

**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-08-91-A  
Date: 14 April 2014  
Original: English

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**IN THE APPEALS CHAMBER**

**Before:** Judge Carmel Agius, Presiding  
Judge William H. Sekule  
Judge Patrick Robinson  
Judge Liu Daqun  
Judge Arlette Ramaroson

**Registrar:** Mr. John Hocking

**Decision of:** 14 April 2014

**PROSECUTOR**

v.

**MIĆO STANIŠIĆ  
STOJAN ŽUPLJANIN**

***PUBLIC***

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**DECISION ON MIĆO STANIŠIĆ'S MOTION SEEKING LEAVE  
TO AMEND NOTICE OF APPEAL**

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**The Office of the Prosecutor**

Ms. Laurel Baig

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**Counsel for Stojan Župljanin**

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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 the “Motion on Behalf of Mićo Stanišić Seeking Leave to Amend Notice of Appeal with Annexes A, B and C” filed by Mićo Stanišić on 2 July 2013 (“Motion” and “Stanišić”, respectively).

## I. BACKGROUND

2. On 27 March 2013, Trial Chamber II of the Tribunal (“Trial Chamber”) issued the judgement in *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T (“Trial Judgement”), finding Stanišić and Stojan Župljanin (“Župljanin”) guilty of committing, through participation in a joint criminal enterprise, the crime of persecutions as a crime against humanity as well as murder and torture as violations of the laws or customs of war.<sup>1</sup> In addition, Župljanin was convicted for the crime of extermination as a crime against humanity.<sup>2</sup> The Trial Chamber sentenced both accused to 22 years of imprisonment.<sup>3</sup>

3. On 13 May 2013, Stanišić filed his notice of appeal challenging the Trial Judgement on 15 grounds.<sup>4</sup> Župljanin and the Office of the Prosecutor (“Prosecution”) also appealed the Trial Judgement.<sup>5</sup>

4. On 2 July 2013, Stanišić filed a motion pursuant to Rule 115 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) seeking the admission of excerpts of a letter written by Judge Frederik Harhoff (“Judge Harhoff”) on 6 June 2013 and published in a Danish newspaper on 13 June 2013 (“Judge Harhoff’s Letter”).<sup>6</sup> On 14 April 2014, the Appeals Chamber issued a decision admitting as additional evidence, Judge Harhoff’s Letter in its entirety.<sup>7</sup>

5. On 2 July 2013, Stanišić filed the Motion. The Prosecution filed a response to the Motion on 10 July 2013,<sup>8</sup> to which Stanišić replied on 15 July 2013.<sup>9</sup> On 9 September 2013, Stanišić filed a

<sup>1</sup> Trial Judgement, vol. 2, paras 955-956. *See* Trial Judgement, vol. 2, paras 313-315, 489-530, 729-781.

<sup>2</sup> Trial Judgement, vol. 2, para. 956.

<sup>3</sup> Trial Judgement, vol. 2, paras 955-956.

<sup>4</sup> Notice of Appeal on Behalf of Mićo Stanišić, 13 May 2013 (“Notice of Appeal”), paras 20-80.

<sup>5</sup> Notice of Appeal on Behalf of Stojan Župljanin, 13 May 2013; Prosecution Notice of Appeal, 13 May 2013.

<sup>6</sup> Rule 115 Motion on Behalf of Mićo Stanišić Seeking Admission of Additional Evidence with Annex, 2 July 2013 (“Rule 115 Motion”). The Prosecution filed its response on 10 July 2013. *See* Prosecution Response to Rule 115 Motion on behalf of Mićo Stanišić Seeking Admission of Additional Evidence, 10 July 2013 (“Prosecution Response to Rule 115 Motion”).

<sup>7</sup> Decision on Mićo Stanišić’s Motion Seeking Admission of Additional Evidence Pursuant to Rule 115, 14 April 2014, (“Stanišić Rule 115 Decision”).

<sup>8</sup> Prosecution Response to Motion on Behalf of Mićo Stanišić Seeking Leave to Amend Notice of Appeal, 10 July 2013 (“Response”).

<sup>9</sup> Reply to Prosecution Response to Motion on Behalf of Mićo Stanišić Seeking Leave to Amend Notice of Appeal, 15 July 2013 (“Reply”).

supplemental submission in support of his Motion,<sup>10</sup> to which the Prosecution responded on 13 September 2013.<sup>11</sup> Stanišić filed a reply to the Prosecution’s response on 17 September 2013.<sup>12</sup>

6. On 23 July 2013, President Theodor Meron (“Judge Meron”) withdrew from considering the Motion and assigned Judge Carmel Agius (“Judge Agius”) in his place.<sup>13</sup> On 24 July 2013, Judge Agius assigned Judge William H. Sekule to replace Judge Meron on the Bench for the purposes of considering the Motion.<sup>14</sup>

7. Stanišić filed his appeal brief on 19 August 2013 (“Stanišić Appeal Brief”).<sup>15</sup> On 21 October 2013, the Prosecution filed its response (“Prosecution Response to Stanišić Appeal Brief”).<sup>16</sup> Stanišić filed his reply on 11 November 2013 (“Stanišić Reply Brief”).<sup>17</sup>

## II. ARGUMENTS OF THE PARTIES

8. In the Motion, Stanišić seeks leave to: (i) amend his fourth ground of appeal; (ii) amend his tenth ground of appeal; and (iii) include an additional ground of appeal (“Ground of Appeal *1bis*”).<sup>18</sup> He submits that these amendments “favour the fair adjudication” of his fourth and tenth grounds of appeal, “by providing additional insight and clarifying for the Appeals Chamber and the Prosecution, the alleged errors of law and fact”.<sup>19</sup> Stanišić submits that the amendments “are

<sup>10</sup> Supplemental Submission in Support of Mićo Stanišić’s Motion to Amend Notice of Appeal, 9 September 2013 (“Supplemental Submission”).

<sup>11</sup> Prosecution Response to Supplemental Submission in Support of Mićo Stanišić’s Motion to Amend Notice of Appeal, 13 September 2013 (“Response to Supplemental Submission”).

<sup>12</sup> Reply on Behalf of Mićo Stanišić to Prosecution Response to Supplemental Submission Supporting Motion to Amend Notice of Appeal, 17 September 2013 (“Reply to Response to Supplemental Submission”).

<sup>13</sup> Order Assigning a Motion to a Judge, 23 July 2013.

<sup>14</sup> Order Replacing a Judge in Respect of a Motion Before the Appeals Chamber, 24 July 2013. The composition of the Bench was challenged on 21 October 2013 when Župljanin filed a motion seeking Judge Liu Daqun’s (“Judge Liu”) recusal from considering his motion to vacate the Trial Judgement (Stojan [Ž]upljanin’s Motion Requesting Recusal of Judge Liu Daqun from Adjudication of Motion to Vacate Trial Judgement, 21 October 2013 *referring to* Stojan [Ž]upljanin’s Motion to Vacate Trial Judgement, 21 October 2013). This motion was denied on 3 December 2013, by Judge Agius, in his capacity as Acting President (Decision on Motion Requesting Recusal, 3 December 2013, paras 23-24). On 13 December 2013, Župljanin filed a request, joined by Stanišić, asking for the appointment of a Panel to adjudicate on the request for recusal of Judge Liu *de novo* (Župljanin Defence Request for Appointment of a Panel to Adjudicate the Request for Disqualification of Judge Liu Daqun, 13 December 2013; Motion on Behalf of Mićo Stanišić joining Župljanin Defence Request for Appointment of a Panel to Adjudicate the Request for Disqualification of Judge Liu Daqun, 23 December 2013). The appointed Panel denied the request on 24 February 2014 (Decision on Motion Requesting Recusal of Judge Liu from Adjudication of Motion to Vacate Trial Judgement, 24 February 2014, paras 16-17. *See also* Decision on Župljanin Defence Request for Appointment of a Panel to Adjudicate the Request for Disqualification of Judge Liu Daqun, 7 February 2014, issued by Judge Agius in his capacity as Acting President).

<sup>15</sup> Appellant’s Brief on behalf of Mićo Stanišić, 19 August 2013.

<sup>16</sup> Prosecution Response to Appeal of Mićo Stanišić, 21 October 2013 (confidential). The Prosecution filed a “redacted public” version of the Prosecution Response to Stanišić Appeal Brief on 15 November 2013 (Prosecution Response to Appeal of Mićo Stanišić, 15 November 2013 (public redacted)).

<sup>17</sup> Brief in Reply on behalf of Mićo Stanišić, 11 November 2013.

<sup>18</sup> Motion, paras 2, 14, 39.

<sup>19</sup> Motion, paras 6, 20, 27.

necessary for the fair adjudication” of his appeal,<sup>20</sup> and that it is “in the interest of justice” that the Appeals Chamber grant his application.<sup>21</sup>

9. Under his fourth ground of appeal, Stanišić alleges that the Trial Chamber committed an error of fact in finding that he was aware of, and shared, the “persecutorial intentions” of the Bosnian Serb leadership to forcibly transfer and deport Muslims and Croats from territories of Bosnia and Herzegovina.<sup>22</sup> Stanišić seeks to amend the fourth ground of appeal in order to modify the alleged error of fact “to a mixed error of law and fact”.<sup>23</sup> He contends that the Trial Chamber committed an error of law by applying “the wrong criteria when finding that [he] possessed the required *mens rea*” in relation to the first category of joint criminal enterprise.<sup>24</sup> Stanišić avers that the scope of his fourth ground of appeal “as it stands [...] remains unchanged as a result of the modification sought”.<sup>25</sup> He submits that this amendment will not prejudice the Prosecution “in any way at this early stage of the appeal proceedings”.<sup>26</sup>

10. Under his tenth ground of appeal, Stanišić argues that the Trial Chamber erred in fact by implicitly finding that the possibility that murder and torture as violations of the laws or customs of war (Counts 4 and 6, respectively) could be committed in the execution of the common plan, was “sufficiently substantial as to be foreseeable to [Stanišić] and that he willingly took that risk.”<sup>27</sup> He seeks to amend his tenth ground of appeal by “adding Counts 3, 5, 7, and 8 to the counts targeted by the alleged error of fact”.<sup>28</sup> Stanišić contends that it is necessary, in the event his eighth ground of appeal is successful but his ninth ground of appeal is unsuccessful, “to also address as part of the 10<sup>th</sup> Ground of Appeal the Trial Chamber’s findings, or lack thereof, for Counts 3, 5, 7 and 8”, in relation to the third category of joint criminal enterprise.<sup>29</sup> He submits that the Trial Chamber’s findings, or lack thereof, in this regard “reveal additional errors of fact”.<sup>30</sup> Second, Stanišić refers to his first ground of appeal, whereby he alleges that the Trial Chamber failed to provide a reasoned opinion with respect to its findings concerning the first and third categories of joint criminal enterprise.<sup>31</sup> He submits that “[t]his deficiency in the Trial Judgement provides further justification

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<sup>20</sup> Motion, para. 36.

<sup>21</sup> Motion, para. 38.

<sup>22</sup> Stanišić Notice of Appeal, para. 30.

<sup>23</sup> Motion, para. 15. *See* Motion, paras 3, 18.

<sup>24</sup> Motion, para. 19. *See* Motion para. 21, Annex A.

<sup>25</sup> Motion, para. 18.

<sup>26</sup> Motion, paras 8, 20.

<sup>27</sup> Notice of Appeal, para. 53.

<sup>28</sup> Motion, para. 22. As it stands, Stanišić’s tenth ground of appeal alleges the Trial Chamber committed an error of fact occasioning a miscarriage of justice, in relation to Counts 4 and 6 (*see* Motion, para. 23; Notice of Appeal, paras 53-56).

<sup>29</sup> Motion, para. 24. Stanišić also argues that the amendment is necessary “for the sake of completeness” (Motion, para. 26).

<sup>30</sup> Motion, para. 24.

<sup>31</sup> Motion, para. 25; Stanišić Appeal Brief, paras 22-54.

for seeking a modification to the 10<sup>th</sup> Ground of Appeal at this stage”.<sup>32</sup> Finally, Stanišić avers that the modification “has the benefit of informing the Prosecution at the earliest opportunity”,<sup>33</sup> and that it does not cause prejudice to the Prosecution in any way.<sup>34</sup>

11. In addition, Stanišić seeks leave to introduce Ground of Appeal *1bis*,<sup>35</sup> in which he challenges the alleged violation of his “right to a fair and public hearing by a competent, independent and impartial tribunal established by law” resulting from the publication of Judge Harhoff’s Letter.<sup>36</sup> Stanišić submits that Judge Harhoff’s Letter reveals Judge Harhoff’s understanding of the law applicable, *inter alia*, to the first category of joint criminal enterprise.<sup>37</sup> He further submits that “the importance of this matter, certainly comes as no surprise to the Prosecution, and cannot be underestimated”,<sup>38</sup> and that the “addition of this new ground of appeal at this early stage of the proceedings will not prejudice the Prosecution in any way”.<sup>39</sup>

12. In its Response, the Prosecution submits that the request for the addition of Ground of Appeal *1bis* should be denied.<sup>40</sup> It argues that this request is dependent on the admission of Judge Harhoff’s Letter on appeal, and refers to arguments advanced in the Prosecution Response to the Rule 115 Motion in arguing that there is no basis for the admission of Judge Harhoff’s Letter.<sup>41</sup> The Prosecution takes no position on the amendments sought in respect of Stanišić’s fourth and tenth grounds of appeal.<sup>42</sup>

13. In his Reply, Stanišić advances two further arguments. First, he argues that his application to add Ground of Appeal *1bis* should be granted by reason of the fact the Prosecution failed to address the “good cause requirement” alone.<sup>43</sup> In addition, Stanišić submits that the statements in Judge Harhoff’s Letter show that Stanišić “may very well succeed in demonstrating on appeal that he was not tried by an impartial and independent Trial Chamber, a violation which would be without remedy unless leave is granted to add Ground of Appeal *1bis*”.<sup>44</sup>

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<sup>32</sup> Motion, para. 25.

<sup>33</sup> Motion, para. 27.

<sup>34</sup> Motion, para. 28.

<sup>35</sup> Motion, para. 30. *See also* Stanišić Appeal Brief, paras 22-54.

<sup>36</sup> Motion, para. 30. *See* Motion, para. 31.

<sup>37</sup> Motion, para. 31, citing Judge Harhoff’s Letter, p. 3.

<sup>38</sup> Motion, para. 33.

<sup>39</sup> Motion, para. 34.

<sup>40</sup> Response, para. 1.

<sup>41</sup> Response, para. 1.

<sup>42</sup> Response, para. 2.

<sup>43</sup> Reply, para 3. *See* Reply, paras 4, 8-13. The applicable law, including the “good cause requirement” will be discussed below (*see infra*, paras 17-20).

<sup>44</sup> Reply, para. 12.

14. In the Supplemental Submission, Stanišić argues that the decision of the chamber specially constituted in the case of *Prosecutor v. Vojislav Šešelj* (“*Šešelj* case”),<sup>45</sup> “supports the proposed addition of Ground of Appeal *Ibis*”.<sup>46</sup> He submits that the *Šešelj* Disqualification Decision, as a “judicial pronouncement” of the Tribunal, dispels the notion that Judge Harhoff’s Letter merely represented a view that senior officials should be held criminally responsible in appropriate circumstances and satisfies the high threshold for demonstrating that the reasonable apprehension of bias is firmly established.<sup>47</sup>

15. The Prosecution responds that the *Šešelj* Disqualification Decision is “an erroneous, non-final Decision in a separate proceeding regarding Judge Harhoff”, and that it does not establish “good cause” for Stanišić’s proposed ground of appeal.<sup>48</sup>

16. In reply, Stanišić submits, *inter alia*, that it is “patently clear from the *Šešelj* Disqualification Decision” that there was an unacceptable appearance of bias on the part of Judge Harhoff and that the finding of partiality therein was “clearly not confined” to the *Šešelj* case.<sup>49</sup>

### III. APPLICABLE LAW

17. Pursuant to Rule 108 of the Rules, the Appeals Chamber “may, on good cause being shown by motion, authorise a variation of the grounds of appeal” contained in the notice of appeal. A motion requesting a variation should be filed 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>50</sup> It is the appellant’s 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>51</sup>

18. The concept of “good cause” covers both good reason for including the new or amended grounds of appeal sought and good reason showing why those grounds were not included or were not correctly phrased, in the original notice of appeal.<sup>52</sup> The Appeals Chamber has considered, *inter*

<sup>45</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on Defence Motion for Disqualification of Judge Frederik Harhoff and Report to the Vice-President, 28 August 2013 (“*Šešelj* Disqualification Decision”).

<sup>46</sup> Supplemental Submission, para 2. *See also* Supplemental Submission, paras 5-14.

<sup>47</sup> Supplemental Submission, para. 13.

<sup>48</sup> Prosecution Response to Supplemental Submission, paras 1-3, 5.

<sup>49</sup> Reply to Prosecution Response to Supplemental Submission, para. 3.

<sup>50</sup> Decision on Stojan Župljanin’s Request to Amend Notice of Appeal, 8 October 2013 (“Decision of 8 October 2013”), para. 9; *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* Decision of 9 September 2011”), para. 5; *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Dragolub Ojdanić’s Second Motion to Amend his Notice of Appeal, 4 December 2009 (“*Šainović* Decision of 4 December 2009”), para. 5.

<sup>51</sup> Decision of 8 October 2013, para. 9; *Šainović* Decision of 9 September 2011, para. 5; *Šainović* Decision of 4 December 2009, para. 5.

<sup>52</sup> Decision of 8 October 2013, para. 10; *Šainović* Decision of 9 September 2011, para. 6; *Šainović* Decision of 4 December 2009, para. 6.

*alia*, the following factors in determining whether “good cause” exists: (i) the variation is so minor that it 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>53</sup> In this respect, the Appeals Chamber has stated that the question of prejudice to an opposing party is an important factor to be considered when assessing a request for variation of grounds of appeal.<sup>54</sup> Where an appellant seeks a substantive amendment broadening the scope of the appeal, “good cause” might also be established under certain circumstances.<sup>55</sup> The Appeals Chamber recalls that no cumulative list of requirements has been established for a substantive amendment to be granted. Rather, the jurisprudence of the Tribunal demonstrates that each proposed amendment is to be considered in light of the particular circumstances of the case.<sup>56</sup>

19. 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.<sup>57</sup>

20. Nonetheless, 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>58</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 miscarriage of justice if excluded.<sup>59</sup> In these limited circumstances, the interests of justice require that an appellant not be held responsible for the failures of his counsel.<sup>60</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>61</sup>

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<sup>53</sup> Decision of 8 October 2013, para. 11; *Šainović* Decision of 9 September 2011, para. 6; *Šainović* Decision of 4 December 2009, para. 6.

<sup>54</sup> *Šainović* Decision of 4 December 2009, para. 18; *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, p. 5.

<sup>55</sup> Decision of 8 October 2013, para. 11; *Šainović* Decision of 9 September 2011, para. 6; *Šainović* Decision of 4 December 2009, para. 6.

<sup>56</sup> Decision of 8 October 2013, para. 11; *Šainović* Decision of 9 September 2011, para. 6; *Šainović* Decision of 4 December 2009, para. 6.

<sup>57</sup> *Šainović* Decision of 9 September 2011, para. 8; *Šainović* Decision of 4 December 2009, para. 8.

<sup>58</sup> Decision of 8 October 2013, para. 12; *Šainović* Decision of 9 September 2011, para. 7; *Šainović* Decision of 4 December 2009, para. 7.

<sup>59</sup> Decision of 8 October 2013, para. 12; *Šainović* Decision of 9 September 2011, para. 7; *Šainović* Decision of 4 December 2009, para. 7.

<sup>60</sup> Decision of 8 October 2013, para. 12; *Šainović* Decision of 9 September 2011, para. 7; *Šainović* Decision of 4 December 2009, para. 7.

<sup>61</sup> Decision of 8 October 2013, para. 12; *Šainović* Decision of 9 September 2011, para. 7; *Šainović* Decision of 4 December 2009, para. 7.

#### IV. DISCUSSION

21. The Appeals Chamber notes that Stanišić requests modification of his fourth ground of appeal on the basis of an error of law, which stems from “further in depth analysis of the findings in the Judgement related to [his] *mens rea* pursuant to JCE I”.<sup>62</sup> Similarly, in relation to the requested amendment to the tenth ground of appeal, Stanišić has submitted that further analysis of the Trial Chamber’s findings, or lack of findings, regarding Counts 3, 5, 7, and 8 has revealed additional errors of fact.<sup>63</sup>

22. The Appeals Chamber recalls that “further analysis undertaken over the course of time” cannot, in and of itself, constitute good cause for an amendment to a notice of appeal.<sup>64</sup> Accordingly Stanišić has failed to show good reason why the contents of the proposed amendments were not included, or correctly phrased, in his fourth and tenth grounds of appeal in the original Notice of Appeal.<sup>65</sup> However, the Appeals Chamber notes that the Prosecution does not oppose these proposed amendments. The Appeals Chamber further notes that the Motion was filed before the Stanišić Appeal Brief and that the arguments encompassed by the proposed amendments to Stanišić’s fourth and tenth grounds of appeal were subsequently addressed in the Stanišić Appeal Brief and Stanišić Reply Brief.<sup>66</sup> Moreover, the Prosecution has already responded to these arguments in the Prosecution Response to Stanišić’s Appeal Brief.<sup>67</sup> Accordingly, the Appeals Chamber considers that the proposed variations concerning Stanišić’s fourth and tenth ground of appeal would bring the Notice of Appeal into conformity with the Stanišić Appeal Brief.<sup>68</sup> The Appeals Chamber considers, therefore, that no amendments are required to the Stanišić Appeal Brief or the Prosecution Response to Stanišić Appeal Brief with respect to the proposed amendments to Stanišić’s fourth and tenth grounds of appeal. In this regard, the Appeals Chamber finds that allowing the variation of the Notice of Appeal with regard to the fourth and tenth grounds of appeal will not unduly interfere with the expeditious administration of justice nor cause prejudice to the Prosecution given the stage of the proceedings and the complexity of other grounds of appeal. For these reasons, in the interests of justice, the Appeals Chamber will allow Stanišić to amend his fourth and tenth grounds of appeal as requested.

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<sup>62</sup> Motion, para. 16.

<sup>63</sup> Motion, para. 24.

<sup>64</sup> See Decision of 8 October 2013, para. 14; *Šainović* Decision of 22 September 2009, para. 15; *Šainović* Decision of 2 September 2009, para. 15.

<sup>65</sup> See *supra*, para. 18.

<sup>66</sup> See, e.g., Stanišić Appeal Brief, paras 96-103, 109, 117-124, 388-423; Stanišić Reply Brief, paras 33-36, 95-100.

<sup>67</sup> See Prosecution Response to Stanišić Appeal Brief, paras 186-203, 210-218, 225.

<sup>68</sup> See *supra*, para. 18.



23. With respect to the proposed Ground of Appeal *1bis*, the Appeals Chamber notes that Stanišić requests the inclusion of an additional substantive ground of appeal which challenges the alleged violation of his right to a fair and public hearing “by a competent, independent, and impartial tribunal established by law”.<sup>69</sup> The Appeals Chamber recalls that: (i) Stanišić filed his Notice of Appeal on 13 May 2013; (ii) Judge Harhoff’s Letter was published on 13 June 2013; and (iii) the Motion was filed soon after the publication of Judge Harhoff’s Letter, on 2 July 2013. Thus, Stanišić could not have addressed Judge Harhoff’s Letter or its possible impact in his original Notice of Appeal. The Appeals Chamber further recalls that the Rule 115 Motion was granted on 14 April 2014, as a result of which Judge Harhoff’s Letter was admitted into evidence in its entirety.<sup>70</sup> The Appeals Chamber notes that Judge Harhoff’s Letter is not “typical” additional evidence and has the potential to affect the Trial Judgement as a whole.<sup>71</sup> Recalling that each proposed amendment to a notice of appeal is to be considered in light of the particular circumstances of the case,<sup>72</sup> the Appeals Chamber is satisfied that, in the unique circumstances of this case, the addition of Ground of Appeal *1bis* is warranted to enable issues relevant to the appellate proceedings to be fully aired, albeit without prejudice as to their merit. Consequently, the Appeals Chamber is of the view that the addition of Ground of Appeal *1bis* would neither cause the Prosecution prejudice, nor unduly interfere with the expeditious administration of justice, given the stage of the proceedings and the complexity of other grounds of appeal. Based on the foregoing, the Appeals Chamber considers that Stanišić has shown good cause and therefore grants the Motion with respect to the addition of Ground of Appeal *1bis*.

## V. DISPOSITION

24. In light of the foregoing, and pursuant to Rule 108 of the Rules, the Appeals Chamber:

- (i) **GRANTS** the Motion;
- (ii) **ORDERS** Stanišić to file an amended notice of appeal no later than 23 April 2014;
- (iii) **ORDERS** Stanišić to file an addition to the Stanišić Appeal Brief with respect to the proposed Ground of Appeal *1bis* no later than 5 May 2014;
- (iv) **ORDERS** the Prosecution to file an addition to the Prosecution Response to Stanišić Appeal Brief, if any, no later than 26 May 2014; and

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<sup>69</sup> Motion, para. 30.

<sup>70</sup> Stanišić Rule 115 Decision, paras 24, 27.

<sup>71</sup> Stanišić Rule 115 Decision, para. 21

<sup>72</sup> See *supra*, para. 18.

(v) **ORDERS** Stanišić to file an addition to the Stanišić Reply Brief, if any, no later than 2 June 2014.

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

Done this 14<sup>th</sup> day of April 2014,  
At The Hague,  
The Netherlands.



\_\_\_\_\_  
Judge Carmel Agius  
Presiding

**[Seal of the Tribunal]**