



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-02-60-A
Date: 14 October 2005
Original: English

BEFORE THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Fausto Pocar
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andréia Vaz

Registrar: Mr. Hans Holthuis

Decision of: 14 October 2005

THE PROSECUTOR

v.

**Vidoje BLAGOJEVIĆ
Dragan JOKIĆ**

DECISION ON DRAGAN JOKIĆ'S REQUEST TO AMEND NOTICE OF APPEAL

Counsel for the Prosecutor:

Mr. Norman Farrell

Counsel for the Accused:

**Mr. Vladimir Domazet for Mr. Vidoje Blagojević
Ms. Cynthia Sinatra and Ms. Chrissa Loukas for Mr. Dragan Jokić**

1. 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 (“International Tribunal”) is seised of appeals from the Judgement of Trial Chamber I in the case of *Prosecutor v. Blagojević et al.*, Case No. IT-02-60, rendered orally on 17 January 2005 and in writing on 24 January 2005 (“Judgement”). Appeals have been filed by both Vidoje Blagojević and Dragan Jokić as well as by the Prosecution.

2. The Appeals Chamber is presently seised of a “Request for Leave to Amend Notice of Appeal Relating to Dragan Jokić” (“Request”) filed by Dragan Jokić (“Appellant”) on 6 September 2005. The Prosecution filed a Response to this request (“Response”) on 16 September 2005.¹ The Appellant has filed no reply to the Response.

3. In a Decision filed on 15 February 2005, the Pre-Appeal Judge in this case held that the deadline for filing the Appellant’s original notice of appeal could not be extended on the basis of a delay in providing the Appellant with a copy of the Judgement translated into Bosnian/Croatian/Serbian (B/C/S).² Rather, the Decision explained, the Appellant’s counsel must prepare the notice of appeal on the basis of the English version of the Judgement, but the Appellant would subsequently be permitted to request to amend the notice as necessary after he had had the chance to review the translated Judgement himself. Accordingly, the Appellant filed his Notice of Appeal on 23 February 2005. The B/C/S translation of the Judgement was delivered to the parties on 8 June 2005.

4. The Appellant now seeks leave to file an amended notice of appeal. The Request never, however, so much as identifies what the various amendments are, much less explains why there is good cause for any of them specifically. Instead it only sets forth the language of the new notice of appeal, without explaining how, precisely, it differs from the old notice. The Appellant argues or implies that as a general matter, the amendments contained therein should be permitted for several reasons: (a) the new grounds of appeal are of “exceptional legal force” and excluding them risks a miscarriage of justice; (b) allowing them will not prejudice the Prosecution; and (c) the necessity of the various amendments only became apparent while preparing the Appeal Brief in consultation with the Appellant.

¹ Prosecution’s Response to Request for Leave to Amend Notice of Appeal Relating to Dragan Jokić, 16 September 2005.

² Decision on Defence Motion for Extension of Time in Which to File the Defence Notice of Appeal, 15 February 2005.

5. The Appellant thus left it to the Prosecution and the Appeals Chamber to determine what amendments were sought. Helpfully, in a table provided in its Response, the Prosecution identified the various differences between the new and old notices and made arguments addressing whether there is good cause for each of them. The Appellant has not filed a reply responding to these arguments and/or to the Prosecution's arguments concerning the procedural shortcomings of the Request.

6. Rule 108 of the Rules of Procedure and Evidence of the International Tribunal ("Rules") states that the "Appeals Chamber may, *on good cause being shown by motion*, authorise a variation of the grounds of appeal." In addition, paragraph 12 of Practice Direction IT/155/Rev. 3 provides:

Where an appeal has been filed from a judgement, a party wishing to move the Appeals Chamber for a specific ruling or relief ("moving party") shall file, in accordance with the Rules, a motion containing:

- (a) the precise ruling or relief sought;
- (b) the specific provision of the Rules under which the ruling or relief is sought;
- (c) the grounds on which the ruling or relief is sought.

7. Together, these requirements mean that a request to amend a notice 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. The generic submissions of the Appellant fall well short of satisfying this requirement.

8. The Appeals Chamber considers that the failure to observe the minimal requirements for written submissions on appeal amounts to negligence on the part of the Appellant's counsel. It has previously held that "inadvertence or negligence by an appellant's counsel to plead a ground of appeal with sufficient clarity should not restrict an appellant's right to raise that ground of appeal where that ground could be of substantial importance to the success of an appeal such as to lead to a miscarriage of justice if it is excluded".³ Although that holding related to negligence in pleading the grounds of appeal in the initial notice of appeal, its logic is applicable here with respect to a failure to plead with sufficient clarity amendments to those grounds of appeal. The Appeals Chamber therefore concludes that the Appellant should be afforded another opportunity to request to amend his notice of appeal.

Disposition

³ See Decision on Prosecution's Request for Leave to Amend Notice of Appeal in Relation to Vidoje Blagojević, 20 July 2005, para. 4.

9. For the foregoing reasons, the Appeals Chamber **DENIES** the Request without prejudice to the Appellant's refiling, within one week of the filing of this Decision, a revised request that:

(1) identifies, with precision, each change sought to be made to the original Notice of Appeal;

(2) explains why there is "good cause" for each change within the meaning of Rule 108 of the Rules; and

(3) explains why pleading of each relevant ground of appeal with sufficient clarity 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".

10. The Registry is requested to ensure that counsel does not receive additional payment as a result of her work on this supplemental briefing.

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



Judge Theodor Meron
Presiding

Dated 14th day of October 2005
At The Hague
The Netherlands

[Seal of the Tribunal]