

UNITED
NATIONS

IT-98-30/1-A
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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-98-30/1-A
Date: 22 March 2004
Original: English

IN THE APPEALS CHAMBER

Before: Judge Mohamed Shahabuddeen, Presiding
Judge Fausto Pocar
Judge Florence Mumba
Judge Mehmet Güney
Judge Inés Mónica Weinberg de Roca

Registrar: Mr. Hans Holthuis

Decision of: 22 March 2004

PROSECUTOR

v.

**Miroslav KVOČKA, Mlado RADIĆ, Zoran ŽIGIĆ and Dragoljub
PRCAĆ**

DECISION

Counsel for the Prosecutor:

Mr. Norman Farrell

Counsel for the Appellants:

**Mr. Kstan Simić for Miroslav Kvočka
Mr. Toma Fila for Mlado Radić
Mr. Slobodan Stojanović for Zoran Žigić
Mr. Jovan Simić for Dragoljub Prcać**

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"),

BEING SEISED OF a "Request to Appeals Chamber for Legal Assistance in Appeals Procedure" filed confidentially and *ex parte* on 26 February 2004 by the Appellant Žigić personally ("Request" and "Appellant"), in which the Appellant submits *inter alia* that the Prosecution is concealing evidence and does not comply with its Rule 68 obligations and also expresses "great concern because of the Decision of 16 February 2004 on additional evidence pursuant to Rule 115";¹

CONSIDERING that second part of the Request amounts to a motion for reconsideration of the "Decision on Appellants' Motions to Admit Additional Evidence pursuant to Rule 115" rendered by the Appeals Chamber on 16 February 2004 ("Decision of 16 February 2004");

NOTING the "Order" issued by the Appeals Chamber on 10 March 2004, which directed the Registrar to file the Request confidentially and *inter partes* and ordered the Prosecution to file a response to the Request by 17 March 2004 and the Appellant to file a reply, if he wished to do so, by 19 March 2004;

NOTING the "Supplement to the 'Request to Appeals Chamber for Legal Assistance in Appeals Procedure' from 25 February 2004", filed confidentially by the Appellant on 12 March 2004 ("Supplement"), in which he submits that the Prosecution had concealed from him until 12 March 2004 a statement which the Prosecution took on 28 February 2001 and that the Appeals Chamber was asked to consider the statement under Rule 115 of the Rules of Procedure and Evidence of the International Tribunal ("Rules");

NOTING the "Prosecution's Reply to 'Request to Appeals Chamber for Legal Assistance in Appeals Procedure' and 'Supplement to the Request to Appeals Chamber for Legal Assistance in Appeals Procedure'", filed confidentially and *ex parte* (in respect of other Appellants in this case) by the Prosecution on 16 March 2004 ("Prosecution's Response"), in which the Prosecution submits that there is no basis for the Appellant's accusations against the Prosecution,² that the Prosecution has detailed its disclosure under Rule 68 of the Rules in five Status Reports filed on appeal,³ that the Prosecution has disclosed all Rule 68 materials in *Prosecutor v. Predrag Banović* (Case No. IT-02-65/1) to the Appellant, as well as the details of the plea agreement filed in the

¹ Request, par 15.

² Prosecution's Reply, par 15.

³ *Ibid.*, par 17.

latter case,⁴ that the Indictments in *Prosecutor v. Dušan Meakić et al.* (Case No. IT-03-65-PT) and *Prosecutor v. Dusko Sikirica et al.* (Case No. IT-95-8-T) are public and any Rule 68 material in the confidential schedules attached to those Indictments would have been disclosed to the Appellant,⁵ that, in relation to the Appellant's claim that the accused in *Prosecutor v. Dusko Sikirica et al.* (Case No. IT-95-8-T) entered into secret plea agreements, those plea agreements, the Prosecution points out, were in fact all filed publicly in 2001,⁶ and that the Prosecution did not consider the statement referred to in the Supplement to contain Rule 68 material but information that was consistent with the Trial Chamber's findings in relation to an incident of beating;⁷

NOTING the "Zoran Zigic's Reply to Prosecution's Reply to Request to Appeals Chamber for Legal Assistance in Appeals Procedure and Supplement to the Request to Appeals Chamber for Legal Assistance in Appeals Procedure", filed confidentially by the Appellant on 19 March 2004 ("Žigic's Reply"), in which the Appellant only replies to one paragraph of the Prosecution's Response by arguing, *inter alia*, that "through the rumours understood", an accused before the International Tribunal, Duća Knežević, was "confidentially indicted" for the murders of certain individuals for which the Appellant was found guilty in his trial;

CONSIDERING that, in relation to the Prosecution's duty under Rule 68 of the Rules, the Appeals Chamber has stated in another case that "under Rule 68, the initial decision as to whether evidence is exculpatory has to be made by the Prosecutor. Without further proof that the Prosecution abused its judgement, the Appeals Chamber is not inclined to intervene in the exercise of this discretion by the Prosecution",⁸

CONSIDERING that the Prosecution has provided detailed explanations in response to the several allegations of Rule 68 violations made by the Appellant and that the Appellant has not contradicted the explanations given by the Prosecution in the Prosecution's Response;

CONSIDERING that the allegations made by the Appellant in his Request, Supplement and Reply lack merit, in that the Appellant has not demonstrated that the Prosecution has abused its judgment under Rule 68 of the Rules;

⁴ *Ibid.*, par 19.

⁵ *Ibid.*, par 20.

⁶ *Ibid.*, par 21.

⁷ *Ibid.*, par 22.

⁸ *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on the Appellant's Motions for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings, Appeals Chamber, 26 September 2000, par 39.

CONSIDERING that, as recalled by the Prosecution, “[t]he Appeals Chamber has previously held that a Chamber may reconsider a decision, and not only when there has been a change of circumstances, where the Chamber has been persuaded that its previous decision was erroneous and has caused injustice. Whether or not a Chamber does reconsider its decision is itself a discretionary decision”;⁹

CONSIDERING that, in support of his request for reconsideration, the Appellant has singled out Items 8, 9, and 13 of his second Rule 115 motion¹⁰ and Item 6 of his first Rule 115 motion;¹¹

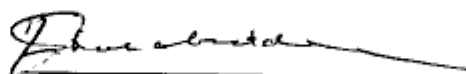
CONSIDERING that, in the Decision of 16 February 2004, while the Appeals Chamber finds that those items were available at trial through the exercise of due diligence, it concludes that “it has not been shown that this evidence would have affected the verdict”;¹²

CONSIDERING, therefore, that the Appeals Chamber has duly considered the substance of the items of evidence on which the Appellant is relying in the Request for reconsideration of the Decision of 16 February 2004;

CONSIDERING further that there is no need to reconsider the Decision of 16 February 2004 because the Appellant has not persuaded the Chamber that its previous decision was erroneous and has caused an injustice;

FOR THE FOREGOING REASONS, HEREBY DISMISSES both the Request and the Supplement.

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



Mohamed Shahabuddeen
Presiding Judge

Dated this 22nd day of March 2004,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

⁹ *Prosecutor v. Zdravko Mucić et al.*, Case No. IT-96-32-Abis, Judgment on Sentence Appeal, Appeals Chamber, 8 April 2003, par 49.

¹⁰ Confidential Zoran Žigić's Second Motion to Present Additional Evidence, 11 April 2003.

¹¹ Confidential Motion to Present Additional Evidence - Defence for the Accused Zoran Žigić, 22 August 2002, and the addendum of 13 June 2003.

¹² Decision of 16 February 2004, p.6.