



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: IT-97-25-A

Date: 16 September 2003

Original: English

IN THE APPEALS CHAMBER

Before: Judge Claude Jorda, Presiding
Judge Wolfgang Schomburg
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Carmel Agius

Registrar: Mr. Hans Holthuis

Decision of: 16 September 2003

PROSECUTOR

v.

Milorad KRNOJELAC

**PUBLIC VERSION OF THE CONFIDENTIAL DECISION ON PROSECUTION'S
MOTION TO ADMIT ADDITIONAL EVIDENCE PURSUANT TO RULE 115 OF THE
RULES OF PROCEDURE AND EVIDENCE FILED ON 11 SEPTEMBER 2003**

Counsel for the Prosecutor:

Mr. Norman Farrell

Counsel for the Defence:

Mr. Mihajlo Bakrač

Mr. Miroslav Vasić

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 (“the International Tribunal”),

NOTING the “Defence Notice of Appeal” filed by Milorad Krnojelac on 12 April 2002 and the “Prosecution’s Notice of Appeal” filed on 15 April 2002 from the Judgement of Trial Chamber II in *Prosecutor v. Milorad Krnojelac* dated 15 March 2002 (“the Appeals”);

NOTING that the appeals hearing in this case took place on 14 and 15 May 2003;

NOTING that, by its Scheduling Order filed on 9 September 2003, the Appeals Chamber has ordered the rendering of the judgement in this case to take place on 17 September 2003 at 3 p.m.;

NOTING that, at that point in time, namely, 9 September 2003, the judgement was completely prepared after full deliberation;

BEING SEISED OF the “Prosecution’s urgent motion to admit additional evidence pursuant to Rule 115 and application for extension of time to file additional evidence pursuant to Rule 127” filed confidentially on 10 September 2003 (“Urgent Motion”) [the public and redacted version of which was filed on 15 September 2003], by which the Prosecutor requests the Appeals Chamber to admit the additional evidence of Witness X, pursuant to Rule 115 of the Rules of Procedure and Evidence (“Rules”), in support of its fourth ground of appeal relating to Krnojelac’s responsibility for killings under Article 7(3) of the Statute;

NOTING that, at the time the parties filed the Appeals, Rule 115(A) of the Rules provided that a party, wishing to present additional evidence before the Appeals Chamber, should apply by motion to be served on the other party and filed with the Registrar not less than fifteen days before the date of the hearing;

NOTING that, on 12 July 2002, Rule 115(A) of the Rules was amended to provide that a party may apply by motion to present additional evidence before the Appeals Chamber and that such motion “must be served on the other party and filed with the Registrar not later than seventy-five days from the date of the judgement unless good cause is shown for further delay”;

NOTING that Rule 6(D) of the Rules provides that “an amendment shall enter into force seven days after the date of issue of an official Tribunal document containing the amendment, but shall not operate to prejudice the rights of the accused or of a convicted or acquitted person in any pending case”;

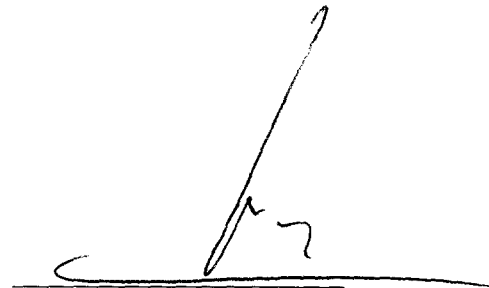
CONSIDERING that the amended Rule 115(A) of the Rules does not prejudice the rights of the accused, as an extension of time is available on good cause being shown, and is therefore applicable to the present appeal;

CONSIDERING that, even if the Prosecutor may have shown due diligence and therefore satisfied the test of non-availability normally required for the production of additional evidence, having regards to the very advanced stage of the proceedings, the Appeals Chamber is of opinion that what the Prosecutor has shown does not rise to the level of good cause for a further delay within the meaning of Rule 115(A) of the Rules;

DISMISS the Urgent Motion;

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

Dated this sixteenth of September 2003,
At The Hague,
The Netherlands.

A handwritten signature in black ink, consisting of a long, sweeping horizontal line at the base, followed by a vertical stroke that curves to the right and then back down, with a small flourish at the end.

Claude Jorda
Presiding Judge

[Seal of the Tribunal]