UNITED
NATIONS

IT-98-34-A
A2825-A2823
18 FEBRUARY 2005

2825 AT

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-98-34-A

Date: 18 February 2005

Original: ENGLISH

**IN THE APPEALS CHAMBER**

**Before:** **Judge Fausto Pocar, Pre-Appeal Judge**

**Registrar:** **Mr. Hans Holthuis**

**Decision of:** **18 February 2005**

**PROSECUTOR**

**v.**

**MLADEN NALETILIĆ, aka "TUTA"**
**VINKO MARTINOVIĆ, aka "ŠTELA"**

# DECISION ON VINKO MARTINOVIĆ'S MOTION TO SUPPLEMENT HIS APPEAL BRIEF

**Counsel for the Prosecutor:**
**Mr. Norman Farrell**

**Counsel for the Defence:**
**Mr. Matt Hennessy and Mr. Christopher Y. Meek for Mladen Naletilić**
**Mr. Želimir Par and Mr. Kurt Kerns for Vinko Martinović**

**I, FAUSTO POCAR**, Pre-Appeal Judge in this case,

**BEING SEISED OF** the "Motion for Leave to File Supplemental Memorandum Instanter", filed on 3 February 2005 ("Motion") by Vinko Martinović ("Appellant"), wherein he seeks leave to file a supplemental memorandum to his previously-filed Appellant Brief,[1] in order to address recent changes in the jurisprudence of the International Tribunal;

**NOTING** that, on the same day, the Appellant filed the "Supplemental Memorandum to Martinović Appeal Brief" ("Supplemental Memorandum");

**NOTING** the "Prosecution's Response to Appellant's Motion for Leave to File Supplemental Memorandum Instanter of 03 February 2005", filed on 14 February 2005 ("Response") by the Office of the Prosecutor ("Prosecution"), wherein the Prosecution states that it does not oppose the Motion, and requests, in the event that it is granted, 14 days within which to respond to the Supplemental Memorandum;

**NOTING** the "Addendum of References to Previously Filed Supplemental Memorandum of February 3, 2005", filed on 15 February 2005 by the Appellant with the Prosecution's agreement,[2] wherein the Appellant includes those references to the specific paragraphs of his Appellant Brief and of the Judgement in the *Blagojević & Jokić* case[3] which had been left out of the Supplemental Memorandum as a result of technical difficulties experienced by the Appellant;

**NOTING** that, in the Supplemental Memorandum, the Appellant argues that the sentences imposed by the Chambers in the *Blaškić*, *Kordić & Čerkez* and *Blagojević & Jokić* cases,[4] which were handed out after the date he filed his Appellant Brief, support the argument that the sentence imposed upon him was disproportionately high;[5]

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[1] Appeal Brief of Mr. Vinko Martinović, 29 August 2003 (filed confidentially) ("Appellant Brief").
[2] Addendum of References to Previously Filed Supplemental Memorandum of February 3, 2005, 15 February 2005, para. 4.
[3] *Prosecutor v Blagojević & Jokić*, Case IT-02-60-T, Judgement, 17 January 2005 ("*Blagojević & Jokić* Trial Judgement").
[4] *Blagojević & Jokić* Trial Judgement; *Prosecutor v Blaškić*, Case IT-95-14-A, Judgement, 29 July 2004 ("*Blaškić* Appeal Judgement"); *Prosecutor v Kordić & Čerkez*, Case IT-95-14/2-A, Judgement, 17 December 2004 ("*Kordić & Čerkez*.Appeal Judgement").
[5] Supplemental Memorandum, p. 12.

**CONSIDERING** that the Appellant already raised this argument in his Notice of Appeal[6] and Appellant Brief;[7]

**CONSIDERING** that, where a party alleges that the subsequent jurisprudence of the International Tribunal impacts upon the position that party took in its previous submissions, leave for it to supplement the said submissions may be granted;

**NOTING** that the "Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the International Tribunal" (IT/155 Rev.1), provides that a response shall be filed within ten days of the filing of the motion;[8]

**NOTING** that the Prosecution requires 14 days within which to respond to the Supplemental Memorandum because of its work obligations in other cases;[9]

**CONSIDERING** that the reason adduced by the Prosecution does not constitute good cause, but that, nevertheless, no prejudice to the parties would result from granting the Prosecution a four-day extension to the time-limit prescribed by the said Practice Direction;

**GRANT** the Motion and **ORDER** the Prosecution to file its response to Supplemental Memorandum, if any, within 14 days of the filing of this decision.

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

Done this 18th day of February 2005,
At The Hague,
The Netherlands.

Fausto Pocar
Pre-Appeal Judge

**[Seal of the Tribunal]**

[6] Notice of Appeal against Judgement No. IT-98-34-T of 31 March 2003 in the Case: Prosecutor v Vinko Martinović, 29 April 2003, p. 12.
[7] Appellant Brief, para. 577.
[8] Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the International Tribunal (IT/155 Rev. 1), 7 March 2002, para. 11.
[9] Response, fn. 4.