

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-05-87-A
Date: 31 January 2013
Original: English

IN THE APPEALS CHAMBER

Before: Judge Liu Daqun, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Arlette Ramaroson
Judge Bakhtiyar Tuzmukhamedov

Registrar: Mr. John Hocking

Decision of: 31 January 2013

PROSECUTOR

v.

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

PUBLIC

**FINAL DECISION ON “NOTICE OF WITHDRAWAL OF
DRAGOLJUB OJDANIĆ’S APPEAL AGAINST THE
JUDGEMENT OF TRIAL CHAMBER III DATED
26 FEBRUARY 2009” AND “NOTICE OF WITHDRAWAL OF
PROSECUTION’S APPEAL AGAINST THE JUDGEMENT OF
TRIAL CHAMBER III DATED 26 FEBRUARY 2009 IN
RELATION TO THE ACCUSED DRAGOLJUB OJDANIĆ”**

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 by Trial Chamber III of the Tribunal on 26 February 2009;¹

NOTING “General Ojdanić’s [*sic*] Second Amended Notice of Appeal” filed by Counsel for Dragoljub Ojdanić (“Ojdanić”)² on 16 October 2009 and the “Prosecution Notice of Appeal” filed by the Office of the Prosecutor (“Prosecution”) on 27 May 2009;

BEING SEISED OF the “Notice of Withdrawal of Dragoljub Ojdanić’s [*sic*] Appeal Against the Judgement of Trial Chamber III Dated 26 February 2009” and the “Notice of Withdrawal of Prosecution’s Appeal Against the Judgement of Trial Chamber III Dated 26 February 2009 in Relation to the Accused Dragoljub Ojdanić” filed by Ojdanić and the Prosecution on 28 January 2013, respectively;³

NOTING that Ojdanić has determined that it is in his interest to withdraw his appeal against the Trial Judgement “based in part upon his advanced age and his medical condition”;⁴

NOTING FURTHER that Ojdanić “accepts the findings in the Trial Judgement as to his conduct, conviction, and sentence”, that he has expressed regret “to all of those who suffered as a result of the conduct for which he has been convicted”, and that he “believes that the interests of justice for all concerned would be served by the finality of the process in his case”;⁵

CONSIDERING that, in a personally signed annex to Ojdanić’s Notice Withdrawing his Appeal, Ojdanić has authorised his Counsel to withdraw his appeal and confirmed the following: “I am informed and aware of all of the legal consequences of my [decision to withdraw], including the fact that, once the Appeal is withdrawn, there is no possibility of subsequent reconsideration of the

¹ *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Judgement, 26 February 2009 (“Trial Judgement”).

² See General Ojdanić’s [*sic*] Motion to Amend his Amended Notice of Appeal of 29 July 2009, 16 October 2009, Annex C.

³ Notice of Withdrawal of Dragoljub Ojdanić’s [*sic*] Appeal Against the Judgement of Trial Chamber III Dated 26 February 2009, 28 January 2013 (public with public and confidential annexes) (“Ojdanić’s Notice Withdrawing his Appeal”); Notice of Withdrawal of Prosecution’s Appeal Against the Judgement of Trial Chamber III Dated 26 February 2009 in Relation to the Accused Dragoljub Ojdanić, 28 January 2013 (“Prosecution’s Notice Withdrawing its Appeal Against Ojdanić”).

⁴ Ojdanić’s Notice Withdrawing his Appeal, paras 2-3. See also Ojdanić’s Notice Withdrawing his Appeal, Annex B (confidential).

⁵ Ojdanić’s Notice Withdrawing his Appeal, paras 5-6. See also Ojdanić’s Notice Withdrawing his Appeal, Annex A.

[Trial] Judgement, pursuant to which I am convicted, or having the [Trial Judgement] abolished or altered in my favor [*sic*”];⁶

NOTING that the Prosecution has withdrawn its appeal against the Trial Judgement in relation to Ojdanić in view of his: (i) full acceptance of the findings in the Trial Judgement as to his conduct, conviction, and sentence; (ii) expression of regret for the suffering endured by the victims as a result of the conduct for which he was convicted; and (iii) current medical condition;⁷

HEREBY DECIDES to accept Ojdanić’s Notice Withdrawing his Appeal and the Prosecution’s Notice Withdrawing its Appeal Against Ojdanić, and **THEREBY DECLARES** the appellate proceedings in this case to be concluded insofar as they pertain to Ojdanić;

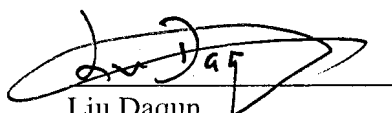
DECLARES that Ojdanić’s convictions for aiding and abetting deportation and other inhumane acts (forcible transfer) as crimes against humanity and his sentence of fifteen years of imprisonment imposed by the Trial Judgement have become final;

RULES that Ojdanić is entitled to credit being given under Rules 101(C) and 107 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) for the period he has already spent in the custody of the Tribunal;


ORDERS, in accordance with Rules 103(C) and 107 of the Rules, that Ojdanić is to remain in the custody of the Tribunal pending his transfer to the State in which his sentence will be served.

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

Dated this 31st day of January 2013,
At The Hague,
The Netherlands.



Liu Daqun
Presiding Judge



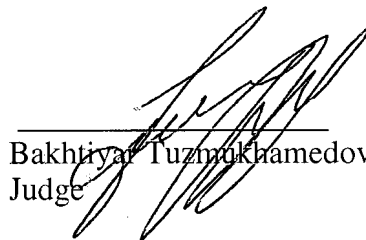
Mehmet Güney
Judge



Fausto Pocar
Judge



Arlette Ramaroson
Judge



Bakhtiyar Tuzmukhamedov
Judge

[Seal of the Tribunal]

⁶ Ojdanić’s Notice Withdrawing his Appeal, Annex A. See also Ojdanić’s Notice Withdrawing his Appeal, paras 1-2.

⁷ Prosecution’s Notice Withdrawing its Appeal Against Ojdanić, paras 1-3.