



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-04-84-R77.4-A
Date: 19 March 2009
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andrésia Vaz

Acting Registrar: Mr. John Hocking

Decision of: 19 March 2009

PROSECUTOR

v.

**ASTRIT HARAQLJA
and
BAJRUSH MORINA**

Public

**DECISION ON BAJRUSH MORINA'S APPLICATION FOR A
VARIATION OF THE GROUNDS OF APPEAL**

The Office of the Prosecutor:

Ms. Barbara Goy

Counsel for Astrit Haraqija:

Mr. Karim A. A. Khan

Counsel for Bajrush Morina:

Mr. Jens Dieckmann

1. The Appeals Chamber of the International Criminal 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 “International Tribunal”, respectively) is seized of a motion, filed confidentially on 13 February 2009 by Bajrush Morina (“Morina”) to vary his notice of appeal and Appellant’s brief.¹ The Prosecution responded confidentially on 19 February 2009.² Morina did not file a reply. The status of the present decision is public given that no information or evidence of a confidential nature is referred to therein.

BACKGROUND

2. On 17 December 2008, Trial Chamber I convicted Morina of one count of contempt pursuant to Rule 77(A)(iv) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”) and sentenced him to three months of imprisonment.³ The Trial Judgement was filed in Albanian, Morina’s native language, on 23 January 2009.⁴ Morina filed his Notice of Appeal on 2 January 2009 and his Appellant’s Brief on 19 January 2009, challenging his conviction and sentence.⁵ In both submissions, he reserved the right to supplement his arguments after receipt of the Albanian version of the Trial Judgement.⁶ The Prosecution filed its Consolidated Respondent’s brief on 29 January 2009.⁷

3. Morina seeks leave to vary his Notice of Appeal and to amend his Appellant’s brief to add an additional ground of appeal to correct the Trial Chamber’s omission in paragraph 11 of the Trial Judgement to mention that he voluntarily surrendered to the International Tribunal after learning of the arrest warrant against him.⁸ The paragraph states only that he was arrested and transferred to The Hague after the issuance of an arrest warrant. According to Morina, the Albanian version of this passage can only mean that he was arrested by force, which gives a misleading impression

¹ Bajrush Morina’s Application for a Variation of the Grounds of Appeal (confidential), 13 February 2009 (“Motion”).

² Prosecution Response to “Bajrush Morina’s Application for a Variation of the Grounds of Appeal” (confidential), 19 February 2009 (“Response”).

³ *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-04-84-R77.4, Judgement on Allegations of Contempt, 17 December 2008, paras 61, 120 (“Trial Judgement”). The Trial Chamber convicted his co-Accused Astrit Haraqija and sentenced him to five months of imprisonment. See Trial Judgement, paras 102, 120.

⁴ Motion, para. 3.

⁵ Notice of Appeal on Behalf of Bajrush Morina, 2 January 2009 (“Notice of Appeal”); Appeal Brief on Behalf of Bajrush Morina (confidential), 19 January 2009 (“Appellant’s brief”). The Prosecution and Astrid Haraqija filed their notices of appeal, respectively on 17 December 2008 and 2 January 2009. See Prosecution’s Notice of Appeal, 17 December 2008; Astrit Haraqija’s Notice of Appeal of the “Judgement on Contempt Allegation”, 2 January 2009.

⁶ Motion, para. 3. See also Notice of Appeal, para. 2; Appellant’s brief, para. 13.

⁷ Prosecution’s Consolidated Response Brief (confidential), 29 January 2009. The Prosecution filed a corrigendum on 26 February 2009 to correspond with the renumbering of paragraphs and footnotes caused by Astrid Haraqija’s filing of the Second Corrigendum to Haraqija’s Appeal Brief.

⁸ Motion, paras 7-16, 19.

since he fully cooperated.⁹ Morina submits that the Trial Chamber's failure to mention his voluntary surrender harms his reputation, infringes upon his rights under Article 8(1) of the European Convention of Human Rights and thus results in a miscarriage of justice.¹⁰ As an alternative, if this ground is not allowed, he requests the Appeals Chamber to order a correction to paragraph 11 of the Trial Judgement or to expressly mention his voluntary surrender in the Appeal Judgement.¹¹ According to Morina, he realized this alleged error in the Trial Judgement only after reviewing the Albanian version.¹² His first opportunity to raise this with his Lead Counsel was during their meeting of 29 January 2009,¹³ which resulted in the present motion.

4. The Prosecution opposes the Motion, arguing that Morina has not shown "good cause" for the requested variation of his Notice of Appeal and Appellant's brief.¹⁴

DISCUSSION

5. Rule 108 of the Rules provides that the "Appeals Chamber may, on good cause being shown by motion, authorise a variation of the grounds of appeal" contained in a notice of appeal. Motions for variation of the notice of appeal should be submitted as soon as possible after identifying the new alleged error of the Trial Chamber to be included in the notice of appeal or after discovering any other basis for seeking variation of the notice of appeal.¹⁵ Generally, "a request to amend a notice of appeal must, at least, explain precisely what amendments are sought and why, with respect to each amendment, the 'good cause' requirement of Rule 108 is satisfied".¹⁶ It is the Appellant's burden to demonstrate that each amendment should be permitted under the standards outlined above, including establishing lack of prejudice to the Prosecution.¹⁷ The "good cause" requirement under Rule 108 encompasses both good reason for including the new or amended grounds of appeal

⁹ Motion, paras 7-8, 11, 14, 16.

¹⁰ Motion, para. 15.

¹¹ Motion, paras 17-19.

¹² Motion, paras 4, 7.

¹³ Motion, paras 4, 7.

¹⁴ Response, paras 1-19.

¹⁵ *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motions for Leave to Submit Additional Grounds of Appeal, to Amend and to Correct his Appellant's Brief, 17 August 2006 ("*Nahimana et al.* Decision of 17 August 2006"), para. 9; *Prosecutor v. Mladen Naletilić, a.k.a. "Tuta", and Vinko Martinović, a.k.a. "Štela"*, Case No. IT-98-34-A, Decision on Mladen Naletilić's Motion for Leave to File Pre-Submission Brief, 13 October 2005, pp. 2-3.

¹⁶ *Nahimana et al.* Decision of 17 August 2006, para. 9; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Dragan Jokić's Motion to Amend Notice of Appeal, 14 October 2005, para. 7. See also Practice Direction on Formal Requirements for Appeals from Judgement (IT/201), 7 March 2002, paras 2-3.

¹⁷ *Nahimana et al.* Decision of 17 August 2006, para. 14; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, 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"), para. 14.

sought and good reason as to why those grounds were not included in the original notice of appeal.¹⁸

6. In its previous determinations that proposed variations to the notice of appeal may be authorized within the scope of the good cause requirement, the Appeals Chamber has considered the following factors to be of relevance: (i) the variation is minor but clarifies the notice of appeal without affecting its content;¹⁹ (ii) the opposing party has not opposed the variation or would not be prejudiced by it; (iii) the variation would bring the notice of appeal into conformity with the appeal brief; (iv) the variation does not unduly delay the appeal proceedings; or (v) the variation could be of substantial importance to the success of the appeal such as to lead to a miscarriage of justice if it is excluded.²⁰

7. The Appeals Chamber considers that it is in the interests of justice to allow an appellant adequate time to read the Trial Judgement in a language he understands and to consult with counsel before filing his brief.²¹ In the present circumstances, Morina did not have an opportunity to consult the Trial Judgement in Albanian prior to the filing of the Notice of Appeal and his Appellant's brief.

8. Nevertheless, the Appeals Chamber is not satisfied that there is good cause to allow Morina to amend his Notice of Appeal and as a corollary his Appellant's brief to add the proposed new ground of appeal. The briefing in this case is complete, and the proposed variation would therefore unduly delay the appeal proceedings by requiring additional submissions on this point from the parties. Moreover, Morina fails to substantiate his claim that by excluding it, this would equate to a miscarriage of justice. In this sense, he has not identified any aspect of his criminal responsibility or his sentence that is implicated by the alleged error. Rather, his concern is mainly for his

¹⁸ *Blagojević* Decision of 26 June 2006, para. 7. See also *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Motions Related to the Pleadings in Dragan Jokić's Appeal, 24 November 2005 ("*Blagojević* Decision of 24 November 2005"), para. 10; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Defence Motion for Extension of Time in Which to File the Defence Notice of Appeal, 15 February 2005, pp. 2-3.

¹⁹ *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, pp. 2-3.

²⁰ *Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-2000-55A-A, Decision on "Accused Tharcisse Muvunyi's Motion for Leave to Amend His Grounds for Appeal to Extend Time to File His Brief on Appeal" and "Prosecutor's Motion Objecting to 'Accused Tharcisse Muvunyi's Amended Grounds of Appeal'", 19 March 2007, para. 7; *Nahimana et al.* Decision of 17 August 2006, para. 13; cf. *Blagojević* Decision of 26 June 2006, paras 7-9.

²¹ *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Decision on Defence Request to Extend the Deadline to file the Appellant's Brief and the Respondent's Brief, 20 February 2008, p. 3; *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT- 95-13/1-A, Decision on Joint Defense Motion for Extension of Time Limits on Submission of Briefs, 14 December 2007, p. 3.

professional reputation²² because, in his view, the language employed by the Trial Judgement leaves the impression that he was arrested by force. This does not amount to good cause.

9. With respect to Morina's alternative requests for relief, the Appeals Chamber observes that the original English version of the Trial Judgement correctly reflects that Morina was arrested and transferred to the International Tribunal. This does not invariably mean that it was done by force. Therefore, there is no error to correct. Any alleged translation error relating to the Albanian version should be raised with the Registry. In any case, both the Trial Chamber and the Appeals Chamber have already expressly mentioned in their decisions on Morina's provisional release that he voluntarily surrendered prior to his arrest.²³ Furthermore, with respect to Morina's request that his voluntary surrender be expressly mentioned in the Appeal Judgement, the Appeals Chamber considers that it is premature to determine whether this fact warrants mention in it.

DISPOSITION

10. For the foregoing reasons, the Appeals Chamber **DISMISSES** the Motion and **DIRECTS** the Registry to lift the confidentiality of the Motion and Response.

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



Judge Liu Daqin
Presiding Judge

Dated this 19th day of March 2009
At The Hague
The Netherlands

[Seal of the International Tribunal]

²² Motion, para. 15.

²³ Decision on Motion of Bajrush Morina for Provisional Release, 9 February 2009, para. 5; *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-04-84-R77.4, Decision on Defence Application for Provisional Release of the Accused Bajrush Morina, 15 September 2008, para. 8. *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-04-84-R77.4, Decision on Defence Motion for Provisional Release of the Accused Bajrush Morina, 13 May 2008, para. 12.