

UNITED
NATIONS

IT-95-9-A
A665 - A661
16 SEPTEMBER 2004

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AT



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-95-9-A
Date: 16 September 2004
Original: English

IN THE APPEALS CHAMBER

Before: Judge Mehmet Güney, Presiding
Judge Fausto Pocar
Judge Mohamed Shahabuddeen
Judge Wolfgang Schomburg
Judge Inés Mónica Weinberg de Roca

Registrar: Mr. Hans Holthuis

Decision: 16 September 2004

PROSECUTOR

v.

BLAGOJE SIMIĆ

**DECISION ON MOTION OF BLAGOJE SIMIĆ TO AMEND
NOTICE OF APPEAL**

Counsel for the Prosecutor:

Mr. Norman Farrell
Mr. Mark J. McKeon

Counsel for the Appellant:

Mr. Igor Pantelić
Mr. Peter Murphy

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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”),

NOTING the Judgement rendered in this case by Trial Chamber II on 17 October 2003;

NOTING the “Appellant Blagoje Simić’s Notice of Appeal” filed on 17 November 2003 (“Notice of Appeal”) and the “Appellate Brief of Blagoje Simić” filed on 17 June 2004 by Blagoje Simić (respectively “Appellant’s Brief” and “Appellant”);

NOTING the “Prosecution’s Response Brief” filed confidentially on 27 July 2004 (“Respondent’s Brief”);

BEING SEISED OF the “Motion of Blagoje Simić to Amend Notice of Appeal to Add Alternative Ground” filed by the Appellant on 10 August 2004 (“Motion”), whereby the Appellant moves the Appeals Chamber for leave to file an amended Notice of Appeal;

NOTING that, in support of his Motion, the Appellant submits that the only change he requests is the addition of an alternative and more precise formulation of the current second ground,¹ which “raises no new issues and requires no further briefing submissions” as both parties have fully addressed the issue in their respective briefs and that, therefore, “no time would be lost and no prejudice caused”;

NOTING the “Prosecution’s Response to Motion to Amend Notice of Appeal” filed on 20 August 2004 (“Response”), in which the Prosecution submits *inter alia*:

- (1) that the proposed amendment to the Notice of Appeal does not merely reformulate the current second ground of appeal with more precision but adds a completely new ground of appeal and that the Appellant has not shown good cause for a variation of his Notice of Appeal;
- (2) that, nevertheless, it does not oppose the Motion to the extent that it would make the Notice of Appeal conform to the arguments developed in the Appellant’s Brief, to which it has already responded, and that, consequently, the Appellant should only be allowed to amend his Notice of Appeal with the language from paragraph 8 of his Appellant’s Brief;

¹ Notice of Appeal, “Second Ground of Appeal: Form of Indictment – Joint Criminal Enterprise”, page 3, paragraph 4.

NOTING that the “Reply of Blagoje Simić to Prosecution’s Response to Motion to Amend Notice of Appeal” was filed on 27 August 2004 (“Reply”), 3 days out of time according to paragraph 12 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal of 7 March 2002, and that no explanation was provided for the late filing, but that, pursuant to Rule 127(A)(ii) and (B) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), a Chamber “may, on good cause being shown by motion, recognise as validly done any act done after the expiration of a time so prescribed on such terms, if any, as is thought just and whether or not that time has already expired”;

REMINDING the Appellant that, according to Rule 127(A) of the Rules, he must request an extension of time for any act filed after the expiration of the time prescribed;

CONSIDERING that the filing of the Reply facilitates an expeditious processing of the matter and that the delay in the filing of the Reply did not prejudice the proceedings in this appeal;

FINDING that there is good cause in the terms of Rule 127(A) of the Rules;

RECOGNISING therefore, in the circumstances of this case, the filing of the Reply as validly done;

NOTING that, in his Reply, the Appellant states his disagreement with the Prosecution’s arguments but, “to avoid an unnecessary dispute”, modifies his Motion to comply with the Prosecution’s suggestion to amend the Notice of Appeal by using the language used in paragraph 8 of the Appellant’s Brief;²

NOTING, as a result, that the Appellant requests the Appeals Chamber to approve the addition of the following alternative second ground (“Ground 2(A)”):

“The Trial Chamber erred in law by failing to ensure that the Appellant was given the required notice of the allegations against him, in that, despite a series of amendments to the Indictment, the Prosecution failed until after the close of the Prosecution’s case at trial to specify the nature of its case with respect to the alleged basis of criminal responsibility under article 7(1) of the Statute, in violation of Articles 21(2) and (4)(a) and (b) of the Statute, and Rule 47(C) of the Rules of Procedure and Evidence; invalidating the decision of the Trial Chamber.

² Response, paragraph 11; Reply, paragraph 3.

[Judgement, paragraphs 150-155 (pages 52-54), 1137 (page 347), Separate and Partly Dissenting Judgement of Judge Lindholm, para. 1-5 (pages 314-316)].

Relief Sought: That the convictions recorded against Blagoje Simic be reversed and a Judgement of acquittal be entered in their place with respect to Count 1 and/or Count 2 of the Indictment, or in the alternative, that Dr. Simic be granted a new trial.”

NOTING that, 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”;

NOTING that the Appellant’s current second ground of appeal reads as follows:

“The Trial Chamber erred in law and abused its discretion by granting, over the objection of Dr. Blagoje Simic, the Prosecution’s Motion to Amend the Third Amended Indictment on 20 December 2001. This decision allowed the Prosecution to proceed against Dr. Simic without affording him sufficient notice of the allegation of Joint Criminal Enterprise. Accordingly, Dr. Simic was not apprised of the specific case against which he was required to defend, and he was, therefore, deprived of the opportunity to fully prepare his defense; thus, invalidating the decision. [Judgement, paragraphs 150-155 (pages 52-54), 1137 (page 347), Separate and Partly Dissenting Judgement of Judge Lindholm, para. 1-5 (pages 314-316)].

Relief Sought: That the convictions recorded against Blagoje Simic be reversed and a Judgement of acquittal be entered in their place with respect to Count 1 and/or Count 2 of the Indictment, or in the alternative, that Dr. Simic be granted a new trial.”

CONSIDERING that the proposed amendment cannot be considered as a mere alternative formulation of the current second ground of appeal, as alleged by the Appellant, since it raises issues not specifically related to the alleged error committed by the Trial Chamber in granting the Prosecution’s Motion to Amend the Third Amended Indictment on 20 December 2001;

CONSIDERING, however, that the issues raised in the proposed Ground 2(A) have been fully addressed by the Appellant in his Appellant’s Brief;³

CONSIDERING that the Prosecution, as it concedes in its Response, has had the opportunity to respond to the arguments developed on this matter in its Respondent’s Brief⁴ and that no material prejudice would be caused to the opposing party if leave to add Ground 2(A) to the Notice of Appeal was granted;

³ See Appellant’s Brief, pages 5 to 15.

⁴ See Respondent’s Brief, pages 4 to 16.

CONSIDERING moreover that the Prosecution does not oppose the addition of a ground whose formulation uses the language in paragraph 8 of the Appellant's Brief;⁵

CONSIDERING that the formulation of Ground 2(A) uses the language found in paragraph 8 of the Appellant's Brief and that the addition of this new ground would put the Notice of Appeal in conformity with the Appellant's Brief;

FINDING therefore that there is good cause within the meaning of Rule 108 of the Rules to vary the grounds of appeal;

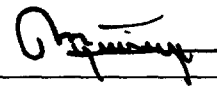
FOR THE FOREGOING REASONS,

AUTHORISES the Appellant to vary his grounds of appeal by adding Ground 2(A) to his current Notice of Appeal;

ORDERS the Appellant to file his amended Notice of Appeal no later than Friday 24 September 2004.

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

Dated this 16th day of September 2004,
At The Hague,
The Netherlands.



Judge Mehmet Güney
Presiding Judge

[Seal of the Tribunal]

⁵ Response, paragraph 11.