



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-04-74-A

Date: 6 March 2014

Original: English

IT-04-74-A
A798-A794
06 MARCH 2014

798
Aj

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Carmel Agius
Judge Patrick Robinson
Judge Fausto Pocar
Judge Liu Daqun

Registrar: Mr. John Hocking

Decision of: 6 March 2014

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
BERISLAV PUŠIĆ**

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ORDER STRIKING
GROUNDS FROM BERISLAV PUŠIĆ'S NOTICE OF APPEAL AND
ON BERISLAV PUŠIĆ'S APPLICATION FOR LEAVE TO FILE A
CORRIGENDUM TO HIS NOTICE OF APPEAL**

The Office of the Prosecutor:

**Mr. Douglas Stringer
Mr. Mathias Marcussen**

Counsel for the Defence:

Mr. Michael G. Karnavas and Ms. Suzana Tomanović for Mr. Jadranko Prlić
Ms. Senka Nožica and Mr. Karim A. A. Khan for Mr. Bruno Stojić
Ms. Nika Pinter and Ms. Natacha Fauveau-Ivanović for Mr. Slobodan Praljak
Ms. Vesna Alaburić and Mr. Guénaél Mettraux for Mr. Milivoj Petković
Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Mr. Valentin Ćorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Mr. Berislav Pušić

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);

NOTING the judgement rendered in French by Trial Chamber III of the Tribunal on 29 May 2013 in the present case;¹

RECALLING the “Decision on Motions for an Extension of Time to File Notices of Appeal and Other Relief”, issued by the Pre-Appeal Judge on 21 June 2013 (“First Decision on Extension of Time”), ordering that: (i) the notices of appeal of Jadranko Prlić, Bruno Stojić, Valentin Ćorić, and Milivoj Petković be filed within 60 days of the issuance of the English translation of the Trial Judgement; and (ii) the remaining parties file their notices of appeal, if any, within 90 days of the issuance of the Trial Judgement;²

NOTING the “Notice of Appeal on Behalf of Berislav Pušić”, filed by Berislav Pušić (“Pušić”) on 28 June 2013 (“Notice of Appeal”);

BEING SEISED OF the “Prosecution Motion for Order Striking Grounds from Berislav Pušić’s Notice of Appeal”, filed by the Office of the Prosecutor (“Prosecution”) on 15 July 2013 (“Prosecution Motion”), in which the Prosecution requests the Appeals Chamber to strike from the Notice of Appeal the grounds and sub-grounds of appeal that fail to comply with the requirements set out in Rule 108 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) and in Paragraph 1(c)(iii) of the Practice Direction on Formal Requirements for Appeals from Judgement;³

BEING FURTHER SEISED OF the “Application for Leave under Rule 108 to File a Corrigendum to Defence Notice of Appeal”, filed by Pušić on 26 July 2013 (“Pušić Application”), in which he seeks leave pursuant to Rule 108 of the Rules to correct errors and other identified omissions by filing a corrigendum to his Notice of Appeal (“Corrigendum”);⁴

NOTING the “Defence Response to Prosecution Motion for Order Striking Grounds from Berislav Pušić’s Notice of Appeal”, filed by Pušić on 26 July 2013 (“Pušić Response”);

NOTING the “Prosecution Consolidated Submission Concerning Pušić’s Notice of Appeal”, filed by the Prosecution on 30 July 2013 (“Prosecution Consolidated Submission”), responding to the

¹ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, *Jugement*, 29 May 2013 (“Trial Judgement”).

² First Decision on Extension of Time, pp. 4-5.

³ Prosecution Motion, paras 1-2, 5 (*referring to grounds 1, 2, and 5, and certain sub-grounds in grounds 3 and 4 of the Notice of Appeal*). See also Practice Direction on Formal Requirements for Appeals from Judgement, IT/201, 7 March 2002 (“Practice Direction”).

⁴ Pušić Application, para. 5.

Pušić Application and replying to the Pušić Response,⁵ in which the Prosecution submits that, if the Appeals Chamber is satisfied that Pušić has shown good cause pursuant to Rule 108 of the Rules, he should be ordered to immediately re-file a corrected version of his Notice of Appeal;⁶

CONSIDERING that, pursuant to Paragraph 1(c)(iii) of the Practice Direction, a party seeking to appeal from a judgement of a trial chamber must file, in accordance with the Tribunal's Statute and the Rules, a notice of appeal containing, *inter alia*, the grounds of appeal, clearly specifying in respect of each ground the challenged finding or ruling in the judgement, with specific reference to the page number and paragraph number concerned;⁷

CONSIDERING that, pursuant to Rule 108 of the Rules, the Appeals Chamber may, on good cause being shown by motion, authorise a variation of grounds of appeal;⁸

NOTING the Prosecution's assertion that, for certain grounds and sub-grounds of appeal, Pušić failed to include in his Notice of Appeal any reference to the page or paragraph numbers of the Trial Judgement to which the alleged errors relate, and thus, these grounds and sub-grounds must be stricken;⁹

NOTING Pušić's response that the Appeals Chamber has the discretion in the event of non-compliance with the Practice Direction to impose an appropriate sanction, which may include an order for clarification or re-filing, and that the Prosecution Motion would become moot if the Pušić Application is granted;¹⁰

NOTING that Pušić maintains, *inter alia*, that at the time of the filing of his Notice of Appeal, he had not been provided with an official or complete translation of the Trial Judgement in a language

⁵ Prosecution Consolidated Submission, fn. 1.

⁶ Prosecution Consolidated Submission, para. 3.

⁷ See also Rule 108 of the Rules.

⁸ See also, e.g., *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Sreten Lukić's Re-Filed Second Motion for Leave to Vary His Notice of Appeal and Appeal Brief, 9 September 2011 ("Šainović et al. Decision"), para. 5; *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, Decision on Milan Lukić's Motion to Amend His Notice of Appeal, 16 December 2009 ("Lukić and Lukić Decision"), para. 9. To show "good cause", an appellant must demonstrate both a good reason for allowing the new or amended grounds of appeal and a good reason why those grounds were not included (or were not correctly articulated) in the original notice of appeal. See, e.g., Šainović et al. Decision, para. 6; Lukić and Lukić Decision, para. 10. The Appeals Chamber has considered, *inter alia*, the following factors in determining whether "good cause" exists: (i) the variation is minor and it does not affect the content of the notice of appeal; and (ii) the opposing party would not be prejudiced by the variation or has not objected to it. See, e.g., Šainović et al. Decision, para. 6; Lukić and Lukić Decision, para. 10.

⁹ Prosecution Motion, paras 3, 5 (referring to grounds 1, 2, and 5, and certain sub-grounds in grounds 3 and 4 of the Notice of Appeal).

¹⁰ Pušić Response, para. 6 (referring, *inter alia*, to Paragraph 17 of the Practice Direction). Pušić further submits that, should the Prosecution Motion not be considered moot, it is premature and should only be ruled upon when finalised versions of the notices of appeal of all appellants have been submitted, as otherwise Pušić would be disadvantaged vis-à-vis the other appellants, the Prosecution would be provided with an unfair advantage, and such ruling would be contrary to the interests of justice and an effective case management given the magnitude of the case. See Pušić Response, paras 7, 9.

that he or his counsel understands – *i.e.*, Bosnian/Croatian/Serbian (“B/C/S”) or English, respectively¹¹ – and for that reason, he had reserved the right to seek leave to amend his Notice of Appeal after an official and complete B/C/S and English translation of the Trial Judgement becomes available;¹²

NOTING Pušić’s further argument that he has already obtained a revised unofficial partial English translation of the Trial Judgement, which is still incomplete but more detailed;¹³

CONSIDERING that the grounds and sub-grounds in the Notice of Appeal identified by the Prosecution indeed fail to include any reference to page or paragraph numbers of the Trial Judgement containing the findings Pušić challenges¹⁴ and that the Notice of Appeal, therefore, does not conform with the requirements of Paragraph 1(c)(iii) of the Practice Direction;

CONSIDERING that the Corrigendum identifies the missing paragraph numbers of the Trial Judgement, thereby curing the defects of the Notice of Appeal without modifying the substance of the relevant grounds of appeal;¹⁵

RECALLING that in the “Decision on Motions for Extension of Time to File Appeal Briefs and for Authorization to Exceed Word Limit”, issued by the Pre-Appeal Judge on 22 August 2013 (“Second Decision on Extension of Time”), Pušić was ordered, *inter alia*, to file his appeal brief within 135 days of the issuance of the official English translation of the Trial Judgement;¹⁶

CONSIDERING, therefore, that the Prosecution would not be prejudiced if the Notice of Appeal is corrected as proposed by Pušić at this stage;

FINDING, in the circumstances of this case, that Pušić has shown good cause, pursuant to Rule 108 of the Rules, for making corrections to his Notice of Appeal¹⁷ and that it is in the interests of justice to allow Pušić to re-file his Notice of Appeal in conformity with the Practice Direction;¹⁸

¹¹ Pušić Application, para. 4; Pušić Response, para. 5. While the Prosecution acknowledges this fact, it opines that Pušić’s decision to file his Notice of Appeal within 30 days of the delivery of the Trial Judgement and not to seek an extension of that time limit cannot justify his failure to comply with the requirements of the Rules and the Practice Direction. *See* Prosecution Motion, para. 4; Prosecution Consolidated Submission, para. 2.

¹² Pušić Response, para. 5 (*referring to* Notice of Appeal, para. 5); Pušić Application, para. 4.

¹³ Pušić Application, para. 5.

¹⁴ *See* Notice of Appeal, grounds 1 (paras 8-9), 2 (para. 10), and 5 (paras 24-27), and sub-grounds in grounds 3 (paras 16-17) and 4 (para. 21).

¹⁵ *See* Corrigendum.

¹⁶ Second Decision on Extension of Time, para. 18.

¹⁷ *See supra*, fn. 8.

¹⁸ *See* Paragraph 17 of the Practice Direction. The Appeals Chamber notes Pušić’s submission that he will file “a final consolidated version of the Notice [of Appeal] once [he] has been provided with and considered an official and complete translation of the [Trial] Judgement in English and B/C/S.” *See* Pušić Application, fn. 4. To the extent that

FOR THE FOREGOING REASONS,

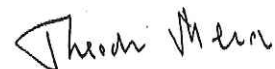
GRANTS in part the Prosecution Motion and the Pušić Application;

ORDERS Pušić to re-file his Notice of Appeal within seven days of the filing of this decision, as directed above, in accordance with the requirements set out in the relevant provisions of the Rules and the Practice Direction; and

DISMISSES the Prosecution Motion and the Pušić Application in all other respects.

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

Done this 6th day of March 2014,
At The Hague,
The Netherlands.



Judge Theodor Meron
Presiding

[Seal of the Tribunal]

Pušić contends that the Rules allow an appellant to first file a preliminary version of a notice of appeal and subsequently file a final version thereof, the Appeals Chamber rejects that contention.