



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-05-87-A
Date: 29 September 2009
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision of: 29 September 2009

PROSECUTOR

v.

**NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

PUBLIC

**DECISION ON THE PROSECUTION'S MOTION FOR AN
ORDER REQUIRING SRETEN LUKIĆ TO FILE HIS
APPELLANT'S BRIEF IN ACCORDANCE WITH THE
APPEALS CHAMBER DECISIONS**

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for the Appellants:

Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

I, LIU DAQUN, Judge of 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), and Pre-Appeal Judge in this case,¹

NOTING the Judgement rendered in the case *Prosecutor v. Milan Milutinović et al.* Case No. IT-05-87-T, by Trial Chamber III on 26 February 2009 (“Trial Judgement”);

NOTING the respective notices of appeal filed by the parties on 27 May 2009;²

NOTING the “Decision on Defence Motions for Extension of Word Limit” rendered on 8 September 2009 (“Decision of 8 September 2009”) granting in part the motions of Nebojša Pavković, Vladimir Lazarević and Sreten Lukić (“Pavković”, “Lazarević” and “Lukić”, respectively) and allowing Pavković and Lazarević to file individual appellant’s briefs of up to 45,000 words and Lukić to file his appellant’s brief of up to 60,000 words;

NOTING the “Decision on Sreten Lukić’s Motion to Reconsider Decision on Defence Motions for Extension of Word Limit” rendered on 14 September 2009 dismissing Lukić’s request for reconsideration of the Decision of 8 September 2009 and ordering him to file an appellant’s brief in full compliance therewith (“Decision of 14 September 2009”);

BEING SEIZED OF the “Request to Exceed Page Limit, Instantly” submitted by Lukić as part of his appellant’s brief filed on 23 September 2009³ (“Lukić’s Request”);

BEING ALSO SEIZED OF the “Prosecution Motion for an Order to Lukić to File a Brief in Accordance with Appeals Chamber Decisions” filed by the Office of the Prosecutor (“Prosecution”) on 25 September 2009 (“Prosecution’s Motion”);

NOTING the oral submissions made in response to the Prosecution’s Motion by Lukić and the oral reply of the Prosecution at the Status Conference on 25 September 2009;⁴

¹ *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Order Appointing the Pre-Appeal Judge, 19 March 2009.

² Prosecution Notice of Appeal, 27 May 2009; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Defence Submission Notice of Appeal, 27 May 2009 (filed by Counsel for Nikola Šainović); *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, General Ojdanić’s Notice of Appeal, 27 May 2009; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Notice of Appeal from the Judgement of 26 February 2009, 27 May 2009 (filed by Counsel for Nebojša Pavković); *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Vladimir Lazarević’s Defence Notice of Appeal, 27 May 2009 (confidential) and Defence Submission: Lifting Confidential Status of the Notice of Appeal, 29 May 2009; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Sreten Lukić’s Notice of Appeal from Judgement and Request for Leave to Exceed the Page Limit, 27 May 2009.

³ Defense Appellant’s Brief, 23 September 2009 (public with confidential annexes) (“Appellant’s Brief”).

⁴ AT. 18-21.

NOTING that in his Request, Lukić submits that despite their best endeavours, his Defence team have been unable further to reduce the word limit without compromising his grounds of appeal;⁵

NOTING that the Prosecution submits that by filing an appellant's brief of 65,956 words Lukić has violated two Appeals Chamber's decisions and requests that the Appeals Chamber order that Lukić comply with its orders and file an appellant's brief of no more than 60,000 words;⁶

NOTING the Prosecution's claim that additional arguments are advanced in Annexes B and D of the Appellant's Brief which he fails to include in his word count;⁷

NOTING that, according to the Prosecution, Lukić has already been granted an extension of twice the word limit mandated by the relevant Practice Direction and twice the 15,000 word extension granted to the other appellants in this case;⁸

NOTING the Prosecution's contention that Lukić attempts to justify his excess by making general assertions and repeating arguments from his previous motions and that he has failed to demonstrate that the reconsideration of the Appeals Chamber decisions is warranted;⁹

NOTING that in response, Lukić emphasises that the length and complexity of the Trial Judgement are without precedent and that a considerable effort was expended upon reducing his Appellant's Brief from 160,000 to 65,000 words, requiring Counsel "to work day and night to get this done and still preserve the essence of the arguments on the appeal";¹⁰

NOTING that Lukić further maintains that as the only "police officer" in the case, Lukić's appeal covers more ground than that of the "military appellants" and a greater proportion of the Trial Judgement;¹¹

NOTING that Lukić accepts that some submissions were repeated in Annex B and that further arguments were incorporated into Annex D but not included in the word count;¹²

⁵ Appellant's Brief, para. 10.

⁶ Prosecution's Motion, para. 1.

⁷ *Id.*, para. 3.

⁸ *Id.*, para. 2, referring to the Practice Direction on the Length of Briefs and Motions, IT/184/Rev.2, 16 September 2005 ("Practice Direction").

⁹ *Id.*, para. 3.

¹⁰ AT. 19.

¹¹ AT. 20.

¹² *Ibid.*

NOTING that the Prosecution further submits that Lukić had sufficient time to comply with the Decision of 8 September 2009 which granted in part an extension of the word limit and “was frankly, very reasonable”;¹³

NOTING that, pursuant to paragraph (C)(1)(a) of the Practice Direction, a “brief of an appellant on appeal from a final judgement of a Trial Chamber will not exceed 30,000 words”;

CONSIDERING the Decision of 8 September 2009 granted Lukić a considerable extension of the said word limit and compared with that granted to other appellants in this case;

CONSIDERING furthermore, that from the moment the Lukić’s Defence team started working on his Appellant’s Brief, they should have aimed to draft a more concise brief in compliance with the Practice Direction since they had no reason to expect that any extension of words would be granted to them;

CONSIDERING therefore that Lukić’s arguments regarding the difficulty of reducing the length of the Appellant’s Brief from 160,000 words as originally drafted, are devoid of merit;

CONSIDERING finally, that Lukić has merely reiterated the arguments and general assertions contained in his previous motions which were dismissed, and has therefore failed to meet the standard required for reconsideration of the Decisions of 8 and 14 September 2009;¹⁴

FINDING consequently that Lukić has failed to demonstrate that any further extension of the word limit for his Appellant’s Brief is warranted;

RECALLING that, pursuant to the Practice Direction “[a]ny appendix or book of authorities does not count towards the word limit” and “will not contain legal or factual arguments, but rather references, source materials, items from the record, exhibits, and other relevant non-argumentative material”;¹⁵

CONSIDERING that Annexes B and D to the Appellant’s Brief impermissibly include legal and factual arguments as follows:

¹³ AT. 21.

¹⁴ Cf. Oral Decision on “Lazarevic [*sic*] Defence Second Request to Exceed the Word Limit for Appeal Brief” filed on 23 September 2009; AT. 17.

¹⁵ Practice Direction, para. (C)(6). The same provision also clarifies that appendices should be “of reasonable length, which is normally three times the page limit for that class of motion or brief [...] although it is understood that the length of appendices will naturally vary more than the length of briefs.”

- (1) Annex B (confidential) comprises Lukić's assessment of a testimony adduced at trial;
- (2) Annex D includes Lukić's commentary on the trial transcript with respect to the alleged bias of the Trial Chamber;¹⁶

FOR THE FOREGOING REASONS,

HEREBY DISMISS Lukić's Request and **GRANT** the Prosecution's Motion;

ORDER Lukić to re-file his Appellant's Brief consisting of no more than 60,000 words no later than 7 October 2009;

ORDER Lukić to remove any legal or factual arguments from Annexes B and D of his Appellant's Brief and re-file them in strict compliance with (C)(6) of the Practice Direction by the same date;

NOTE that since the Appellant's Brief in its current form was filed on time, the present decision does not affect the deadline set for the Prosecution's respective brief in response.

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

Done this 29th day of September 2009

At The Hague,
The Netherlands.



Judge Liu Daqun, Pre-Appeal Judge

[Seal of the Tribunal]

¹⁶ Appellant's Brief, paras 195 *et seq.* While it is permissible to include extracts from trial transcripts in the appendices of an appellant's brief, such reference must be devoid of legal or factual argument or commentary.