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UNITED
NATIONS

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:	2 February 2010
	Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Liu Daqun, Pre-Appeal Judge**

Registrar: **John Hocking**

Decision: **2 February 2010**

PROSECUTOR

v.

NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ

PUBLIC

DECISION ON SRETEN LUKIĆ'S MOTION FOR AN ORDER REQUIRING THE PROSECUTION TO RE-FILE ITS RESPONDENT'S BRIEF

The Office of the Prosecutor:

Mr. Peter Kremer QC

Counsel for the Defence:

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 that six appeals have been lodged by the parties against the Trial Judgement;[2]

NOTING a series of decisions granting Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Sreten Lukić ("Lukić") and the Office of the Prosecutor ("Prosecution") appropriate extensions of time to file their submissions on appeal[3] and allowing them to exceed the applicable word limits of their respective filings;[4]

NOTING that the briefing is completed with respect to the Prosecution's Appeal[5] and, with respect to the Defence Appeals,[6] the reply briefs are due to be filed no later than 15 February 2010;[7]

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

[2] Defence Submission: Notice of Appeal, 27 May 2009 (filed by Counsel for Nikola Šainović); General Ojdanic's [*sic*] Second Amended Notice of Appeal, 16 October 2009 (filed as Annex C to General Ojdanic's [*sic*] Motion to Amend his Amended Notice of Appeal of 29 July 2009, 16 October 2009); Vladimir Lazarevic's [*sic*] Defence Notice of Appeal, 27 May 2009 (confidential) and Defence Submission: Lifting Confidential Status of the Notice of Appeal, 29 May 2009; Notice of Appeal from the Judgement of 26 February 2009, 29 September 2009 (filed by Counsel for Nebojša Pavković as Annex A to General Pavković Submission of his Amended Notice of Appeal, 29 September 2009); Sreten Lukic's [*sic*] Notice of Appeal from Judgement and Request for Leave to Exceed the Page Limit, 27 May 2009 (jointly, "Defence Appeals"); Prosecution Notice of Appeal, 27 May 2009 ("Prosecution's Appeal").

[3] *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Decision on Motions for Extension of Time to File Notices of Appeal, 23 March 2009; Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009; Decision on the Prosecution's Motion for an Extension of Time to File Respondent's Briefs, 1 October 2009.

[4] Decision on Defence Motions for Extension of Word Limit, 8 September 2009 ("Decision of 8 September 2009"); Decision on Nikola Šainović's and Dragoljub Ojdanić's Joint Motion for Extension of Word Limit, 11 September 2009; Decision on Sreten Lukić's Motion to Reconsider Decision on Defence Motions for Extension of Word Limit, 14 September 2009 ("Decision of 14 September 2009"); Oral Decision on Lazarević's Motion to Exceed the Word Limit for Appeal Brief, AT. 14-17, 25 September 2009; 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, 29 September 2009 ("Decision of 29 September 2009"); Decision on Dragoljub Ojdanić's Second Motion to Amend his Notice of Appeal, 4 December 2009.

[5] Prosecution Appeal Brief, 10 August 2009 (confidential; the public redacted version was filed on 21 August 2009) and Corrigenda to Prosecution Appeal Brief, 24 August 2009 and 15 January 2010; Defence Respondent's Brief, 2 November 2009 (filed by Šainović); General Ojdanić's Response Brief, 2 November 2009; General Pavković [*sic*] Reply to Prosecution Appeal Brief, 2 November 2009; Lazarević Defence Respondent's Brief, 2 November 2009; Sreten Lukic's [*sic*] Response to the Prosecution Appeal, 2 November 2009 (confidential); Prosecution's Consolidated Reply Brief, 17 November 2009 (confidential).

[6] Defence Appeal Brief, 23 September 2009 (filed by Šainović); General Ojdanić's Amended Appeal Brief, 11 December 2009 (filed as Annex B to General Ojdanic's [*sic*] Motion Submitting Amended Appeal Brief, 11 December 2009); General Vladimir Lazarević's Refiled Appeal Brief, 2 October 2009 (confidential; public redacted version filed on 20 October 2009); General Pavković's Amended Appeal Brief, 30 September 2009 (filed as Annex A to General Pavković's Submission of his Amended Appeal Brief, 30 September 2009); Defense Appelant's [*sic*] Brief Refiled, 7 October 2009 (public with confidential annexes) (filed by Lukić). See also Prosecution Response to Šainović

BEING SEISED OF "Sreten Lukic's [*sic*] Motion for an Order to the Prosecution to File a Brief in Accordance with Appeals Chamber Decisions and Practice Directions" filed confidentially by Lukić on 26 January 2010 ("Motion");[8]

NOTING the Response filed confidentially by the Prosecution on 27 January 2010;[9]

NOTING that Lukić did not file a reply;

NOTING that in his Motion, Lukić submits that the appendices of the Prosecution's Response Brief (Lukić) were used to present additional arguments resulting in the usage of over 22,000 words in excess of the applicable word limit imposed by the Decision of 8 September 2009;[10]

NOTING that Lukić contends that the chart in Appendix 1 includes substantive arguments which are grouped and referred to on multiple occasions throughout the Prosecution's Response Brief (Lukić) by an abbreviation code of a single word;[11]

NOTING that Lukić asserts that these additional arguments should have been included in the body of the Prosecution's Response Brief (Lukić) and, as such, should have been subject to the word count;[12]

NOTING that Lukić also objects to the inclusion of "additional arguments/words" in Appendix 2 of the Prosecution's Response Brief (Lukić) and the improper spacing contained therein;[13]

NOTING Lukić's request that the Prosecution should be ordered to file a revised brief of no more than 60,000 words within a very short deadline to limit the prejudice to Lukić's ability to file his reply, and that Lukić does not seek an extension of the time limit to file his reply;[14]

Brief [*sic*], 15 January 2010 (confidential); Prosecution Response to General Ojdanić's Amended Appeal Brief, 15 January 2010 (confidential); Prosecution Response to General Pavković's Amended Appeal Brief, 15 January 2010 (confidential); Prosecution Response to Appeal of Vladimir Lazarević, 15 January 2010 (confidential); Prosecution Response to Appeal of Sreten Lukić, 15 January 2010 (confidential) ("Prosecution's Response Brief (Lukić)").

[7] Decision on Defence Requests for Extension of Time and Word Limits to File Reply Briefs, 20 January 2010.

[8] Recalling that under Rules 78 and 107 of the Tribunal's Rules of Procedure and Evidence, all proceedings before the Appeals Chamber, including the Appeals Chamber's orders and decisions, shall be public unless there are exceptional reasons for keeping them confidential, and considering that no confidential information from the parties' filings is cited herein, I render the present decision publicly. (*Cf.* Decision on Vladimir Lazarević Motion to Present Additional Evidence and on Prosecution's Motion for Order Requiring Translations of Excerpts of Annex E of Lazarević's Rule 115 Motion, 26 January 2010, para. 14, and references cited therein.)

[9] Prosecution Response to Lukić Motion for Order on Filing in Accordance with Appellate Decisions and Practice Directions, 27 January 2010 (confidential) ("Response").

[10] Motion, paras 1, 4, 9. See also Decision of 14 September 2009; Decision of 29 September 2009.

[11] *Ibid.*, paras 5- 6.

[12] *Ibid.*, paras 4-7.

[13] *Ibid.*, para. 8.

[14] *Ibid.*, paras 13-14.

NOTING that in response, the Prosecution asserts that both Appendix 1 and 2 comply with the relevant Practice Direction[15] and are not required to be included in the word count since they contain neither legal nor factual arguments;[16]

NOTING that, according to the Prosecution, Appendix 1 is a table containing 16 direct quotations from the Tribunal's jurisprudence and, as non argumentative references, are appropriately placed outside the main text of the Prosecution's Response Brief (Lukić);[17]

NOTING that the Prosecution maintains that the use of abbreviation codes to set out the categories of deficient submissions liable for summary dismissal in combination with a glossary is an established practice that ensures that citations in the text remain clear, coherent and concise;[18]

NOTING that the Prosecution further responds that Appendix 2 is a table collating and cross-referencing the murder victims identified in volumes 2 and 4 of the Trial Judgement and does not contain any factual or legal argument, and that Lukić's further argument alleging improper spacing in Appendix 2 is irrelevant;[19]

RECALLING that, pursuant to paragraph (C)(6) of the Practice Direction, appendices and books of authorities do not count towards the word limit and should not contain legal or factual arguments, but rather references, source materials, items from the record, exhibits, and other relevant, non-argumentative material;

CONSIDERING that the abbreviations defined in Appendix 1 represent legal arguments and, as such, should be properly represented in the Prosecution's Response Brief (Lukić);[20]

CONSIDERING FURTHER that these abbreviations are repeatedly relied upon throughout the Prosecution's Response Brief (Lukić);

FINDING therefore, that Appendix 1 amounts to an impermissible attempt to circumvent the word limit imposed by the Decision of 8 September 2009;

CONSIDERING that the information contained in Appendix 2 merely represents the collation of information contained in the Trial Judgement and does not include legal or factual arguments;

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[15] Response, para. 1, referring to the Practice Direction on the Length of Briefs and Motions, IT/184/Rev.2, 16 September 2005 ("Practice Direction").
[16] Response, para. 2.
[17] *Ibid.*, para. 3.
[18] *Ibid.*, para. 5.
[19] *Ibid.*, para. 6.

FINDING therefore, that Appendix 2 was validly filed;

FOR THE FOREGOING REASONS,

HEREBY GRANT Lukić's Motion **IN PART**;

ORDER the Prosecution to re-file its Response Brief (Lukić) consisting of no more than 60,000 words no later than 8 February 2010 in strict compliance with paragraph (C)(6) of the Practice Direction and the present Decision;

NOTE that the present decision does not affect the deadline set for Lukić's respective brief in reply.

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

Done this second day of February 2010

At The Hague,
The Netherlands.

Judge Liu Daqun, Pre-Appeal Judge

[Seal of the Tribunal]

[20] The parties are obviously not precluded from using abbreviations or short references, including cross-references to arguments made elsewhere in their briefs. However, excluding the entire bulk of legal arguments contained in Appendix 1 from the word count is impermissible.