



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia Since 1991

Case No. IT-98-32-A  
Date: 21 October 2003  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Wolfgang Schomburg  
Judge Inés Mónica Weinberg de Roca

**Registrar:** Mr. Hans Holthuis

**Decision of:** 21 October 2003

**PROSECUTOR**

v.

**MITAR VASILJEVIĆ**

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**DECISION ON APPLICATION FOR ADMISSION OF  
ADDITIONAL EVIDENCE**

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**The Office of the Prosecutor:**

Mr. Norman Farrell

**Counsel for the Accused:**

Mr. Vladimir Domazet  
Mr. Gerardus Godefridus Johannes Knoops

**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,

**NOTING** the “Defence Motion for Additional Evidence” filed on 24 June 2003 and the “Addendum to Defence Additional Evidence Motion” filed on 11 July 2003 (together “Defence Motion”), whereby an extension of time is requested and five documents from the municipality of Višegrad, a videotape and a transcript of a statement made to the Defence by Stojan Kosorić are submitted for admission as additional evidence pursuant to Rule 115 of the Rules of Procedure and Evidence (“Rules”);

**NOTING** the “Response to Defence Motion for Additional Evidence” filed by the Prosecution on 17 July 2003, in which it argues that none of the evidence submitted in the Defence Motion is admissible pursuant to Rule 115 of the Rules;

**NOTING** the “Defence Response to Prosecution Motion dated 17 July 2003” filed on 22 July 2003;

**NOTING** that the Defence Motion was filed outside of the 75-day limit prescribed by Rule 115(A) of the Rules;<sup>1</sup>

**CONSIDERING** that good cause has not been shown for granting an extension of time and that the Defence Motion is liable to dismissal on this ground alone, but that in any event the motion must be dismissed for the following reasons;

**CONSIDERING** that, in order to have additional evidence admitted on appeal, the party submitting such evidence is required primarily to establish that the evidence itself “was not available at trial” in any form<sup>2</sup> and could not have been discovered through the exercise of due diligence,<sup>3</sup> which means that the party seeking admission must show (*inter alia*) that it made use of “all mechanisms of

<sup>1</sup> Rule 115 as amended on 12 July 2002. The Defence argues that the previous version of Rule 115, which allowed motions for admission of additional evidence as late as 15 days prior to the appeals hearing, should apply. The amendment in question entered into force on 19 July 2002, which is before the Trial Judgement against Vasiljević issued and before his appeal commenced. The present version of Rule 115, therefore, governs the proceedings in this appeal.

<sup>2</sup> The Prosecutor v. *Tadić*, Case No.: IT-94-1-A, Decision on Appellant’s Motion for Extension of the Time Limit and Admission of Additional Evidence, 15 October 1998, (“*Tadić* Rule 115 Decision”), para 34; The Prosecutor v. *Kupreškić et al*, Case No.: IT-95-16-A, Decision on the Motions of Appellants *Kupreškić et al* to Admit Additional Evidence, 26 February 2001, para 14; The Prosecutor v. *Krstić*, Case No.: IT-98-33-A, Decision on the Application of Subpoenas, 1 July 2003, (“*Krstić* Subpoenas Decision”), para 4.

<sup>3</sup> *Tadić* Rule 115 Decision, paras 36-45.

protection and compulsion available under the Statute and the Rules of the International Tribunal to bring evidence on behalf of the Accused before the Trial Chamber”;<sup>4</sup>

**CONSIDERING** that the additional evidence must be considered in the context of the evidence that was presented at trial and not in isolation;

**CONSIDERING** that the documents (D-51, D-52, D-53, D-54, D-55) presented for admission as additional evidence were available at the municipality of Višegrad before the beginning of the trial and that the individual whose statement the Defence seeks to admit, Stojan Kosorić (D-56, D-57), was known to Defence counsel for Mitar Vasiljević during trial;

**CONSIDERING** that the Defence provided no explanation as to why it could not have obtained this evidence during the course of the trial;

**CONSIDERING** that, during the course of the trial, the Defence counsel did not alert the Trial Chamber to any difficulties it had in obtaining evidence, including those arising from intimidation or inability to locate witnesses;<sup>5</sup>

**CONCLUDING** that the additional evidence in question was available to the Defence at trial;

**CONSIDERING** that, where the evidence was available at trial or could have been discovered through the exercise of due diligence, to have that evidence admitted on appeal, the moving party is required to establish that the exclusion of the additional evidence would lead to a miscarriage of justice, in that if it had been presented at trial it would have affected the verdict;<sup>6</sup>

**CONSIDERING** that the additional evidence submitted for admission relates only to the testimony of witness VG-14 that, on the day of the Drina River incident, Vasiljević pointed out a nearby house and told the accompanying leader of a Serb paramilitary group, Milan Lukić, that the house belonged to a Muslim family;

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<sup>4</sup> The Prosecutor v. *Kupreškić et al*, Case No.: IT-95-16-A, Appeal Judgment, 23 October 2001 (*Kupreškić Appeals Judgment*), para 50; The Prosecutor v. *Krstić*, Case No.: IT-98-33-A, Decision on Applications for Admission of Additional Evidence on Appeal, 5 August 2003, para 3, (“*Krstić* 115 Decision”).

<sup>5</sup> See *Krstić* Subpoena Decision, para 5; *Kupreškić Appeals Decision*, para 50.

<sup>6</sup> *Krstić* Subpoena Decision, para 16; *Krstić* 115 Decision, p. 3; The Prosecutor v. *Delić*, Case No.: IT-96-21-R-1119, Decision on Motion for Review, 25 April 2002, para 15.

**CONSIDERING** that the above testimony was a factor on which the Trial Chamber relied in finding Vasiljević to be an informant to the Lukić group;

**CONSIDERING** however, that, even if the proposed additional evidence could establish that the house in question belonged to a Serb and not to a Muslim, the evidence would not establish that Vasiljević did not in fact make the statement to which witness VG-14 testified;

**CONCLUDING** that, in the circumstances, the proposed additional evidence would not have affected the Trial Chamber's verdict, and so its exclusion would not lead to a miscarriage of justice;

**FOR THE FOREGOING REASONS**

**FINDS** that the proposed additional evidence inadmissible, and

**DISMISSES** the Defence Motion.

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



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Judge Theodor Meron  
Presiding

Dated this 21<sup>st</sup> October 2003  
At The Hague,  
The Netherlands.

[Seal of the Tribunal]