



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: 10 February 2011
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. John Hocking

Decision: 10 February 2011

PROSECUTOR

v.

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

PUBLIC

**DECISION ON SRETEN LUKIĆ'S MOTION FOR LEAVE TO
VARY HIS GROUNDS OF APPEAL**

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

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);

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;¹

NOTING that following the translation of the Trial Judgement into Bosnian/Croatian/Serbian (“B/C/S”), the Pre-Appeal Judge reminded the Defence that they may seek a variation of their grounds of appeal, provided that they show good cause under Rule 108 of the Tribunal’s Rules of Procedure and Evidence (“Rules”);²

BEING SEISED OF “Sreten Lukic’s [*sic*] Motion for Leave to File Variation of Appeal. [*sic*] Pursuant to Review of Judgment Translated in B/C/S” filed by Counsel for Lukić on 17 December 2010 (“Motion”) in which Lukić requests the Appeals Chamber to “review his Appeal Submissions” attached to the Motion in Annexes A through C (“Additional Submissions”) and consider them alongside his previously filed appeal;³

NOTING the response filed by the Office of the Prosecutor (“Prosecution”) on 22 December 2010,⁴ in which the Prosecution submits that Lukić “fails to show good cause for leave to vary his grounds of appeal by failing to refer at all to his May 2009 Notice of Appeal and by failing to provide a good reason for why these alleged ‘new’ grounds of appeal were not

¹ See *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); General Ojdanić’s [*sic*] Second Amended Notice of Appeal, 16 October 2009 (filed as Annex C to General Ojdanić’s [*sic*] Motion to Amend his Amended Notice of Appeal of 29 July 2009, 16 October 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); *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Vladimir Lazarević’s [*sic*] Defence Notice of Appeal, 27 May 2009 (confidential); *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Defence Submission: Lifting Confidential Status of the Notice of Appeal, 29 May 2009 (filed by Counsel for Vladimir Lazarević); *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Sreten Lukic’s [*sic*] Notice of Appeal from Judgment and Request for Leave to Exceed the Page Limit, 27 May 2009; Prosecution Notice of Appeal, 27 May 2009. Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Sreten Lukic (“Lukić”) are herein referred to as the “Defence”.

² See Status Conference, 14 Sep 2010, AT. 78; Decision on the Prosecution’s Motion Seeking Clarification and an Order Regarding the Time-Limit for the Defence to File Potential Motions to Vary Grounds of Appeal, 22 September 2010, p. 1.

³ Motion, p. 9.

⁴ Prosecution Response to Sreten Lukic’s Motion “for Leave to File Variation of Appeal”, 22 December 2010 (“Response”).

included in that Notice of Appeal”, and requests that the Motion be dismissed and the Additional Submissions stricken from the record;⁵

NOTING that in his reply filed on 27 December 2010, Lukić asserts that the interests of justice require that the “additional filing” be allowed,⁶ and offers to file “a new Notice of Appeal relating these arguments to existing or new grounds” should the Appeals Chamber find it necessary;⁷

CONSIDERING that, pursuant to Rule 108 of the Rules, a party seeking to vary its grounds of appeal must show good cause, save for exceptional circumstances where the requested variation is of substantial importance to the success of an appeal, such as to lead to a miscarriage of justice if denied;⁸

CONSIDERING that “good cause” encompasses both good reason for including the new or amended grounds of appeal sought, and good reason showing why those grounds were not included (or were not correctly phrased) in the original notice of appeal;⁹

RECALLING that a party seeking variation of its grounds of appeal “must, at least, explain precisely what amendments are sought and why, with respect to *each* such amendment, the ‘good cause’ requirement of Rule 108 is satisfied” and that “generic submissions” will fall short of satisfying this requirement;¹⁰

CONSIDERING that Lukić has failed to specify how the Additional Submissions relate to his existing grounds of appeal or indicate whether they are in fact new grounds of appeal or amendments to the existing grounds;

FINDING therefore that the Motion fails to satisfy Rule 108 of the Rules;

FOR THE FOREGOING REASONS,

DISMISSES the Motion without prejudice to Lukić’s right to file a new motion seeking variation of his grounds of appeal that:

⁵ Response, para. 12.

⁶ Sreten Lukic’s [*sic*] Reply in Support of Motion for Leave to File Variation of Appeal. [*sic*] Pursuant to Review of Judgment Translated in B/C/S, 27 December 2010 (“Reply”), para. 17.

⁷ Reply, para. 18.

⁸ Decision on Nebojša Pavković’s Second Motion to Amend his Notice of Appeal, 22 September 2009 (“*Pavković* Decision of 22 September 2009”), paras 8, 16.

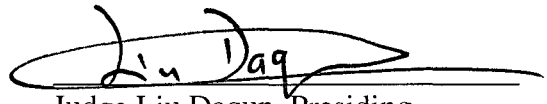
⁹ Decision on Nebojša Pavković’s Motion to Amend his Notice of Appeal, 9 September 2009 (“*Pavković* Decision of 9 September 2009”), para. 5; *Pavković* Decision of 22 September 2009, para. 7.

¹⁰ *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Dragan Jokić’s Request to Amend Notice of Appeal, 14 October 2005, para. 7 (emphasis in original). See also *Pavković* Decision of 9 September 2009, para. 4; *Pavković* Decision of 22 September 2009, para. 6. *Cf.* Practice Direction on Formal Requirements for Appeals from Judgement (IT/201), 7 March 2002, paras 2, 3.

- (1) identifies, with precision, each change sought to be made to his Notice of Appeal; and
- (2) demonstrates why there is “good cause” for each change within the meaning of Rule 108 of the Rules; or
- (3) explains why each requested variation 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”.

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

Dated this tenth day of February 2011,
At The Hague, The Netherlands.



Judge Liu Daqun, Presiding

[Seal of the Tribunal]