



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: IT-95-14/2-A
Date: 5 April 2002
Original: English

IN THE APPEALS CHAMBER

Before: Judge David Hunt, Pre-Appeal Judge

Registrar: Mr Hans Holthuis

Decision of: 5 April 2002

PROSECUTOR

v

Dario KORDIĆ & Mario ČERKEZ

**DECISION ON PROSECUTION APPLICATION
RE AMENDED GROUNDS OF APPEAL**

Counsel for the Prosecutor:

Mr Norman Farrell

Counsel for the Defence:

**Mr Mitko Naumovski for Dario Kordić
Mr Božidar Kovačić and Mr Goran Mikuličić for Mario Čerkez**

1. The two appellants, Dario Kordić (“Kordić”) and Mario Čerkez (“Čerkez”), were each ordered to file a new document which:

- (a) clearly and concisely lists each and every one of his grounds of appeal,
- (b) identifies the pages and paragraphs where each one of those grounds of appeal is dealt with in his Appellant’s Brief, and
- (c) states concisely the manner in which the Trial Chamber is alleged to have committed an error in respect of each of these grounds of appeal.¹

2. The Order made it clear that the appellants were not permitted to raise additional grounds of appeal which were not contained in their original Appellant’s Brief without seeking leave to do so.² Where an appellant listed grounds of appeal which were not sufficiently apparent in his Appellant’s Brief, the prosecution was invited to seek leave to file a further response to address those grounds of appeal in more detail.³ The Order also stated that, if leave were granted to the prosecution to do so, the appellants would not have the right to reply to such further response unless leave to do so were granted by the Appeals Chamber.⁴ The appellants were given until 10 March to file such a document,⁵ and they were granted permission for such document to be up to ten pages in length.⁶

3. These orders had become necessary because each of the appellants had failed to identify clearly all of his grounds of appeal, as he had been obliged to, and because what may have been intended to be grounds of appeal were scattered throughout his Appellant’s Brief – sometimes in footnotes, sometimes in a collective manner, often without any supporting argument or references to the trial record and often without specifying the precise relief sought – and occasionally even for the first time in his Brief in Reply. This cavalier method of formulating an appeal adopted by the appellants could obviously have led to misinterpretation by the prosecution in its Respondent’s Brief and by the Appeals Chamber in its judgment.

¹ Order to File Amended Grounds of Appeal, 18 Feb 2002 (“Order”), p 3.

² Order, p 3.

³ *Ibid*, p 4.

⁴ *Ibid*, p 4

⁵ Scheduling Order, 20 Feb 2002, p 2.

⁶ Order on Application to Exceed Page Limit (Čerkez), 4 Mar 2002, p 2; Order on Application by Dario Kordić to Exceed Page Limit, 4 Mar 2002, p 3.

4. Kordić filed his amended grounds of appeal on 8 March, in a document inappropriately described as a response to the Order,⁷ and Čerkez filed his amended grounds of appeal in a document inappropriately called a brief, on 9 March.⁸ The appropriate title in each case would have been “Amended Grounds of Appeal”, and each document will now be referred to as such. The prosecution, however, has for some unexplained reason interpreted each of the Amended Grounds of Appeal as a motion to which either Rule 126*bis* of the Rules of Procedure and Evidence (“Rules”) or the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal (IT/155) (“Practice Direction”) applies,⁹ and it has sought an extension of time within which to file its response to the Amended Grounds of Appeal filed by each appellant.¹⁰

5. The prosecution’s submission is that the filing times provided by Rule 126*bis* are to be obeyed rather than those in the Practice Direction,¹¹ but this submission has already been rejected in other proceedings.¹² The misinterpretation by the prosecution would nevertheless have justified an order pursuant to par 16 of the Practice Direction recognising the Prosecution Application as having been validly filed on 22 March 2002, had that document been a “response” to a motion of any kind. But it was not. The documents filed by the appellants were, in every sense, amended grounds of appeal to be considered as part of their Appellant’s Briefs. The document filed by the prosecution was, in every sense, a motion seeking the relief to which reference is made shortly, and which the Order had invited the prosecution to seek. In the circumstances, no time limit is provided by either the Rules or the Practice Direction for the filing of such a document but, having been filed, the document itself attracts the provisions of Part IV of the Practice Direction.

6. The relief sought by the Prosecution Application is for:

- (i) Grounds 1-A, 1-D, 1-F, 3-F, 3-G and 5-B in Kordić’s Amended Grounds of Appeal to be disallowed, as being additional grounds which were not raised previously;

⁷ Appellant Dario Kordić’s Response to Order to File Amended Grounds of Appeal, 8 Mar 2002.

⁸ Appellant Mario Čerkez’s Brief Pursuant to 18 February 2002 Order to File Amended Grounds of Appeal, 9 Mar 2002.

⁹ Prosecution’s Consolidated Response to “Appellant Dario Kordić’s Response to Order to File Amended Grounds of Appeal” and “Appellant Mario Čerkez Brief Pursuant to 18 February 2002 Order to File Amended Grounds of Appeal”, (“Prosecution Application”), par 2.

¹⁰ Prosecution Application, par 5.

¹¹ *Ibid*, par 3.

¹² *Prosecutor v Krstić*, IT-98-33-A, Decision on Prosecution Request for Extension of Time, 25 Mar 2002, p 2.

- (ii) in the alternative, the opportunity to file a “Supplemental Response” (*scil* Supplementary Respondent’s Brief) to those grounds; and
- (iii) the opportunity to file a Supplementary Respondent’s Brief to Ground 3C and to any new submissions made in relation to the other grounds.

7. The prosecution does not challenge any grounds of appeal in Čerkez’s Amended Grounds of Appeal,¹³ but it notes that *both* appellants have taken advantage of the Order to tidy up and to improve their grounds of appeal with the benefit of having read the prosecution’s objections and criticisms of the original formulation of those grounds.¹⁴ These views expressed by the prosecution are correct, and the prosecution should not be prejudiced by an inability to respond to the changes which each of the appellants has seized the opportunity to make.

8. There has been no response to the Prosecution Application within the time allowed by par 11 of the Practice Direction.

9. It is unnecessary to deal with the relief sought by the prosecution in detail. It is sufficient to state:

- (a) The prosecution has correctly characterised grounds 1-A and 1-D as additional grounds which were not raised previously, but their disallowance is not appropriate at this stage. Instead, Kordić should be required to show cause why leave to add them at this stage should be granted.
- (b) Grounds 1-F, 3-F, 3-G and 5-B are no more than reformulations of grounds raised previously (although inadequately expressed).
- (c) The prosecution may file a Supplementary Respondent’s Brief in relation to grounds 1-F, 3-C, 3-F, 3-G and 5-B in Kordić’s Amended Grounds of Appeal and in relation to any material stated for the first time in either of the appellant’s Amended Grounds of Appeal.
- (d) If Kordić is permitted to add Grounds 1-A and 1-D, an order will be made fixing the time within which the prosecution may add to its Respondent’s Brief in relation to those grounds.

¹³ Prosecution Application, par 7.

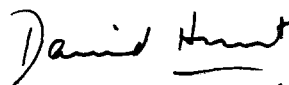
¹⁴ *Ibid*, par 8,

Disposition

10. Accordingly, the following orders are made:
 1. If Kordić wishes to maintain grounds 1-A and 1-D identified in his Amended Grounds of Appeal, he is to file within 14 days of this Decision a motion for leave to add them as new grounds of appeal, showing cause why he should be permitted to do so.
 2. In the event that Kordić does not file such a motion within 14 days, grounds 1-A and 1-D are disallowed.
 3. The prosecution may file a Supplementary Respondent's Brief to all of the material stated for the first time both in Kordić's Amended Grounds of Appeal (in particular, to grounds 1-F, 3-C, 3-F, 3-G and 5-B) and in Čerkez's Amended Grounds of Appeal, within 21 days of this Decision or such further period as may be allowed upon good cause being shown.
 4. If either appellant wishes to reply to such Supplementary Respondent's Brief, he must seek to leave do so within seven days of the Supplementary Respondent's Brief having being filed. Such a reply is available only in relation to issues raised in the Supplementary Respondent's Brief which go beyond the issues raised in the Appellant's Brief and in the Amended Grounds of Appeal. The appellant must identify in his motion, and with precision, the issues to which he wishes to reply.

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

Dated this 5th day of April 2002,
At The Hague,
The Netherlands.



Judge David Hunt
Pre-Appeal Judge

[Seal of the Tribunal]