

IT-05-88-A
A4627-A4625
31 January 2011

4627
NL

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-05-88-A
Date: 31 January 2011
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Pre-Appeal Judge
Registrar: Mr. John Hocking
Decision: 31 January 2011

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ**

PUBLIC

**DECISION ON REQUEST OF VUJADIN POPOVIĆ FOR LEAVE TO VARY
ORDER OF ARGUMENTS IN APPELLANT BRIEF AND ON MOTION FOR
VARIATION OF TIME LIMIT**

The Office of the Prosecutor

Mr. Peter Kremer
Mr. Peter McCloskey

Counsel for the Defence:

Mr. Zoran Živanović and Ms. Mira Tapušковиć for Mr. Vujadin Popović
Mr. John Ostojić and Mr. Predrag Popović for Mr. Ljubiša Beara
Ms. Jelena Popović and Mr. Stéphane Bourgon for Mr. Drago Nikolić
Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić for Mr. Radivoje Miletić
Mr. Dragan Krgović and Mr. David Josse for Mr. Milan Gvero
Mr. Peter Haynes and Mr. Simon Davis for Mr. Vinko Pandurević

I, Patrick Robinson, Presiding 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 (“Tribunal”), and Pre-Appeal Judge in this case,

NOTING the “Judgement” rendered by Trial Chamber II of the Tribunal on 10 June 2010;¹

NOTING the respective notices of appeal filed by the parties on 8 September 2010;²

BEING SEISED OF “Vujadin Popovic’s [*sic*] Motion for Variation of Time Limit to File Request to Vary Order of Arguments in Appeal Brief”, filed by Counsel for Vujadin Popović (“Popović”) on 24 January 2011 (“First Motion”), in which Popović requests the Pre-Appeal Judge to recognise as validly done “Vujadin Popovic’s [*sic*] Request to Vary the Order of Arguments in the Appeal Brief”, dated 21 January 2011 (“Second Motion”) and annexed to the First Motion;³

NOTING that Popović, in the First Motion, explains that the Second Motion was submitted to the Registry of the Tribunal (“Registry”) on 21 January 2011, directly after the filing of his appellant brief, but that, for unknown reasons, the Second Motion was not received by the Registry and there is no record of it being sent;⁴

NOTING the affidavit of Popović’s legal assistant explaining the circumstances surrounding the failed transmission of the Second Motion to the Registry;⁵

NOTING the “Prosecution’s Response to Popović’s Motion for Variation of Time Limit to File Request to Vary Order of Arguments in Appeal Brief”, filed by the Office of the Prosecutor (“Prosecution”) on 26 January 2011 (“First Response”), in which the Prosecution takes no position with respect to the First Motion;⁶

CONSIDERING that it is in the interests of justice to recognise the Second Motion as having been validly filed;

¹ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Judgement, 10 June 2010.

² Prosecution’s Notice of Appeal, 8 September 2010; Vujadin Popovic’s [*sic*] Notice of Appeal, 8 September 2010 (confidential); Appellant, Ljubisa [*sic*] Beara’s Notice of Appeal, 8 September 2010; Notice of Appeal on Behalf of Drago Nikolić, 8 September 2010 (confidential); *Acte d’appel de la defense de Radivoje Miletic* [*sic*], 8 September 2010; Notice of Appeal on Behalf of Vinko Pandurevic [*sic*] Against the Judgment [*sic*] of the Trial Chamber Dated 10th June 2010, 8 September 2010 (confidential).

³ First Motion, paras 1, 6.

⁴ First Motion, paras 3-6.

⁵ First Motion, Annex II.

⁶ First Response, para. 1.

NOTING that Popović, in the Second Motion, seeks leave to present his appeal arguments in a manner and order that differs from the order of the grounds set out in his notice of appeal and argues that, under the existing word limit, the different order of his arguments will enable him to achieve the greatest possible clarity in his appellant brief;⁷

NOTING the “Prosecution’s Response to Popović’s Request to Vary the Order of Arguments in the Appeal Brief”, filed by the Prosecution on 28 January 2011 (“Second Response”), in which the Prosecution takes no position with respect to the Second Motion;⁸


NOTING that paragraph 4, entitled “*The Appellant’s Brief*”, of the Practice Direction on Formal Requirements for Appeals from Judgement (IT/201), 7 March 2002 (“Practice Direction”), provides, “The grounds of appeal and the arguments must be set out and numbered in the same order as in the Appellant’s Notice of Appeal, unless otherwise varied with leave of the Appeals Chamber [...]”;

CONSIDERING that, based upon the fact that Popović claims that the variation in arguments would increase the clarity of his appellant brief and the fact that the Prosecution does not oppose the Second Motion, it is in the interests of justice in the present circumstances to allow the requested variation;

PURSUANT to Rules 111 and 127(B) of the Rules of Procedure and Evidence of the Tribunal and paragraph 4 of the Practice Direction,

HEREBY GRANT the First Motion and the Second Motion.

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



Judge Patrick Robinson
Presiding

Dated this thirty-first day of January 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

⁷ Second Motion, paras 5-7.
⁸ Second Response, para. 1.