

IT-03-68-A
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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-03-68-A
Date: 3 May 2007
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Liu Daqun
Judge Andréia Vaz
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: Hans Holthuis

Decision of: 3 May 2007

PROSECUTOR

v.

NASER ORIĆ

**DECISION ON THE PROSECUTION'S MOTION FOR
VARIANCE CONCERNING ORDER AND NUMBERING OF
THE ARGUMENTS ON APPEAL AND ON THE
PROSECUTION'S CORRIGENDUM TO APPEAL BRIEF**

The Office of the Prosecutor:

Ms. Christine Dahl

Counsel for Naser Orić:

Ms. Vasvija Vidović
Mr. John Jones

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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 (“International Tribunal”),

RECALLING that it is seized with the “Prosecution’s Notice of Appeal” filed on 31 July 2006 (“Notice of Appeal”) from the Judgement of Trial Chamber II rendered on 30 June 2006 in *Prosecutor v. Naser Orić*;¹

NOTING “[t]he Prosecution’s Appeal Brief” filed on 16 October 2006 (“Appeal Brief”) and the “Prosecution’s Corrigendum to Appeal Brief” filed on 18 October 2006 (“Corrigendum”);

BEING SEIZED OF the “Prosecution’s Motion for Variance Concerning Order and Numbering of the Arguments on Appeal” of 18 October 2006 (“Motion”), in which the Office of the Prosecutor (“Prosecution”) seeks leave to vary the order and numbering of the arguments on appeal in its Appeal Brief pursuant to the Practice Direction on Formal Requirements for Appeals From Judgement (IT/201) of 7 March 2002 (“Practice Direction”);

NOTING the “Defence Response to Prosecution Motion for Variance Concerning Order and Numbering of Arguments on Appeal and to Prosecution’s ‘*Corrigendum to Appeals Brief*’” filed on 27 October 2006 (“Response”), in which Naser Orić (“Orić”) opposes the Motion on the basis that the Prosecution seeks to argue a new ground of appeal,² requests the Appeals Chamber to reject the Corrigendum submitting that it contains substantial changes to the Appeal Brief,³ and requests the Appeals Chamber to find that the Prosecution has breached Rule 111(B) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”) by not providing the required declaration in the Appeal Brief;⁴

NOTING “[t]he Prosecution’s Reply to Defence Response to the Corrigendum and the Motion for Variance” filed on 2 November 2006 (“Reply”);

CONSIDERING that, according to paragraph II(4) of the Practice Direction, the grounds of appeal and the arguments in an Appellant’s Brief must be set out and numbered in the same order as in the Appellant’s Notice of Appeal, unless otherwise varied with leave of the Appeals Chamber;

CONSIDERING that the Prosecution did – with one exception – merely change the numbering of the headings in the Appeal Brief as compared to the Notice of Appeal, but did not re-arrange the

¹ Case No. IT-03-68-T.
² Response, para. 7
³ Response, paras 13-19.
⁴ Response, paras 21-26.

order of its arguments, and that in only one instance did it change the order of arguments supporting a particular ground of appeal without changing their substance;⁵

CONSIDERING that the difference between the headings “Error of Fact: no reasonable trier of fact could have concluded that Orić did not have effective control over the Srebrenica Military Police”⁶ and “The evidence establishes beyond reasonable doubt that Orić had effective control over the SMP”⁷ alters the language with respect to the applicable standard of review, but does not change the substance of this ground of appeal such that it does not amount to a new ground of appeal;

CONSIDERING that the Prosecution submits that these changes were introduced to improve the structure of the Appeal Brief to provide clarity and to facilitate its understanding;⁸

FINDING that the changes the Prosecution seeks to introduce to the order and numbering of the headings and arguments on appeal are permissible under paragraph II(4) of the Practice Direction;

RECALLING that “a party may, without requesting leave from the Appeals Chamber, file a corrigendum to their previously filed brief or motion whenever a minor or clerical error in said brief or motion is subsequently discovered and where correction of the error is necessary in order to provide clarification;”⁹

CONSIDERING, having reviewed Orić’s objections to the Corrigendum,¹⁰ that the amendments opposed by Orić correct only minor errors and do not affect the substance of the Prosecution’s arguments;

CONSIDERING that it would have been preferable if the Prosecution had identified the particular amendments included in the Corrigendum, but that the Prosecution explains them sufficiently in the Reply;¹¹

CONSIDERING that Orić’s argument concerning the Prosecution’s alleged breach of Rule 111(B)¹² is irrelevant to both the Motion and the Corrigendum, as it is related to the original Appeal Brief and is therefore inappropriately raised outside of the scope of the Response;

⁵ Motion, para. 2.

⁶ Notice of Appeal, heading before para. 8.

⁷ Appeal Brief, heading before para. 19.

⁸ Motion, para. 2.

⁹ *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza’s Motions for Leave to Present Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence, 8 December 2006, para. 14, quoting *Prosecutor v. Željko Mejačić et al.*, Case No. IT-02-65-AR11bis.1, Decision on Joint Defense Motion for Enlargement of Time to File Appellant’s Brief, 30 August 2005, p. 3.

FOR THE FOREGOING REASONS,

DECLINES to address the alleged breach of Rule 111(B) in this Decision;

GRANTS the Motion and **ACCEPTS** that the Prosecution's Appeal Brief be read as amended by the Motion and Corrigendum.

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



Judge Fausto Pocar
Presiding

Dated this 3rd day of May 2007,
at The Hague,
The Netherlands.

[Seal of the International Tribunal]

¹⁰ Response, paras 13-16.

¹¹ Reply, paras 6-17.

¹² Response, paras 21-26.