



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-02-60/1-A  
Date: 30 September 2004  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Fausto Pocar  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Inés Mónica Weinberg de Roca

**Registrar:** Mr. Hans Holthuis

**Decision:** 30 September 2004

**Momir NIKOLIĆ**

v.

**THE PROSECUTOR**

---

**DECISION ON MOTION FOR LEAVE TO VARY NOTICE OF APPEAL**

---

**Counsel for the Appellant:**

Mr. Veselin Londrović  
Ms. Virginia C. Lindsay

**Counsel for the Prosecutor:**

Mr. Norman Farrell

**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 I, Section A, on 2 December 2003;

**NOTING** “Momir Nikolić’s Notice of Appeal” filed on 30 December 2003 (“Notice of Appeal”) and “Momir Nikolić’s Opening Brief on Appeal” filed confidentially on 24 May 2004 by Momir Nikolić (“Appellant’s Brief” and “Appellant”);

**NOTING** the “Prosecution’s Response Brief on Appeal” (“Respondent’s Brief”) and the “Corrigenda to Prosecution’s Response Brief on Appeal” filed confidentially on 5 and 30 July 2004, respectively, by the Prosecution;

**NOTING** the “Appellant’s Reply Brief on Appeal” filed confidentially on 20 August 2004 (“Brief in Reply”) and the “Corrigenda to Appellant’s Reply Brief on Appeal” filed confidentially on 1 September 2004 by the Appellant;

**BEING SEISED OF** the “Motion for Leave to Vary Notice of Appeal” filed by the Appellant on 20 August 2004 (“Motion”), whereby the Appellant seeks leave to vary his grounds of appeal by including the grounds named I, II.A and II.B and developed in his Appellant’s Brief, should the Appeals Chamber find that the Notice of Appeal was insufficiently broad or insufficiently specific to include the issues raised in those grounds;

**NOTING** that, on 15 September 2004, the Appellant filed the “Notice of Withdrawal of Section II.A. of Appellant’s Reply Brief on Appeal and Relevant Portions of Related Pleadings” (“Notice of Withdrawal”), in which he informed the Appeals Chamber that he wishes to withdraw Section II.A. of his Brief in Reply, as well as the entirety of the Corrigenda of the Brief in Reply, and that “he also wishes to withdraw relevant sections of his Motion to vary his Notice of Appeal”;<sup>1</sup>

**NOTING** that the Appellant supports his Motion with the following grounds:

- (i) “The Prosecution has argued in its Response Brief on Appeal that Grounds I, II.A. and II.B. present grounds of appeal that were not raised in Appellant’s Notice of Appeal” but,

---

<sup>1</sup> Notice of Withdrawal, paras. 4-5.

nonetheless, has indicated that it has “no objection to those Grounds of Appeal” and has “fully addressed” those grounds in its Response Brief;<sup>2</sup>

- (ii) the issues raised in Grounds I, II.A. and II.B., “although not perfectly presented in the Notice Appeal [sic], are nonetheless sufficiently presented to come within the Notice of Appeal”;<sup>3</sup>
- (iii) however, “out of an abundance of caution”,<sup>4</sup> the Appellant seeks leave to vary his grounds of appeal, “should the Appeals Chamber find that the Notice of Appeal was insufficiently broad or insufficiently specific to include the issues raised in Grounds I, II.A. and II.B.”;<sup>5</sup>

**NOTING** the “Prosecution Response to Motion for Leave to Vary Notice of Appeal” filed on 26 August 2004 (“Response”), in which the Prosecution submits that the Motion should be dismissed on the grounds, *inter alia*, that:

- (i) the Motion is “unacceptably unclear and ambiguous” as to the wording suggested for the new grounds of appeal and as to the nature and scope of the Motion, in particular regarding the request for leave to “add a new permutation of Ground II.A.”;<sup>6</sup>
- (ii) the Appellant failed to show good cause;

**NOTING** that the “Appellant’s Reply to the Prosecution Response to Motion for Leave to Amend Notice of Appeal and Motion for Leave to Late File the Same”, filed by the Appellant on 1 September 2004 (“Reply”), was filed 2 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 (“Practice Direction”);

**NOTING** that, in the Reply, the Appellant’s Counsel “apologises for the delay, and respectfully urges that an enlargement of time to allow for the filing of this Reply [...] would be just”;<sup>7</sup>

**NOTING** 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, recognize 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”;

**NOTING** that, in support of the request for an enlargement of time, the Appellant’s Co-Counsel argues, *inter alia*, that she “was under the mis-impression that weekends would not count towards

---

<sup>2</sup> Motion, para. 1.

<sup>3</sup> Motion, para. 2.

<sup>4</sup> Motion, para. 3.

<sup>5</sup> *Idem*.

<sup>6</sup> Response, paras 4-16.

<sup>7</sup> Reply, para. 32.

the four days allowed for a Reply and did not realise her error until the evening of 30 August<sup>8</sup> and that, in addition, she had to resolve misunderstandings before this Reply could be filed;<sup>9</sup>

**CONSIDERING** that none of the reasons put forward by the Appellant's Co-Counsel constitute good cause within the meaning of Rule 127 of the Rules;

**FINDING** therefore the Reply as invalidly done;

**NOTING** that, at the time it filed its Response, the Prosecution did not have the benefit of the Notice of Withdrawal, which substantially clarified the Motion;

**CONSIDERING**, however, that, in light of the contents of the Response, the Prosecution would not be prejudiced by the Appeals Chamber issuing a decision without giving it an opportunity to react to the Notice of Withdrawal;

**CONSIDERING** that, with respect to the Appellant's claim that the issues raised in Grounds I, II.A. and II.B. are covered by the Notice of Appeal, the Appeals Chamber points out that the grounds named I, II.A. and II.B. in the Appellant's Brief ("Grounds I, II.A. and II.B.") raise issues not contained in the Notice of Appeal;

**FINDING** therefore that Grounds I, II.A. and II.B. are not covered by the Notice of Appeal;

**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";

**CONSIDERING** that the Appellant has not formulated any specific wording for the grounds he wants to add in his Notice of Appeal;

**CONSIDERING** that the Motion does not fulfil the requirements of paragraph 10(a) of the Practice Direction, which provides that "a party wishing to move the Appeals Chamber for a specific ruling or relief shall file, in accordance with the Rules, a motion containing the precise ruling or relief sought";

**REMINDING** the Appellant that Rule 108 of the Rules provides, *inter alia*, that, in a Notice of Appeal, the Appellant should "identify the order, decision or ruling challenged with specific

---

<sup>8</sup> Reply, para. 29.

reference to the date of its filing, and/or the transcript page, and indicate the substance of the alleged errors and the relief sought”;

**FINDING** that, due to its lack of clarity, the Motion did not give the opposing party the opportunity to respond with full knowledge and does not put the Appeals Chamber on notice of the precise relief sought;

**FOR THE FOREGOING REASONS,**

**DISMISSES** the Motion without prejudice to the Appellant’s refileing a motion consistent with this decision.

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

Done this 30 day of September 2004,  
At The Hague,  
The Netherlands.



Theodor Meron  
Presiding Judge

---

<sup>9</sup> Reply, para. 30.