

**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: 20 January 2010
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision: 20 January 2010

PROSECUTOR

v.

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

PUBLIC

**DECISION ON DEFENCE REQUESTS FOR EXTENSION OF
TIME AND WORD LIMITS TO FILE REPLY BRIEFS**

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 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 in the case *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, by Trial Chamber III on 26 February 2009 (“Trial Judgement”);

NOTING that six appeals have been lodged by the parties against the Trial Judgement;²

NOTING a series of decisions granting Nikola Šainović (“Šainović”), Dragoljub Ojdanić (“Ojdanić”), Nebojša Pavković (“Pavković”), Vladimir Lazarević (“Lazarević”) and Sreten Lukić (“Lukić”) (jointly, “Defence”) and the Office of the Prosecutor (“Prosecution”) appropriate extensions of time to file their submissions on appeal³ and allowing them to exceed the applicable word limits of their respective filings;⁴

NOTING that the briefing is completed with respect to the Prosecution’s Appeal⁵ and, with respect to the Defence Appeals,⁶ the reply briefs are due to be filed no later than 1 February 2010;⁷

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

² Defence Submission: Notice of Appeal, 27 May 2009 (filed by Counsel for Nikola Šainović); General Ojdanić’s [sic] Second Amended Notice of Appeal, 16 October 2009 (filed as Annex C to General Ojdanić’s [sic] Motion to Amend his Amended Notice of Appeal of 29 July 2009, 16 October 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; Notice of Appeal from the Judgement of 26 February 2009, 29 September 2009 (filed by Counsel for Nebojša Pavković as Annex A to General Pavković Submission of his Amended Notice of Appeal, 29 September 2009); Sreten Lukić’s [sic] Notice of Appeal from Judgement and Request for Leave to Exceed the Page Limit, 27 May 2009 (jointly, “Defence Appeals”); Prosecution Notice of Appeal, 27 May 2009 (“Prosecution’s Appeal”).

³ *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 (“Decision of 23 March 2009”); Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009; Decision on the Prosecution’s Motion for an Extension of Time to File Respondent’s Briefs, 1 October 2009.

⁴ Decision on Defence Motions for Extension of Word Limit, 8 September 2009 (“Decision of 8 September 2009”); Decision on Nikola Šainović’s and Dragoljub Ojdanić’s Joint Motion for Extension of Word Limit, 11 September 2009; Decision on Sreten Lukić’s Motion to Reconsider Decision on Defence Motions for Extension of Word Limit, 14 September 2009; Oral Decision on Lazarević’s Motion to Exceed the Word Limit for Appeal Brief, AT. 14-17, 25 September 2009; Decision on the Prosecution’s Motion for an Order Requiring Sreten Lukić to File his Appellant’s Brief in Accordance with the Appeals Chamber Decisions, 29 September 2009; Decision on Dragoljub Ojdanić’s Second Motion to Amend his Notice of Appeal, 4 December 2009 (“Decision of 4 December 2009”).

⁵ Prosecution Appeal Brief, 10 August 2009 (confidential; the public redacted version was filed on 21 August 2009) and Corrigenda to Prosecution Appeal Brief, 24 August 2009 and 15 January 2010; Defence Respondent’s Brief, 2 November 2009 (filed by Šainović); General Ojdanić’s Response Brief, 2 November 2009; General Pavković [sic] Reply to Prosecution Appeal Brief, 2 November 2009; Lazarević Defence Respondent’s Brief, 2 November 2009; Sreten Lukić’s [sic] Response to the Prosecution Appeal, 2 November 2009 (confidential); Prosecution’s Consolidated Reply Brief, 17 November 2009 (confidential).

⁶ Defence Appeal Brief, 23 September 2009 (filed by Šainović); General Ojdanić’s Amended Appeal Brief, 11 December 2009 (filed as Annex B to General Ojdanić’s [sic] Motion Submitting Amended Appeal Brief, 11 December 2009); General Vladimir Lazarević’s Refined Appeal Brief, 2 October 2009 (confidential; public redacted version filed on 20 October 2009); 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); Defense Appellant’s [sic] Brief

BEING SEISED OF the Defence oral requests for extensions of time and word limits to file their respective reply briefs at the Status Conference on 18 January 2010;⁸

NOTING the oral submissions made in response by the Prosecution to which the Defence did not reply;⁹

NOTING that, in light of the complexity of the case and the need for the Defence counsel to consult with their respective clients in order to clarify matters arising from the Prosecution respondent's briefs in the absence of the B/C/S translation of the Trial Judgement,¹⁰ the Defence request an extension of 15 days to file their respective reply briefs,¹¹ underlining that an extension of time will not affect significantly the scheduling of the appeal proceedings;¹²

NOTING that the Prosecution raised no objection with respect to the Defence request for an extension of time;

RECALLING that the Pre-Appeal Judge may, on good cause being shown by motion, enlarge the time limits prescribed by the Rules;¹³

RECALLING the previous finding that the length of the Trial Judgement is unprecedented and that this case raises issues of significant complexity;¹⁴

CONSIDERING that the said circumstances coupled with the volume of the respective Prosecution respondent's briefs constitute good cause for the requested extension;

FURTHER CONSIDERING that it is in the interests of justice to ensure that the parties have sufficient time to prepare meaningful reply briefs in full conformity with the applicable provisions;

FINDING that, in the circumstances of this case, the sought extension of 15 additional days is reasonable and justified;

Refiled, 7 October 2009 (public with confidential annexes) (filed by Lukić). See also Prosecution Response to Šainović Brief [*sic*], 15 January 2010 (confidential); Prosecution Response to General Ojdanić's Amended Appeal Brief, 15 January 2010 (confidential); Prosecution Response to General Pavković's Amended Appeal Brief, 15 January 2010 (confidential); Prosecution Response to Appeal of Vladimir Lazarević, 15 January 2010 (confidential); Prosecution Response to Appeal of Sreten Lukić, 15 January 2010 (confidential).

⁷ See Rule 113 of the Tribunal's Rules of Procedure and Evidence ("Rules").

⁸ AT. 44-48.

⁹ AT. 48-49.

¹⁰ AT. 45.

¹¹ AT. 45-48.

¹² AT. 46.

¹³ Rules 127(A)(i) and 127(B) of the Rules.

¹⁴ Decision of 23 March 2009, p. 4 and references cited therein.

NOTING FURTHER the Defence requests to exceed the word limit for their respective reply briefs, with Ojdanić and Pavković requesting an extension of 5,000 words (“Ojdanić’s Request” and “Pavković’s Request”, respectively), Šainović and Lukić asking to exceed the word limit by 10,000 words (“Šainović’s Request” and “Lukić’s Request”, respectively) and Lazarević requesting the authorisation to file a reply brief of up to 18,000 words (“Lazarević’s Request”);¹⁵

NOTING that, pursuant to paragraph (C)(1)(c) of the Practice Direction on the Length of Briefs and Motions,¹⁶ an appellant’s reply brief should not exceed 9,000 words;

RECALLING that the Pre-Appeal Judge may, in exceptional circumstances, grant an extension of the word limit set by the Practice Direction;¹⁷

NOTING that Ojdanić submits that the sought extension of the word limit is warranted due to the complexity of the case, the size and the nature of the concurrent filings, including the relevant Prosecution respondent’s brief and, in particular, the sources cited in support of the arguments in relation to Ojdanić’s sub-ground of appeal 3(D);¹⁸

NOTING that Šainović and Lukić submit that an extension of the word limit by an additional 10,000 words is necessary given the complexity of the case and in order to adequately address all the matters set forth in the lengthy brief filed by the Prosecution;¹⁹

NOTING that Lazarević bases his request for an additional 9,000 words upon the unique nature of the present case, including the unprecedented length of the Trial Judgement;²⁰

NOTING that according to the Prosecution, the concerns raised by Ojdanić are unique to the relevant Prosecution respondent’s brief, none of the other briefs going into matters of law in such depth;²¹

NOTING that the Prosecution submits that each of the Requests should be considered separately with regard to each appellant;²²

¹⁵ AT. 45-47.

¹⁶ IT/184/Rev.2, 16 September 2005 (“Practice Direction”).

¹⁷ Practice Direction, para. (C)(7).

¹⁸ AT. 45-46.

¹⁹ AT. 46-48.

²⁰ AT. 47.

²¹ AT. 48.

²² *Ibid.*

FURTHER NOTING the Prosecution's submission that a reply brief is restricted to dealing with new issues raised in the respondent's brief and is not an opportunity for the parties to supplement their arguments on appeal;²³

RECALLING that the quality and effectiveness of written submissions on appeal does not depend on length but on the clarity and cogency of the arguments presented and that, therefore, excessively long briefs do not necessarily facilitate the efficient administration of justice;²⁴

REITERATING however, that the length of the Trial Judgement is unprecedented and that this case raises issues of significant complexity;²⁵

CONSIDERING that the convictions subject to appeal also concern numerous criminal incidents, covering diverse geographical locations;²⁶

FINDING therefore that the existence of exceptional circumstances that necessitate the oversized filings has been established;

CONSIDERING that in light of the said factors coupled with the complexity of the arguments in relation to Ojdanić's sub-ground of appeal 3(D),²⁷ the sought extension of the word limit for his reply brief by 5,000 words is justified and proportionate;

CONSIDERING, however, that the extension of the word limit requested by Šainović, Pavković, Lazarević and Lukić for filing their respective reply briefs is excessive;

CONSIDERING that the word limit for reply briefs imposed by the Practice Direction is relative to that prescribed for the length of the appellant's and respondent's briefs, and that the sought extensions should be assessed accordingly;²⁸

FOR THE FOREGOING REASONS AND PURSUANT TO Rules 127(A)(i) and 127(B) of the Rules and paragraph (C)(7) of the Practice Direction,

²³ AT. 48-49.

²⁴ Decision of 8 September 2009, p. 4 and references cited therein.

²⁵ Decision of 23 March 2009, p. 4 and references cited therein. See also *supra*, p. 2.

²⁶ Decision of 8 September 2009, p. 4.

²⁷ Cf. Decision of 4 December 2009, para. 19.

²⁸ Šainović, Pavković and Lazarević were authorised to file their appellant's briefs of up to 45,000 words (*i.e.* an additional 15,000 words, or one third of the word limit provided for by the Practice Direction) and the Prosecution was allowed to file respondent's briefs of the same length. Consequently, a reasonable and proportionate extension for the word limit applicable to the respective reply briefs would be of 3,000 words. Lukić was authorised to file an appellant's brief of up to 60,000 words (*i.e.* the double of the word limit provided for by the Practice Direction) with a corresponding extension of the word limit for the Prosecution respondent's brief. Consequently, a reasonable and proportionate extension of the word limit applicable to his reply brief would be of 9,000 words.

HEREBY GRANT the Defence request for an extension of time and **ORDER** the Defence to file their respective reply briefs no later than 15 February 2010, in compliance with the word limits specified below;

GRANT Ojdanić's Request and **ORDER** Ojdanić to file his reply brief consisting of no more than 14,000 words;

GRANT Šainović's, Pavković's, Lazarević's and Lukić's Requests **IN PART** and **ORDER** Šainović, Pavković and Lazarević to file their respective reply briefs of no more than 12,000 words, and Lukić to file his reply brief consisting of no more than 18,000 words;


ORDER the Defence, bearing in mind the irregularities encountered in relation to some of the appellant's briefs in this case, to adhere fully to the said word limits, including observing the correct spaces between words and punctuation in both the text of their respective reply briefs and their footnotes to ensure that the word count accurately reflects the number of words contained therein;²⁹

DISMISS Šainović's, Pavković's, Lazarević's and Lukić's Requests in all other respects.

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

Done this 20th day of January 2010,

At The Hague, The Netherlands.



Liu Daqun, Pre-Appeal Judge

[Seal of the Tribunal]

²⁹ Cf. *In Case Against Florence Hartmann*, Case No. IT-02-54-R77.5-A, Decision on Further Motion to Strike, 17 December 2009, para. 11.