

**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-05-88-A
Date: 22 July 2014
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge William H. Sekule
Judge Fausto Pocar
Judge Arlette Ramaroson
Judge Mandiaye Niang

Registrar: Mr. John Hocking

Decision of: 22 July 2014

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
RADIVOJE MILETIĆ
VINKO PANDUREVIĆ**

PUBLIC

**DECISION ON VUJADIN POPOVIĆ'S SIXTH MOTION FOR
ADMISSION OF ADDITIONAL EVIDENCE ON APPEAL
PURSUANT TO RULE 115**

The Office of the Prosecutor:

Mr. Peter Kremer QC

Counsel for the Accused:

Mr. Zoran Živanović and Ms. Mira Tapušević for Mr. Vujadin Popović
Mr. John Ostojić for Mr. Ljubiša Beara
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Mr. Drago Nikolić
Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić for Mr. Radivoje Miletić
Mr. Peter Haynes QC and Mr. Simon Davis for Mr. Vinko Pandurević

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);

BEING SEISED OF “Vujadin Popović’s Sixth Rule 115 Motion” filed publicly with a confidential annex by Vujadin Popović (“Popović”) on 1 October 2013 (“Motion”), in which he seeks the admission, as additional evidence on appeal, of notes compiled by an investigator from the Office of the Prosecutor (“Prosecution”) during a meeting with Witness PW-101 on 30 July 2013 (“Investigator Notes”);¹

NOTING the “Prosecution Response to Vujadin Popović’s Sixth Rule 115 Motion” filed publicly with confidential annexes by the Prosecution on 23 October 2013 (“Response”), in which it opposes the Motion;²

NOTING the “Reply to Prosecution Response to Vujadin Popović’s Sixth Rule 115 Motion” filed confidentially by Popović on 6 November 2013 (“Reply”);³

RECALLING that, pursuant to Rule 115(A) of the Rules, a party may submit a request to present additional evidence on appeal no later than 30 days from the date of filing of the brief in reply unless good cause or, after the appeal hearing, cogent reasons are shown for a delay;⁴

NOTING that in this case the 30-day time limit prescribed under Rule 115 of the Rules expired on 1 June 2011;⁵

RECALLING that for all motions filed pursuant to Rule 115 of the Rules after the 30-day deadline, the moving party must “demonstrate that it was not able to comply with the time limit set

¹ Motion, paras 1, 4, 8. See also Motion, Annex.

² Response, paras 1, 3, 13, 17.

³ The Appeals Chamber notes that Popović requests leave to reply. See Reply, para. 1. However, the Appeals Chamber notes that where a motion under Rule 115 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) is filed during an appeal from judgement the moving party may file a reply within 14 days of the filing of the response without first seeking leave to file such a reply. See Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal, IT/155 Rev. 4, 4 April 2012 (“Practice Direction”), para. 14; Public Redacted Version of 2 May 2014 Decision on Vujadin Popović’s Third and Fifth Motions for Admission of Additional Evidence on Appeal Pursuant to Rule 115, 23 May 2014 (“Decision of 23 May 2014”), para. 15. Additionally, notwithstanding the confidential status of the Reply, the Appeals Chamber finds no reason to render the present Decision confidentially.

⁴ See Decision on Drago Nikolić’s Third Motion for Admission of Additional Evidence on Appeal Pursuant to Rule 115, 8 July 2014 (confidential) (“Decision of 8 July 2014”), p. 1; Decision on Drago Nikolić’s Second Motion for Admission of Additional Evidence on Appeal Pursuant to Rule 115, 23 June 2014 (confidential) (“Decision of 23 June 2014”), para. 9.

⁵ See Decision of 8 July 2014, p. 1; Decision of 23 May 2014, para. 19.

out in the Rule, and that it submitted the motion in question as soon as possible after it became aware of the existence of the evidence sought to be admitted”;⁶

NOTING that the Motion was filed approximately two months after the date of the Investigator Notes and that Popović provides no information as to when the Investigator Notes were communicated or otherwise disclosed to him;⁷

FINDING, therefore, that Popović has not shown good cause for his failure to comply with the time limit set out in Rule 115(A) of the Rules as he has failed to demonstrate that the Motion was filed as soon as possible after he became aware of the existence of the Investigator Notes;⁸

FOR THE FOREGOING REASONS

HEREBY DISMISSES the Motion in its entirety.

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



Judge Patrick Robinson
Presiding

Dated this twenty-second day of July 2014,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

⁶ Decision of 8 July 2014, p. 2; Decision of 23 June 2014, para. 16; Decision of 23 May 2014, para. 19.

⁷ In his submissions on the availability and credibility of the Investigator Notes, Popović cross-references another motion filed by Drago Nikolić (“Nikolić”) who had submitted that the Investigator Notes were communicated to him on 2 September 2013. See Motion, fn. 8, referring, *inter alia*, to Rule 115 Motion on Behalf of Drago Nikolić Seeking Admission of Additional Evidence on Appeal with Annex, 19 September 2013 (public with confidential annex), paras 10-13. The Appeals Chamber recalls that, pursuant to paragraph 12(c) of the Practice Direction, a motion for a specific ruling or relief must contain, *inter alia*, “the grounds on which the ruling or relief is sought”. The Appeals Chamber further notes that, “in the well-established practice of the Tribunal, parties substantiate their arguments in support of each of their submissions in their motions and not by reference to submissions made elsewhere”. See *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case Nos. IT-03-69-A & IT-04-75-T, Decision on Goran Hadžić’s Motion for Access to Confidential Material in the *Stanišić and Simatović* Case, 1 November 2013, para. 8.

⁸ *Cf.* Decision of 8 July 2014, p. 2; Decision of 23 June 2014, para. 17.