



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: 9 September 2011  
Original: English

**IN THE APPEALS CHAMBER**

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

**Registrar:** Mr. John Hocking

**Decision:** 9 September 2011

**PROSECUTOR**

v.

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

***PUBLIC***

**DECISION ON SRETEN LUKIĆ'S RE-FILED SECOND  
MOTION FOR LEAVE TO VARY HIS NOTICE OF APPEAL  
AND APPEAL BRIEF**

**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 “Sreten Lukic’s [*sic*] Re-filed Second Motion for Leave to File Variation to Notice of Appeal and Variation to Appeal Arguments” (“Motion”), filed by Counsel for Sreten Lukić (“Lukić”) on 21 June 2011. The Office of the Prosecutor (“Prosecution”) filed a response on 1 July 2011.<sup>1</sup> On 8 July 2011, Lukić filed a reply.<sup>2</sup>

## I. BACKGROUND

2. On 26 February 2009, Trial Chamber III (“Trial Chamber”) convicted Lukić pursuant to Article 7(1) of the Tribunal’s Statute (“Statute”) of committing, through participation in a joint criminal enterprise, the crimes of deportation, other inhumane acts (forcible transfer), murder, and persecutions as crimes against humanity under Article 5 of the Statute, and the crime of murder as a violation of the laws or customs of war under Article 3 of the Statute, and sentenced him to 22 years of imprisonment.<sup>3</sup> Lukić appealed his conviction on 16 grounds.<sup>4</sup> Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, and the Prosecution have also appealed against the Trial Judgement.<sup>5</sup>

3. The official translation of the Trial Judgement into Bosnian/Croatian/Serbian (“B/C/S”) was filed on 13 September 2010.<sup>6</sup> The following day, the Pre-Appeal Judge reminded the Defence that they could seek variation of their respective grounds of appeal following the translation of the Trial

<sup>1</sup> Prosecution Response to Sreten Lukić’s Re-filed Second Motion for Leave to File Variation to Notice of Appeal and Variation to Appeal Arguments, 1 July 2011 (“Response”).

<sup>2</sup> Sreten Lukic’s [*sic*] Reply in Support of Re-filed Second Motion for Leave to File Variation of Appeal, 8 July 2011 (“Reply”).

<sup>3</sup> *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Judgement, 26 February 2009 (“Trial Judgement”), vol. 3, paras 1138, 1140, 1212.

<sup>4</sup> *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Sreten Lukic’s [*sic*] Notice of Appeal from Judgment and Request for Leave to Exceed the Page Limit, 27 May 2009 (“Notice of Appeal”); Defense Appellant’s [*sic*] Brief Refiled, 7 October 2009 (public with confidential annexes) (“Appeal Brief”).

<sup>5</sup> *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); General Ojdanic’s [*sic*] Second Amended Notice of Appeal, 16 October 2009 (filed as Annex C to General Ojdanic’s [*sic*] Motion to Amend his Amended Notice of Appeal of 29 July 2009, 16 October 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); *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Vladimir Lazarević’s [*sic*] Defence Notice of Appeal, 27 May 2009 (confidential); *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Defence Submission: Lifting Confidential Status of the Notice of Appeal, 29 May 2009 (filed by Counsel for Vladimir Lazarević); Prosecution Notice of Appeal, 27 May 2009.

<sup>6</sup> See Status Conference, 17 May 2011, AT. 112.

Judgement, provided that they showed good cause under Rule 108 of the Tribunal's Rules of Procedure and Evidence ("Rules").<sup>7</sup>

4. On 10 February 2011, the Appeals Chamber dismissed, without prejudice, Lukić's Motion of 17 December 2010 in which he sought to vary his Notice of Appeal,<sup>8</sup> for failing to satisfy the requirements of Rule 108 of the Rules.<sup>9</sup> On 17 May 2011, the Pre-Appeal Judge informed the parties that, should they wish to vary their grounds of appeal following the translation of the Trial Judgement, they should do so no later than 14 June 2011, as after this date, the translation of the Trial Judgement would not constitute good cause pursuant to Rule 108 of the Rules.<sup>10</sup> On 14 June 2011, Lukić filed a second motion seeking to vary his grounds of appeal.<sup>11</sup> On 16 June 2011, the Pre-Appeal Judge ordered Lukić to re-file the motion in compliance with the Practice Direction on the Length of Briefs and Motions.<sup>12</sup> Pursuant to the order of the Pre-Appeal Judge, Lukić filed the present Motion on 21 June 2011. In the Motion, Lukić seeks leave to file a "Proposed Varied Notice of Appeal" attached to the Motion, and subsequently a variation to his Appeal Brief.<sup>13</sup> The Prosecution opposes the Motion, arguing that Lukić fails to meet the requirements of Rule 108 of the Rules, and averring that should the Appeals Chamber grant the Motion, no extension of the word limit for Lukić's Appeal Brief ought to be allowed.<sup>14</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 a motion should be submitted as soon as possible after identifying the newly alleged error or after discovering any other basis for seeking a variation of the notice of appeal.<sup>15</sup> It is the appellant's

<sup>7</sup> Status Conference, 14 Sep 2010, AT. 78. See also Decision on the Prosecution's Motion Seeking Clarification and an Order Regarding the Time-Limit for the Defence to File Potential Motions to Vary Grounds of Appeal, 22 September 2010 ("Decision of 22 September 2010"), pp. 2-3.

<sup>8</sup> Sreten Lukic's [*sic*] Motion for Leave to File Variation of Appeal. [*sic*] Pursuant to Review of Judgment Translated in B/C/S, 17 December 2010 ("Motion of 17 December 2010").

<sup>9</sup> Decision on Sreten Lukić's Motion for Leave to Vary his Grounds of Appeal, 10 February 2011 ("Decision of 10 February 2011"), pp. 2-3.

<sup>10</sup> Status Conference, 17 May 2011, AT. 112.

<sup>11</sup> Sreten Lukic's [*sic*] Second Motion for Leave to File Variation to Notice of Appeal and Variation to Appeal Arguments, 14 June 2011 ("Motion of 14 June 2011").

<sup>12</sup> Order Requiring Sreten Lukić to Re-file his Second Motion for Leave to Vary his Notice of Appeal and Appeal Brief, 16 June 2011, p. 2, referring to Practice Direction on the Length of Briefs and Motions, IT/184 Rev. 2, 16 September 2005 ("Practice Direction on the Length of Briefs and Motions").

<sup>13</sup> Motion, p. 9. See also *ibid.*, Attachment #1.

<sup>14</sup> Response, paras 3-4, 26.

<sup>15</sup> Decision on Dragoljub Ojdanić's Second Motion to Amend his Notice of Appeal, 4 December 2009 ("Decision of 4 December 2009"), para. 5, and references cited therein.

burden to explain precisely what amendments are sought and to demonstrate that each proposed amendment meets the “good cause” requirement of Rule 108 of the Rules.<sup>16</sup>

6. The concept of “good cause” encompasses both good reason for including the new or amended grounds of appeal sought and good reason why those grounds were not included (or were not correctly articulated) in the original notice of appeal.<sup>17</sup> The Appeals Chamber has considered, *inter alia*, the following factors in determining whether “good cause” exists: (i) the variation is minor and 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 appeal brief.<sup>18</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>19</sup>

7. In certain exceptional cases, notably where the failure to include the new or amended grounds of appeal resulted from counsel’s negligence or inadvertence, the Appeals Chamber has allowed variations even though “good cause” was not shown by the appellant.<sup>20</sup> Such cases have required a showing that the variation sought, assuming its merits, is of substantial importance to the success of the appeal such that it would result in a reversal of the conviction.<sup>21</sup> In these limited circumstances, the interests of justice require that an appellant not be held responsible for the failures of his counsel.<sup>22</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>23</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 such amendments would require briefs to be revised and re-filed.<sup>24</sup> To hold otherwise would leave appellants free to change their appeal strategy and essentially restart the appeal process at will,

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<sup>16</sup> Decision of 4 December 2009, para. 5.

<sup>17</sup> *Ibid.*, para. 6.

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

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*, para. 7.

<sup>21</sup> *Ibid.* See also *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, paras 31, 35.

<sup>22</sup> Decision of 4 December 2009, para. 7.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*, para. 8.

interfering with the expeditious administration of justice and prejudicing the other parties to the proceedings.<sup>25</sup>

### III. DISCUSSION

#### A. Preliminary issue

9. Pursuant to paragraph 14 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the International Tribunal (“Practice Direction”),<sup>26</sup> the Reply was to be filed within four days of the filing of the Response. However, Lukić filed his Reply on 8 July 2011, three days after the expiration of the time-limit. Notwithstanding the late filing of the Reply, the Appeals Chamber considers that the matter at issue is of substantial importance, as it concerns Lukić’s ability to vary his grounds of appeal following the translation of the Trial Judgement into B/C/S, and therefore it is in the interests of justice that the Appeals Chamber be in a position to fully assess the arguments of the parties. Moreover, the filing of the Reply three days after the expiration of the time-limit prescribed by the Practice Direction did not unduly delay the proceedings. Consequently, the Appeals Chamber considers it appropriate, in the circumstances of this case, to exercise its discretion pursuant to paragraph 19 of the Practice Direction and recognize the Reply as validly filed.<sup>27</sup>

#### B. Submissions of the parties

10. Lukić seeks leave to amend his Notice of Appeal in order to introduce three new grounds of appeal.<sup>28</sup> He submits that the paragraphs of the Trial Judgement challenged under the proposed new grounds of appeal are either new to his Notice of Appeal “and/or” Appeal Brief, or were already included in his Notice of Appeal but under different grounds.<sup>29</sup>

<sup>25</sup> Decision of 4 December 2009, para. 8.

<sup>26</sup> IT/155 Rev. 3, 16 September 2005.

<sup>27</sup> Paragraph 19 of the Practice Direction provides, *inter alia*, that “the Appeals Chamber or Pre-Appeal Judge may vary any time-limit prescribed under this Practice Direction or recognise as validly done any act done after the expiration of a time-limit so prescribed.” See also *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Public Redacted Version of 13 December 2010 Decision on Motion by Counsel Assigned to Milan Gvero Relating to his Present Health Condition, 16 May 2011, para. 10; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence’s Request “Pursuant to Rule 126 bis”, 21 July 2004, p. 3.

<sup>28</sup> Motion, paras 9-10. The Appeals Chamber notes that, contrary to Lukić’s submission, the Motion does not contain “Attachment #2” or “Attachment #3” (see *ibid.*, paras 9, 14). Lukić numbers the proposed new grounds of appeals as follows: D1, E(3), and KK (see *ibid.* para. 10; Attachment #1). Although Lukić refers throughout his Motion to sub-ground E(3), the Appeals Chamber understands the reference to be to sub-ground F(3) in accordance with the amendments contained in “Sreten Lukic’s [*sic*] Varied Notice of Appeal from Judgement” attached to the Motion (see Attachment #1). Accordingly, when necessary for the purposes of this Decision, the Appeals Chamber will refer to F(3).

<sup>29</sup> Motion, para. 11; Reply, para. 9.

11. Lukić submits that good cause exists to allow the variation of his Notice of Appeal.<sup>30</sup> He argues that since the Trial Judgement was rendered in English, he did not have an adequate opportunity to contribute to the preparation of his Notice of Appeal and Appeal Brief,<sup>31</sup> and that, following the B/C/S translation of the Trial Judgement, he should be allowed to participate in the proceedings in a language he understands.<sup>32</sup>

12. Lukić further argues that he was the only one who, upon receipt of the translation of the Trial Judgement into B/C/S, could identify errors relating to “review of documents/evidence and inconsistencies in citation/reliance.”<sup>33</sup> In particular, he claims to be in the best position to: (i) compare the Trial Judgement with evidence originally submitted in B/C/S;<sup>34</sup> (ii) identify the “inconsistencies in interpretation/quotations” from the interview he had given to the Prosecution (“Interview”);<sup>35</sup> (iii) provide the context and “illuminate the misrepresentations” of documents bearing the Serbian Ministry of Interior (“MUP”) Staff letterhead, his typewritten name, or alleging his participation in meetings;<sup>36</sup> and (iv) identify errors concerning the crime sites, on the basis of his “personal knowledge [...] of the geography and other features of Kosovo, including specific incidents, institutions, or other notorious facts.”<sup>37</sup>

13. Lukić further claims that the newly identified errors “are of such a dramatic nature so as to render the [Trial] Judgment unsound/unsupportable” and to lead to a miscarriage of justice.<sup>38</sup> According to Lukić, these errors include: (i) errors in the citation and interpretation of the Interview, suggesting that the document relied upon by the Trial Chamber is not the official version of the exhibit;<sup>39</sup> (ii) disregard of evidence, including references which could be found in neither the B/C/S version nor the English translation of the evidence in question;<sup>40</sup> (iii) reliance upon evidence found not to be credible;<sup>41</sup> (iv) misrepresentation or misinterpretation of the evidence, including the Trial Chamber’s finding that Lukić was often the only MUP representative at meetings despite the

<sup>30</sup> Motion, paras 12-16.

<sup>31</sup> *Ibid.*, paras 3, 15(d); Reply, para. 16.

<sup>32</sup> Motion, paras 3, 14, 22.

<sup>33</sup> *Ibid.*, para. 15.

<sup>34</sup> *Ibid.*, para. 15(a), referring to proposed grounds of appeal D1, KK.

<sup>35</sup> *Ibid.*, para. 15(c), referring to proposed grounds of appeal D1, F(3), KK.

<sup>36</sup> *Ibid.*, para. 15(b), referring to proposed grounds of appeal D1, KK.

<sup>37</sup> *Ibid.*, para. 16, referring to proposed ground of appeal KK.

<sup>38</sup> *Ibid.*, paras 8, 17-18, 22; Reply, para. 4.

<sup>39</sup> Motion, para. 19(a), referring to proposed grounds of appeal D1, F(3), KK. Although Lukić cites proposed ground of appeal D, the Appeals Chamber understands this to be a typographical error.

<sup>40</sup> *Ibid.*, para. 19(b)-(c), referring to proposed grounds of appeal D1, F(3), KK.

<sup>41</sup> *Ibid.*, para. 19(d), referring to proposed ground of appeal KK.

evidence showing this not to have been the case, and a misinterpretation of the minutes of the MUP meeting of 11 May 1999.<sup>42</sup>

14. In response, the Prosecution submits that Lukić fails to show good cause for amending his Notice of Appeal or to demonstrate that the proposed amendments are of substantial importance to the success of his appeal.<sup>43</sup> It adds that, contrary to Lukić's assertion, none of the alleged errors appear to have required his direct input to be discovered, as any inconsistencies resulting from incorrect or incomplete citation or interpretation of the evidence, including with respect to the Interview, could and should have been apparent to Lukić's Counsel, who are fluent in both English and B/C/S.<sup>44</sup> The Prosecution further maintains that Lukić's knowledge of Kosovo's geography is "merely an aid to interpretation of the evidence" which was available during the trial, and thus, any misinterpretation of the evidence in the Trial Judgement should have been identifiable by Counsel.<sup>45</sup> Overall, the Prosecution submits that Lukić fails to explain how his personal reading of the translation of the Trial Judgement disclosed errors that his Counsel could not have identified and that his proposed amendments "can perhaps best be understood as an attempt to 'recapture' some of the words" reduced after the Appeals Chamber denied his requests for extensions to the word-limit.<sup>46</sup>

15. The Prosecution further contends that Lukić makes general submissions without explaining why the "good cause" requirement is satisfied with respect to each proposed new ground of appeal.<sup>47</sup> It also claims that whether or not Lukić was the only MUP representative at the Joint Command meetings is irrelevant to the Trial Chamber's findings concerning his responsibility.<sup>48</sup> Similarly, the Prosecution argues that Lukić fails to show that the Trial Chamber's interpretation of the minutes of the MUP meeting of 11 May 1999 was unreasonable or that the Trial Chamber erred in relying on his Interview.<sup>49</sup> The Prosecution finally alleges that through his request to supplement his Appeal Brief, Lukić is effectively asking for an extension of the word limit, in violation of the Appeals Chamber's repeated orders.<sup>50</sup>

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<sup>42</sup> Motion, para. 19(e), referring to proposed ground of appeal D1; Exhibit P1468; Trial Judgement, vol. 3, para. 1032; Motion, paras 15(e)-(g), 20-21, referring to proposed grounds of appeal D1, F(3), KK; Exhibit P1993; Trial Judgement, vol. 3, para. 1009.

<sup>43</sup> Response, paras 3, 15-16, 23-24.

<sup>44</sup> *Ibid.*, paras 1-2, 7-10.

<sup>45</sup> *Ibid.*, para. 11.

<sup>46</sup> *Ibid.*, para. 12, referring to Decision on Defence Motions for Extension of Word Limit, 8 September 2009; Decision on Sreten Lukić's Motion to Reconsider Decision on Defence Motions for Extension of Word Limit, 14 September 2009.

<sup>47</sup> *Ibid.*, paras 13-14.

<sup>48</sup> *Ibid.*, para. 17.

<sup>49</sup> *Ibid.*, paras 18-23.

<sup>50</sup> Response, para. 25. See also *ibid.*, para. 12.

16. In his Reply, Lukić submits that the variations sought derive directly from Lukić's input, following his own careful review of the Trial Judgement in B/C/S, and not from his Counsel.<sup>51</sup> He stresses that the newly proposed grounds of appeal are unrelated and different from those that were set forth in his "original Notice of Appeal or Appellant's Brief" and are not, as suggested by the Prosecution, merely recapturing words deleted from his original appeal brief.<sup>52</sup> Furthermore, Lukić submits that his Motion is sufficiently specific, arguing that he is not required at this stage to refer to the evidence he claims to be misconstrued, as the paragraphs of the Trial Judgement he wishes to challenge are exhaustively listed in the proposed notice of appeal and the exhibits in question are "naturally those cited and relied upon in those paragraphs."<sup>53</sup> Lukić maintains that the Motion identifies how the "good cause averments" apply specifically to each new ground of appeal.<sup>54</sup> Contrary to the Prosecution's argument, Lukić submits that the fact that he was not the only MUP member present in meetings undermines the Trial Judgement,<sup>55</sup> and that until he received the translation of the Trial Judgement he could not predict the extent to which the Trial Chamber would misinterpret the evidence "based on geography."<sup>56</sup> Finally, Lukić contends that it would be illogical to bar a variation of his Appeal Brief based merely on the fact the he already filed an appeal brief of 60,000 words.<sup>57</sup>

### C. Analysis

17. The interests of justice require that an appellant have adequate time to read the Trial Judgement in a language he understands and consult with counsel before filing his appeal brief.<sup>58</sup> In the present case, the convicted appellants did not have the opportunity to read the Trial Judgement in B/C/S prior to the filing of their respective notices of appeal and appeal briefs. Mindful of this constraint, the Pre-Appeal Judge reminded the Defence that they could seek variation of their respective grounds of appeal after having read the B/C/S translation of the Trial Judgement, provided that they showed good cause under Rule 108 of the Rules. He further clarified that such requests "should concern matters which require direct input from the convicted appellants rather

<sup>51</sup> Reply, paras 6-8, 13, 21.

<sup>52</sup> *Ibid.*, paras 8-12.

<sup>53</sup> *Ibid.*, para. 19. See also *ibid.*, para. 18. Lukić further argues that in his "Varied Appellant's Brief supplement", which was attached to his Motions of 17 December 2010 and 14 June 2011, "the alleged errors are very specifically addressed, and are not left to vague or unclear assertions" (*ibid.*, para. 20). The Appeals Chamber notes, however, that it dismissed the Motion of 17 December 2010 for failing to satisfy the requirements of Rule 108 of the Rules and ordered Lukić to re-file the Motion of 14 June 2011 in compliance with the Practice Direction on the Length of Briefs and Motions (See *supra*, para. 4).

<sup>54</sup> Reply, para. 15, referring to Motion, paras 15(a)-(g), 16.

<sup>55</sup> *Ibid.*, para. 23.

<sup>56</sup> *Ibid.*, para. 22.

<sup>57</sup> *Ibid.*, para. 24.

<sup>58</sup> See *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-04-84-R77.4-A, Decision on Bajrush Morina's Application for a Variation of the Grounds of Appeal, 19 March 2009, para. 7, and references cited therein.

than their counsel.”<sup>59</sup> The Appeals Chamber has previously acknowledged that the unavailability of the B/C/S translation of the Trial Judgement at the time when the notices of appeal were filed could prevent the identification of alleged errors to which the appellant’s understanding of the Trial Judgement is central.<sup>60</sup>

18. Lukić seeks to introduce three new grounds of appeal.<sup>61</sup> To the extent that he alleges new errors of law and fact, including in paragraphs of the Trial Judgement already challenged in the Notice of Appeal but under different grounds of appeal, he seeks to introduce substantive amendments broadening the scope of his appeal. However, the Appeals Chamber is not persuaded that Lukić’s proposed amendments could not have been identified by Counsel and required Lukić’s direct input following the reading of the B/C/S translation of the Trial Judgement. Any errors resulting from discrepancies between the B/C/S version of the evidence and the relevant findings in the English version of the Trial Judgement,<sup>62</sup> as well as any misinterpretation or misrepresentation of the documentary evidence resulting from the omission of “parts of [...] sentences, and even whole sentences contained in the original”<sup>63</sup> should have been apparent to Lukić’s Counsel, who are fluent in both English and B/C/S. Lukić fails to show how his own reading and understanding of the Trial Judgement was central to the identification of such errors.

19. Similarly, with regard to the Interview, the Appeals Chamber notes that the combined English-B/C/S transcript of the Interview was available to Lukić at the time the Notice of Appeal was filed<sup>64</sup> and indeed, in his Notice of Appeal and Appeal Brief, Lukić raised arguments on this issue, including specific challenges to the translation and interpretation of the Interview.<sup>65</sup> The Appeals Chamber therefore considers that Lukić fails to show that the newly alleged errors could not have been identified by Counsel.

20. Further, although Lukić submits that his personal knowledge of the “geography and other features of Kosovo, including specific incidents, institutions, or other notorious facts” allows him to identify errors in the Trial Judgement in relation to findings concerning the crime sites,<sup>66</sup> his submission lacks precise explanation as to the relevance of his knowledge to each of the sought

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<sup>59</sup> Decision of 22 September 2010, p. 3. See also Status Conference, 14 Sep 2010, AT. 78; Decision on Motions for Extension of Time to File Notices of Appeal, 23 March 2009, p. 3; Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009, p. 4.

<sup>60</sup> Decision on Nebojša Pavković’s Motion to Amend his Notice of Appeal, 9 September 2009, para. 10.

<sup>61</sup> Motion, paras 9-10.

<sup>62</sup> See *ibid.*, para. 15(a), (c), (e)-(g).

<sup>63</sup> *Ibid.*, para. 15(f).

<sup>64</sup> See *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Decision on Lukić Request for Reconsideration of the Trial Chamber’s Admission into Evidence of his Interview with the Prosecution (Exhibit P948), 22 May 2008, para. 7.

<sup>65</sup> Notice of Appeal, ground of appeal F; Appeal Brief, paras 166-182.

<sup>66</sup> Motion, para. 16.

amendments. Likewise, with respect to documents bearing the MUP Staff letterhead, Lukić's typewritten name, or alleging his participation in meetings, Lukić fails to specify how his personal insight following the reading of the B/C/S translation of the Trial Judgement was crucial to the identification of each of the newly alleged errors in over 200 paragraphs challenged under proposed grounds of appeal D1 and KK.<sup>67</sup> The inadequacy of Lukić's submissions is particularly salient in light of the fact that, in its Decision of 10 February 2011, the Appeals Chamber explicitly reminded Lukić that a party seeking variation of its grounds of appeal "must, at least, explain precisely what amendments are sought and why, with respect to *each* such amendment, the 'good cause' requirement of Rule 108 is satisfied" and that "generic submissions" will fall short of satisfying this requirement.<sup>68</sup> Hence, without specifying with precision how his personal knowledge made the newly alleged errors identifiable, Lukić's submissions are insufficient to meet the good cause requirement of Rule 108 of the Rules.

21. On the basis of the foregoing, the Appeals Chamber is not satisfied that the availability of the B/C/S translation of the Trial Judgement constitutes good cause for allowing the requested amendments. Considering, however that, even when good cause has not been shown, the interests of justice require that an appellant not be held responsible for the failures of his counsel, the Appeals Chamber will consider whether, assuming their merits, the amendments sought are of substantial importance to the success of Lukić's Appeal, such that they would require a reversal of his conviction.<sup>69</sup>

22. Although Lukić generally alleges that all of his proposed amendments, if successful, would invalidate the Trial Judgement,<sup>70</sup> he does not articulate why the specific errors he alleges would result in a reversal of his conviction.<sup>71</sup> Repetitive and generic submissions that the Trial Chamber committed "[m]ultiple errors" in interpreting and citing evidence "which often is the lynchpin evidence for its findings of guilt" or that the Trial Chamber disregarded "certain evidence"<sup>72</sup> are insufficient in this respect. Therefore, even assuming for the purpose of this Decision that Lukić would prevail on the merits of his arguments, the Appeals Chamber cannot conclude that his submissions would be of "substantial importance" to the success of his appeal. Moreover, Lukić fails to explain why, assuming their merits, the two allegations of error he provides as examples -

<sup>67</sup> See Motion, para. 15(b); *ibid.*, Attachment #1, proposed grounds of appeal D1, KK.

<sup>68</sup> Decision of 10 February 2011, p. 2, citing *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Dragan Jokić's Request to Amend Notice of Appeal, 14 October 2005, para. 7 (emphasis in the original).

<sup>69</sup> See *supra*, para. 7.

<sup>70</sup> Motion, para. 18.

<sup>71</sup> See *ibid.*, paras 18-19. See also Decision of 10 February 2011, p. 3, referring to Lukić's duty to explain "why each requested variation is of substantial importance to the success of the appeal, such that permitting each amendment at this stage is necessary to avoid a 'miscarriage of justice'."

<sup>72</sup> Motion, para. 19. See also *ibid.*, paras 17-18, 22.

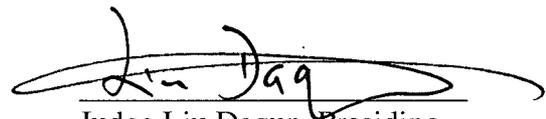
namely the Trial Chamber's alleged misinterpretation of the minutes of the MUP Staff meeting of 11 May 1999<sup>73</sup> and the alleged misrepresentation of the evidence that he was often the only MUP representative at Joint Command meetings<sup>74</sup> - would result in a reversal of his conviction. Consequently, the Appeals Chamber is not persuaded that the amendments sought are of substantial importance to the success of Lukić's Appeal.

#### IV. DISPOSITION

23. For the foregoing reasons, the Appeals Chamber **DENIES** the motion in its entirety.

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

Dated this ninth day of September 2011.  
At The Hague,  
The Netherlands.



Judge Liu Daqun, Presiding

[Seal of the Tribunal]

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<sup>73</sup> See Motion, paras 20-21.

<sup>74</sup> See *ibid.*, para. 19(e).