UNITED
NATIONS

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-A

Date: 24 November 2005

Original: English

BEFORE THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, President**
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andrésia Vaz
Judge Theodor Meron

Registrar: **Mr. Hans Holthuis**

Decision: **24 November 2005**

PROSECUTOR

v.

Vidoje BLAGOJEVIĆ
Dragan JOKIĆ

DECISION ON MOTIONS RELATED TO THE PLEADINGS IN DRAGAN JOKIĆ'S APPEAL

The Office of the Prosecutor:

Mr. Norman Farrell

Counsel for the Accused:

Mr. Vladimir Domazet for Vidoje Blagojević
Ms. Cynthia Sinatra and Ms. Chrissa Loukas for Dragan Jokić

A. Introduction

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 ("International Tribunal") is seized of appeals from the Judgement of Trial Chamber I in the case of *Prosecutor v. Blagojević et al.*, Case No. IT-02-60, rendered orally on 17 January 2005 and in writing on 24 January 2005 ("Judgement").

2. In a Decision filed on 15 February 2005, the Pre-Appeal Judge in this case held that the deadline for filing the Appellant's original notice of appeal could not be extended on the basis of a delay in providing the Appellant with a copy of the Judgement translated into Bosnian/Croatian/Serbian ("B/C/S").[1] Rather, the Decision explained, the Appellant's counsel must prepare the notice of appeal on the basis of the English version of the Judgement, but the Appellant would subsequently be permitted to request to amend the notice as necessary after he had had the chance to review the translated Judgement himself. Accordingly, the Appellant filed his notice of appeal on 23 February 2005 and an amended notice of appeal on 25 February 2005 ("Notice of Appeal"). The B/C/S translation of the Judgement was delivered to the parties on 8 June 2005.

3. On 6 September 2005, the Appellant filed a "Request for Leave to Amend Notice of Appeal Relating to Dragan Jokić" ("Original Request to Amend"). In its "Decision on Dragan Jokić's Request to Amend Notice of Appeal", issued on 14 October 2005 ("14 October Decision"), the Appeals Chamber denied the Original Request to Amend for the reasons that the request neither identified the various amendments sought nor explained why there was good cause for them, as required under Rule 108 of the Rules of Procedure and Evidence of the International Tribunal ("Rules"). The Appeals Chamber found that this failure to comply with the Rules resulted from attorney negligence, and held that its precedents established that such negligence should not prevent an appellant from obtaining an amendment that is necessary in order to avoid a miscarriage of justice. It therefore afforded the Appellant another opportunity to submit, within one week, a revised motion for leave to amend his notice of appeal.[2] The Appellant accordingly filed a "Motion to Clarify Request to Amend Dragan Jokić's Notice of Appeal" on 18 October 2005 ("Revised Request to Amend").

4. The "Prosecution Response to Motion to Clarify Request to Amend Dragan Jokić's Notice of Appeal" was filed on 28 October 2005 ("Prosecution Response"). In it, the Prosecution contends that in the Revised Request to Amend, the Appellant continues to fail to satisfy the requirements of

[1] Decision on Defence Motion for Extension of Time in Which to File the Defence Notice of Appeal, 15 February 2005.

Rule 108 of the Rules and Practice Direction IT/155/Rev.3[3] and to establish "good cause" for the amendments sought.[4] The Prosecution Response exceeds the word limit for responses to motions set by the applicable Practice Direction;[5] the Prosecution seeks leave to vary the word limit in light of the complexity of the issues and the necessity to discuss filings in several related matters.[6] The Appellant has not filed a reply to the Prosecution Response and has not opposed the request for leave to vary its word limit. The Appeals Chamber notes that the issues posed by the Revised Request to Amend are important to this appeal and relatively complex, and finds that under the circumstances there is good cause for the variation in word limit sought by the Prosecution.

5. The Appeals Chamber notes that the Revised Request to Amend does not itself set forth the language that the Appellant seeks to add to the notice of appeal; rather, it refers back to the Original Request to Amend and provides arguments in favour of permitting the amendments sought therein. The Appeals Chamber agrees with the Prosecution that this approach is unfortunate, requiring the Appeals Chamber to "cobble[] together" two filings in order to determine what relief is sought.[7] However, the Appeals Chamber considers that so long as the cross-references make clear what relief is sought, it is appropriate for it to consider the Appellant's request for relief at this stage. The Prosecution's assertion that the Original Request to Amend is "no longer a viable document" is unfounded.[8] The Request was denied, but it was not expunged from the record, and there is no procedural rule that *per se* bars litigants from making references in their filings to arguments made in previous motions that were not granted. The Appeals Chamber notes, however, that if cross-references to particular paragraphs in the Original Request to Amend are not made clearly, the Appeals Chamber will not scrutinize the Original Request to Amend in order to figure out what amendments are sought. As the 14 October Decision held, it is the Appellant's responsibility to set forth with precision the relief sought.

6. In this decision, the Appeals Chamber will also address three related motions in addition to the Revised Request to Amend. First, the Appeals Chamber is seized of the "Request for Leave of Court to Exceed Word Limitation in Appeal Brief", filed by the Appellant on 17 October 2005 ("Request to Exceed Word Limit"), which requests that the Appeals Chamber consider as valid the "Appeal Brief of Dragan Jokić" that the Appellant filed on 4 October 2005 ("Appeal Brief"). The

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[2] 14 October Decision, para. 9.
[3] Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal, 16 September 2005.
[4] Prosecution Response, para. 2.
[5] Practice Direction on the Length of Briefs and Motions, No. IT/184/Rev.2, 16 September 2005, para. 5 (setting a limit of 3,000 words).
[6] Motion to Extend Word Limit for "Prosecution Response to Motion to Clarify Request to Amend Dragan Jokić's Notice of Appeal", 28 October 2005, paras. 3-5, 7.
[7] Prosecution Response, para. 10.
[8] *Ibid.*

Prosecution filed a response to this request on 31 October 2005, and the Appellant filed a reply on 6 November 2005.[9] Second, the Appeals Chamber is also seized of the "Urgent Prosecution Motion to Suspend Scheduling Order With Respect to Defence Appeal Briefs", filed on 14 November 2005 ("Motion to Suspend Scheduling Order"), which requests a delay in the deadline for the Prosecution's consolidated response brief pending the Appeals Chamber's disposition of the Revised Request to Amend. Finally, the Appeals Chamber will also consider certain aspects of the Prosecution Motion for Clarification of Matters Contained in Jokić's Appeal Brief, filed on 7 October 2005 ("Prosecution Motion for Clarification"). Although the Appeals Chamber has already denied this motion, in doing so it noted that the Prosecution's request for relief was in part premature, as the appropriateness of one of the requested remedies depended on the extent to which the Appellant was ultimately permitted to amend his notice of appeal.[10] Under the circumstances of this case, the Appeals Chamber considers that it is appropriate for it to revisit this aspect of the Prosecution Motion for Clarification in conjunction with its consideration of the amendments sought by the Appellant.

B. Applicable Law Concerning Amendments to a Notice of Appeal

7. Rule 108 of the Rules states that the Appeal Chamber "may, on good cause being shown by motion, authorise a variation of the grounds of appeal". In its cases, the Appeals Chamber has relied upon a variety of factors in determining that "good cause" has been established. These have included the fact that the variation is so minor that it does not affect the content of the notice of appeal; the fact that the opposing party would not be prejudiced by the variation or has not objected to it; and the fact that the variation would bring the notice of appeal into conformity with the appeal brief.[11] Where the appellant seeks a substantive amendment broadening the scope of the appeal, "good cause" might also, under some circumstances, be established.[12] The Appeals Chamber notes that it has never, notwithstanding the Prosecution's suggestion,[13] established a cumulative list of requirements that must be met each time a substantive amendment is to be granted. Rather, each amendment is to be considered in light of the particular circumstances of the case.

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[9] Prosecution Response to Jokić Request for Leave to Exceed Word Limitation in Appeal Brief, 31 October 2005 ("Response to Request to Exceed Word Limit"); Reply to Prosecution Response to Jokić Request for Leave to Exceed Word Limitation in Appeal Brief, 6 November 2005.

[10] Decision on Prosecution Motion for Clarification of Matters Contained in Dragan Jokić's Appeal Brief, 10 November 2005, p. 3 ("Decision on Prosecution Motion for Clarification").

[11] Decision on Prosecution's Request for Leave to Amend Notice of Appeal in Relation to Vidoje Blagojević, 20 July 2005, pp. 3-4 ("20 July Decision"); *see also Momir Nikolić v. Prosecutor,* Case No. IT-02-60/1-A, Decision on Appellant's Motion to Amend Notice of Appeal, pp. 2-3.

[12] *See, e.g.*, Decision on Prosecution's Request for Leave to Amend Notice of Appeal in Relation to Vidoje Blagojević, 20 July 2005, p. 3.

[13] Prosecution Response, para. 8.

8. In addition, as a general rule "inadvertence or negligence by an appellant's counsel to plead a ground of appeal with sufficient clarity should not restrict an appellant's right to raise that ground of appeal where that ground could be of substantial importance to the success of an appeal such as to lead to a miscarriage of justice if it is excluded" [14]. The Appeals Chamber notes that it has extended this principle in the present case to apply to the negligence of counsel in preparing a motion for leave to amend the notice of appeal. In its 14 October Decision, it therefore permitted the Appellant to file a revised request to amend notice of appeal which

> (1) identifies, with precision, each change sought to be made to the original Notice of Appeal;
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> (2) explains why there is "good cause" for each change within the meaning of Rule 108 of the Rules; and
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> (3) explains why pleading of each relevant ground of appeal with sufficient clarity is of substantial importance to the success of the appeal, such that permitting each amendment at this stage is necessary to avoid a 'miscarriage of justice'.[15]

The Appeals Chamber considers that the 14 October Decision sets out the relevant legal standards to be applied in this case. Thus, under the circumstances of this case, in which the Appeals Chamber has permitted previously rejected amendments to be presented to it for a second time as a remedy for attorney negligence, the Appellant must show that each amendment is of "substantial importance to the success of the appeal".

C. Assessment of the Requested Amendments

9. The Appellant seeks leave to amend his notice of appeal to allege two new errors not alleged in his original notice of appeal, each pertaining to the Trial Chamber's definition of aiding and abetting and its application of that definition to the facts of the case:

> **ERROR # 1** . . . The Trial Chamber erred in law finding on the basis of the facts as found by the Trial Chamber . . . that the conduct of Dragan Jokić satisfied the legal elements of aiding and abetting in relation to the crimes committed at Orahovac, Pilica School/Branjevo Military Farm and Kozluk. In particular, on the facts as found by the Trial Chamber, it was not open to a reasonable trier of fact to conclude that acts of Dragan Jokić had "a substantial effect on the commission of" the crimes in question . . . .
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> **ERROR # 2.** . . . The Trial Chamber erred in law in convicting Dragan Jokić of aiding and abetting crimes in circumstances where any assistance provided to the perpetrators of the crimes in question was *ex post facto*. . . .[16]

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[14] *Prosecutor v. Kordić and Čerkez,* Case No. IT-95-14/2-A, Decision Granting Leave to Dario Kordić to Amend His Grounds of Appeal, 9 May 2002, para. 5; Decision on Prosecution's Request for Leave to Amend Notice of Appeal in Relation to Vidoje Blagojević, 20 July 2005, p. 4.
[15] 14 October Decision, para. 9.
[16] Original Request to Amend, paras. 12-13; *see* Revised Request to Amend, paras. 9-12.

The Appellant offers two reasons that there is "good cause" to permit both of these amendments: that the errors in question only became apparent "after time spent disseminating the Judgement and extensive legal analysis", and that counsel's preparation of the ground of appeal was aided by consultation with the Appellant after he received the B/C/S translation of the Judgement.[17] He provides no further explanation of these arguments.

10. The Appeals Chamber notes that, without further development, the Appellant's bare assertions do not illustrate that he was justified in failing to make these allegations of error in his initial notice of appeal. Obviously, any amendment sought to any notice of appeal is the result of further analysis having been undertaken over the course of time; this fact cannot constitute good cause for an amendment taken alone. In addition, although under some circumstances the Appellant would be entitled to amend his notice of appeal after he received the B/C/S version of the Judgement,[18] in this instance the Appellant has failed to explain how the framing of the grounds of appeal in question depended on the Appellant's personal insight. Both concern issues of law, and Appellant's counsel, who is a native English speaker, is principally responsible for the assessment of legal errors in the Judgement.

11. Thus, the Appellant has not demonstrated a justification for failing to raise these grounds of appeal in his original notice of appeal. Nevertheless, notwithstanding counsel's apparent negligence in not raising these grounds earlier, the Appeals Chamber will permit these new grounds to be raised at this stage on the ground that they are necessary to avoid a miscarriage of justice. The Appellant argues that this standard is satisfied, with respect to both alleged errors, because "the definition of aiding and abetting, the crime for which the Appellant was convicted, lies at the heart of the entire Judgement".[19] The Prosecution does not respond to this argument.

12. The Appeals Chamber finds that the two new grounds of appeal raised by the Appellant are of substantial importance to the success of his appeal. If he prevails on the first ground, his convictions for extermination, murder, and persecutions—which rested solely on the mode of liability of aiding and abetting—will have to be vacated, and if he prevails on the second, the convictions will have to be vacated at least insofar as they rely on the Appellant's assistance to others after the fact of the crime. Thus, permitting the amendments sought is necessary to avoid a potential miscarriage of justice. Moreover, the Prosecution has not argued that the Appellant's failure to raise these errors in his original ground of appeal has unfairly prejudiced it. The Appeals Chamber notes further that these grounds of appeal were briefed in the Appellant's Appeal Brief

[17] Revised Request to Amend, paras. 10-12.
[18] *See* Decision on Defence Motion for Extension of Time in Which to File the Defence Notice of Appeal, 15 February 2005.

and that the Revised Request to Amend would bring the notice of appeal into conformity with the Appeal Brief. For these reasons, the Appeals Chamber will permit the addition of the errors of law set forth in paragraphs 12 and 13 of the Original Request to Amend (to which paragraphs 10 through 12 of the Revised Request to Amend refer).[20]

13. In the Revised Request to Amend, the Appellant clarifies that he no longer seeks, as he had in his Original Request to Amend, to amend paragraphs 5 through 8 of the original notice of appeal.[21] He does, however, seek to withdraw paragraphs 9, 11, 14, 15, 16, 31, and 51 of the original notice of appeal.[22] A withdrawal of grounds of appeal need not satisfy the above-described legal standards for amendment to the notice of appeal, as withdrawal can only benefit the Prosecution and also aids the Appeals Chamber in evaluating the case. The Prosecution contends that the portion of the Revised Request to Amend withdrawing grounds of appeal does not specify precisely what relief the Appellant requests.[23] The Appeals Chamber finds, however, that the Appellant plainly states that the seven identified paragraphs "are respectfully withdrawn".[24] The Appeals Chamber will therefore permit the requested amendments that withdraw grounds of appeal.

14. In footnote 9 of the Revised Request to Amend, the Appellant asserts that "the duties of Chief of Engineering are mutually exclusive" and suggests that some amendment to the notice of appeal might be justified with respect to this argument, to which the Appellant claims to have "generally alluded" in several paragraphs of the notice of appeal. The Appeals Chamber agrees with the Prosecution[25] that the Appellant has not explained what specific amendment to the original notice of appeal he seeks, if any, and the Appeals Chamber therefore will not permit any amendment on the basis of the argument in this footnote.

15. With respect to sentencing, the Revised Request to Amend contains the following paragraph (reproduced in its entirety):

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[19] Revised Request to Amend, paras. 10, 11.
[20] The Appeals Chamber reads paragraph 12 of the Revised Request to Amend (which addresses the "Erroneous Application of Law to Fact") as simply providing further explanation for the necessity of the amendment set forth in paragraph 12 of the Original Request to Amend. If it is instead meant to refer to some other requested amendment, the Appellant has not provided an adequate explanation for what relief he seeks, and the Appeals Chamber agrees with the Prosecution that no additional amendment should be allowed. *See* Prosecution Response, paras. 14-16.
[21] Revised Request to Amend, para. 13. The Appellant's language in this paragraph is less than crystalline, but the Appeals Chamber relies on his statement that it is "superfluous to seek to amend this error". The Appeals Chamber thus notes that the Prosecution's contentions concerning the inadequacy of the Appellant's arguments on this point are irrelevant, as the Appellant is no longer seeking an amendment. *See* Prosecution Response, para. 17.
[22] Revised Request to Amend, para. 15.
[23] Prosecution Response, paras. 23-26.
[24] Revised Request to Amend, para. 15. The Appeals Chamber also takes note of the Prosecution's argument that the list of withdrawn paragraphs is "incomplete", in that there are certain other paragraphs in the Notice of Appeal that are not addressed in the Appeal Brief. But the Appellant is under no obligation to formally amend his notice of appeal to withdraw every argument not addressed in the Appeal Brief, and the fact that he may not have done so does not mean that the "incomplete" relief he does seek should be denied.
[25] Prosecution Response, paras. 19-22.

> The Notice of Appeal stated in Section (7) of its prayer that "the Appellant seeks a substantial reduction in the sentence imposed upon him". The Defence would like to take this generous opportunity to clarify that this is also a ground of appeal.[26]

This paragraph contains no request for relief, and the Appeals Chamber therefore need not address it. The Appellant does not seek to amend the notice of appeal with respect to sentencing.

16. Finally, the Appellant observes that the order of the arguments in his Appeal Brief does not correspond to the order of the grounds of appeal in the notice of appeal (either in its original form or as revised by the amendments sought). He explains that the notice of appeal lists errors in the order in which they appeared in the judgement, while the Appeal Brief follows the "more logical" approach of addressing separately the three major incidents underlying the Appellant's conviction. The Appeals Chamber notes that the Appellant does not seek to amend the notice of appeal to correspond with the order of the Appeal Brief. Rather, he appears to be seeking the Appeals Chamber's leave not to comply with the requirement of Practice Direction on Formal Requirements for Appeals from Judgement that the Appeal Brief should set out and number its grounds of appeal and arguments "in the same order as in the Appellant's Notice of Appeal."[27] In the Prosecution Motion for Clarification, the Prosecution had argued that the Appeal Brief failed to comply with this requirement, and requested that the Appellant be ordered to file a chart detailing the correspondence between the notice of appeal and the Appeal Brief.[28]

17. The Appeals Chamber will grant, on an exceptional basis, the Appellant's request to present the errors in his Appeal Brief in a different order from that of the Notice of Appeal. Contrary to the Prosecution's contention, this request is not premature.[29] It can be disposed of simultaneously with the present grant of leave to amend the original Notice of Appeal. The Appeals Chamber considers that the alternative of ordering the Appellant to restructure his Appeal Brief in accordance with the revised notice of appeal is impractical. Such an order would be likely to cause undue delays in the appeals process, with adverse effects on the administration of justice and on the Appellant's co-accused Vidoje Blagojević.

18. In this regard, the Appeals Chamber recalls the Prosecution Motion for Clarification, noting that its decision on that motion treated the Prosecution's request for a chart showing the correspondence between the amended notice of appeal and the Appeal Brief as premature because no amendments had yet been granted.[30] It is now appropriate, in the interests of justice and pursuant to the Appeals Chamber's authority under Rule 54 of the Rules, to grant relief similar to

[26] Revised Request to Amend, para. 16.
[27] Practice Direction on Formal Requirements for Appeals from Judgement, No. IT/201, 7 March 2002, para. 4.
[28] Prosecution Motion for Clarification, paras. 7-8, 17.
[29] Prosecution Response, para. 28.

that previously requested by the Prosecution. Because the Appeals Chamber is ordering (as specified below) that the Appellant re-file his Appeal Brief, it is appropriate to order the Appellant to include, in the headings of each section and subsection of his Appeal Brief, references to the corresponding grounds of appeal in his revised notice of appeal. The Appeals Chamber considers that such headings will obviate the necessity of a chart illustrating the correspondences, and that adding them will not unduly complicate or delay the pleading process.

D. Request to Exceed Word Limit

19. The Appeal Brief, filed on 4 October 2005, is 104 pages long, and includes no word count. The most recent revision of the Practice Direction on the Length of Briefs and Motions, issued 16 September 2005, sets a word limitation of 30,000 words and requires that the word count be included; the earlier version of this Practice Direction had set the length limit at 100 pages or 30,000 words, whichever was longer.[31] In his Request to Exceed Word Limit, the Appellant first argues that the more flexible requirements of the original Practice Direction should be applied, since the bulk of the work on the Appeal Brief was done before the revision was filed. He then argues that the page-length requirement of the original Practice Direction should be varied in this case (permitting him four extra pages), apparently because he included blank space on some pages, deep indentations and quotations of large portions of the transcript.

20. In response, the Prosecution contends, first, that the Request to Exceed Word Limit may be moot, depending on the Appeals Chamber's disposition of the Revised Request to Amend; it observes that some of the Appeal Brief corresponds to new grounds of appeal that might not be granted. Specifically, the Prosecution points to pages 16 through 62 of the Appeal Brief.[32] Pages 16 through 48 relate to the Appellant's new grounds of appeal concerning aiding and abetting; the Appeals Chamber is permitting these new grounds of appeal, so this portion of the Appeal Brief remains relevant. Pages 48 through 62 relate to the Trial Chamber's application of the reasonable doubt standard, regarding which the Appellant seeks no amendment.[33] The Prosecution does not, in its Response to the Motion to Exceed Word Limit, specify any other portions of the Appeal Brief that are dependent on the requested amendments. Moreover, to the extent such portions exist,[34] the Appeals Chamber recalls its finding in the Decision on Prosecution Motion for Clarification "that

[30] Decision on Prosecution Motion for Clarification, p. 3.
[31] *Compare* Practice Direction No. IT/184/Rev.1, 5 March 2002, para. (C)(1)(a), *with* Practice Direction No. IT/184/Rev.2, 16 September 2005, paras. (C)(1)(a) and (C)(8).
[32] Response to Request to Exceed Word Limit, paras. 12-14.
[33] Revised Request to Amend, para. 13 (stating that the ground of appeal was adequately pleaded in the original notice of appeal).
[34] *See* Prosecution Motion for Clarification, para. 11 (arguing that fourteen pages of the Appeal Brief correspond to sentencing issues not raised in the original notice of appeal).

the Prosecution remains free to argue in its response brief that certain arguments in the Appeal Brief are not founded in the notice of appeal, and that the Appellant may then answer these arguments in his reply brief".[35] The Appeals Chamber considers that it is inappropriate for it, *proprio motu*, to simply identify paragraphs in the Appeal Brief that must be struck. It therefore will proceed to the merits of the Appellant's Request to Exceed Page Limit.

21. Rule 6(D) of the Rules provides that amendments to the Rules "shall not operate to prejudice the rights of the accused or of a convicted or acquitted person in any pending case".[36] The Appeal Chamber considers that the same principle applies to changes in the procedural requirements set out by the Tribunal's practice directions. Here, the Appeals Chamber agrees with the Appellant that his rights would be prejudiced by imposing what is in effect a more stringent length limitation after he had been proceeding in the preparation of his brief for several months, until two weeks before the due date of the Appeal Brief, on the basis of the earlier rule. The Appellant is therefore entitled to file a brief of 100 pages (or 30,000 words, whichever is greater).

22. The Appellant, however, filed a brief that included no word count and that was 104 pages long. He provides no explanation for why there are "exceptional circumstances", within the meaning of the Practice Direction, for allowing an expansion of the page limit. The Appellant's own choices regarding what to include in his brief, whether aesthetic (leaving extra blank space on pages) or strategic (quoting useful passages from the transcripts), do not amount to exceptional circumstances.

23. The Appeals Chamber will therefore direct the Appellant to refile his Appeal Brief in compliance with the earlier revision of Practice Direction IT/184. The Appellant is reminded that, in redacting his brief accordingly, he is entitled *only* to make deletions or alter the formatting (within the parameters of the Practice Direction); he may not make additions or other changes to his argument. The Appeals Chamber considers that in light of the relatively minor and non-substantive nature of the changes required for this refiling, and because the refiling will include no additions and cannot prejudice the Prosecution, the deadline for the Prosecution's consolidated response brief should continue to run from the date of the filing of the original Appeal Brief, subject to the extension of time discussed below.

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[35] Decision on Prosecution Motion for Clarification, p. 3.

[36] *See Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-21-1-T, Decision in the Matter of Proceedings under Rule 15 *bis*, 24 September 2003, paras. 13-14; *Prosecutor v. Blaškić*, Case No. IT-95-14-AR108*bis*, Decision on Prosecution Motion to Set Aside the Decision of the Appeals Chamber of 29 July 1997, 12 August 1997, paras. 12-13.

E. Motion to Suspend Scheduling Order

24. In its Motion to Suspend Scheduling Order, the Prosecution requests that the deadline for its consolidated response brief to the appeal briefs of the Appellant and his co-accused, Vidoje Blagojević, be suspended "until a reasonable period of time after the October Request is decided".[37] It argues that the confusion surrounding the Appellant's arguments and concerning which amendments to the notice of appeal would be granted has made it difficult for it to make progress on its consolidated response brief, or at least on those portions related to the Appellant's appeal.

25. The Appeals Chamber notes that the Prosecution has been in possession of the Appeal Brief, which sets forth all of the arguments to which it is required to respond, and that despite various points of confusion, considerable progress on the Appeal Brief should have been possible. However, the Appeals Chamber finds that there is good cause for an extension of time of a reasonable period in order to enable the Prosecution to adjust its response brief as appropriate in reaction to the final Notice of Appeal and Appeal Brief that will be filed by the Appellant pursuant to this decision. The Appeals Chamber notes that the administration of justice is served by having the filings of all the parties correspond appropriately with one another.

II. DISPOSITION

26. The Prosecution's "Motion to Extend Word Limit for Prosecution Response to Motion to Clarify Request to Amend Dragan Jokić's Notice of Appeal" is **GRANTED.**

27. The Revised Request to Amend is **GRANTED** in part, insofar as the Appellant seeks to:

(1) add to his original notice of appeal Paragraphs 12 and 13 (Errors 1 and 2) of the Original Request to Amend,

(2) withdraw Paragraphs 9, 11, 14, 15,16, 31, and 51 from his original notice of appeal, and

(3) structure the Appeal Brief in a way that does not follow the order of the notice of appeal;

and is **DENIED** in all other respects.

28. The Appellant's Request to Exceed Word Limit is **GRANTED** insofar as the Appellant seeks to proceed according to the length limitation established by Revision 1 of Practice Direction IT/184, and **DENIED** insofar as it seeks a variation of that length limitation.

[37] Motion to Suspend Scheduling Order, para, 15.

29. Within one week of the filing of this decision, the Appellant is hereby **ORDERED** to:

(1) file a Second Amended Notice of Appeal that is identical to the Amended Notice of Appeal filed on 25 February 2005, except that it omits paragraphs 9, 11, 14, 15, 16, 31, and 51, and adds Paragraphs 12 and 13 (Errors 1 and 2) from the Original Request to Amend (paragraphs and error numbers may be adjusted accordingly); and

(2) file an Amended Appeal Brief that:

- is no longer than 100 pages or 30,000 words, whichever is longer, and otherwise comports with the requirements of Practice Direction IT/184/Rev.1;
- includes in all of its section and sub-section headings references to the corresponding numbered grounds of appeal in the Second Amended Notice of Appeal;
- includes no changes to the text of the Appeal Brief filed on 4 October 2005, other than the above-specified heading amendments and the deletion of paragraphs or quotations or format changes required to meet the above-specified length limitations; and
- appends a statement listing any paragraphs or quotations that were deleted in compliance with this order.

30. The Prosecution's Motion to Suspend Scheduling Order is **GRANTED**. The Prosecution is **ORDERED** to file its consolidated response brief within one week of the Appellant's filing of his Second Amended Notice of Appeal and Amended Appeal Brief.

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

Done this 24 of November 2005
At The Hague, The Netherlands

Judge Fausto Pocar, Presiding

[Seal of the Tribunal]