nikolić and Notice of Re-Filing of the Brief in Reply on Behalf of Drago Nikolić, 4 May 2011 (confidential).

⁵ Motion, paras 1, 14, 16-17, 19.

⁶ Motion, paras 2-4.

⁷ Motion, paras 11-12.

⁸ IT/184/Rev. 2, 16 September 2005.

CONSIDERING that each word in a footnote counts towards the word limit, which calls for observing the correct spaces between words and characters in footnotes to ensure that the word count accurately reflects the number of words;⁹

CONSIDERING that the Tribunal's word limits for appellate briefs are necessary to ensure the fair and expeditious conduct of an appeal;¹⁰

CONSIDERING, however, that multiple re-filings of briefs may affect the expeditious conduct of an appeal;

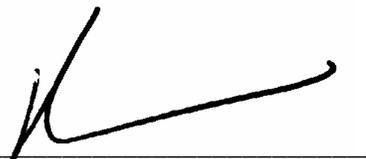
CONSIDERING that the Prosecution filed its response brief on the basis of Nikolić's appeal brief and its reply brief on the basis of Nikolić's response brief,¹¹ that Nikolić has already prepared and filed his modified reply brief,¹² and that the Prosecution does not oppose the Motion;

CONSIDERING that, in the present circumstances, it is in the interests of justice to grant the Motion;

PURSUANT to Rules 113 and 127 of the Rules of Procedure and Evidence of the Tribunal and paragraph (C)(1) of the Practice Direction;

HEREBY GRANT the Motion.

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



Judge Patrick Robinson
Presiding

Dated this twenty-sixth day of May 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

⁹ *In the Case Against Florence Hartmann*, Case No. IT-02-54-R77.5-A, Decision on Further Motions to Strike, 17 December 2009, para. 11. See also *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Defence Requests for Extension of Time and Word Limits to File Reply Briefs, 20 January 2010, p. 5.

¹⁰ *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Decision on Defence Motion for Extension of Time to File Appellate Brief and to Increase the Word Limit, 11 August 2008, p. 3.

¹¹ See Motion, paras 11, 13, 15.

¹² Motion, Annex A.