



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: 12 July 2010
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision: 12 July 2010

PROSECUTOR

v.

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

PUBLIC

**DECISION ON “DEFENCE REQUEST TO FILE A REPLY TO
CONFIDENTIAL ‘PROSECUTION RESPONSE TO
ŠAINOVIĆ’S SECOND MOTION TO ADMIT ADDITIONAL
EVIDENCE”**

The Office of the Prosecutor:

Mr. Paul Rogers

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 by Trial Chamber III on 26 February 2009;²

NOTING that six appeals against the Trial Judgement are currently pending before the Appeals Chamber;

NOTING that on 9 June 2010, Counsel for Nikola Šainović (“Šainović”) filed a “Defence Motion Requesting Admission of Additional Evidence Pursuant to Rule 115 with Annex”, and that on 7 July 2010, the Office of the Prosecutor (“Prosecution”) filed confidentially a “Prosecution Response to Šainović’s Second Motion to Admit Additional Evidence” (“Response”);

BEING SEISED OF “Defence Request to File a Reply to Confidential ‘Prosecution Response to Šainović’s Second Motion to Admit Additional Evidence’” filed confidentially by Šainović on 9 July 2010 (“Request”) in which Šainović requests that the Response be dismissed as it was filed after the expiry of the deadline provided for in Rule 126 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) or, should the Appeals Chamber not dismiss the Response, that he is granted leave to file a reply;³

CONSIDERING that the relevant Practice Direction provides that in the event of a motion pursuant to Rule 115 of the Rules, the opposing party may file a response within 30 days of the motion being filed and that the moving party may file a reply within 14 days of the filing of the response;⁴

RECALLING that the Practice Direction does not require the moving party in a motion filed during an appeal from judgement to seek leave prior to filing a reply;⁵

FINDING therefore that the Response was filed within the prescribed time limit and that Šainović may file a reply within 14 days of the filing of the Response;

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

² *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Judgement, 26 February 2009 (“Trial Judgement”).

³ Request, paras 2-4.

⁴ Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal, IT/155 Rev. 3, 16 September 2005, (“Practice Direction”), paras 13-14.

⁵ Practice Direction, para. 14. See further Status Conference, 25 September 2009, AT. 15-16; Status Conference, 18 January 2010, AT. 43-44; Decision on Nikola Šainović’s Request for Temporary Provisional Release on Compassionate Grounds, 28 January 2010, fn. 2, referring to, *inter alia*, *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Decision on Dragomir Milošević’s Further Motion to Present Additional Evidence, 9 April 2009, fn. 3.

CONSIDERING FURTHER, that all submissions filed before the Tribunal shall be public unless there are exceptional reasons for keeping them confidential;⁶

FINDING that no exceptional reasons exist to justify the confidential status of the Request;

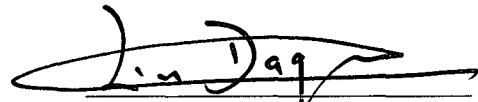
FOR THE FORGOING REASONS,

HEREBY DISMISS the Request;

DIRECT the Registrar to lift the confidential status of the Request.

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

Dated this twelfth day of July 2010,
At The Hague, The Netherlands.



Liu Daqun, Pre-Appeal Judge

⁶ *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-A, Decision on Lahi Brahimaj's Application for Provisional Release, 25 May 2009, para. 5, and the references cited therein.