



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: 12 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: 12 March 2004

PROSECUTOR

v.

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

**DECISION ON PROSECUTION'S MOTION TO ADDUCE
REBUTTAL MATERIAL**

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 Zigić
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”),

RECALLING the “Decision on Appellants’ Motions to Admit Additional Evidence Pursuant to Rule 115” rendered on 16 February 2004 (“Decision of 16 February 2004”), which ordered that the witnesses identified in Items 4 and 16 of annex D to the decision be heard by the Appeals Chamber on a date specified by the Appeals Chamber;

BEING SEIZED OF the “Prosecution’s Motion to Adduce Rebuttal Evidence”, filed confidentially by the Prosecution on 27 February 2004 (“Prosecution’s Motion”), in which the Prosecution seeks the admission of the evidence of two witnesses as rebuttal material pursuant to Rule 115 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”);¹

NOTING “Zoran Žigić’s Response to Prosecution’s Motion to Adduce Rebuttal Evidence”, filed confidentially by the Appellant Žigić on 8 March 2004 (“Response”), in which the Appellant Žigić suggests that the Appeals Chamber ought to apply to the Prosecution’s rebuttal material “all of the tests it applied to” his additional evidence,² “with the same rigorousness”, since “any rebuttal material is without any doubt additional evidence, which clearly falls under the (*sic*) Rule 115”;³

NOTING the “Prosecution’s Reply to ‘Zoran Žigić’s response to Prosecution’s Motion to Adduce Rebuttal Evidence’”, filed confidentially by the Prosecution on 11 March 2004 (“Reply”);

RECALLING that, by the Scheduling Order of 16 February 2004, the Appeals Chamber ordered 1) the Prosecution to file any motion to adduce rebuttal material by 27 February 2004, 2) the Appellant Žigić to file any response to such a motion by 5 March 2004, and 3) the Prosecution to file any reply by 10 March 2004;

NOTING that the Response was filed out of time, but that counsel for the Appellant received a copy of the Prosecution’s Motion on 5 March 2004, and sought an extension of time through his Response;⁴

CONSIDERING that, pursuant to Rule 127 of the Rules, the Appellant Žigić has shown good cause for being granted an extension of time;

¹ Rule 115 (B) uses the expression “rebuttal material” which is not considered differently from that of “rebuttal evidence” as used in the Prosecution’s Motion.

² Response, para. 8.

³ *Ibid.*, para. 5.

⁴ Response, paras 3-4.

RECOGNISING, therefore, the filing of the Response as validly done;

NOTING that the Reply was filed on 11 March 2004, without, however, any request for extension of time being included;

CONSIDERING that the Prosecution has not offered any explanation for the one-day delay in filing its Reply;

CONSIDERING nevertheless that in view of the shortening of time that resulted from the filing of the Response on 8 March 2004, there is good cause to recognise the Reply as having been validly filed, although it was filed one day out of time, without any explanation;

CONSIDERING that the Prosecution submits that the evidence of the two rebuttal witnesses tendered by it is material to the issue raised by the additional evidence because it contradicts the evidence contained in the statement of one of the additional witnesses, and that the Prosecution has demonstrated that the proposed rebuttal material may contradict the evidence to be given by the additional witnesses;⁵

CONSIDERING that it has been stated by the Appeals Chamber that “rebuttal material is admissible if it directly affects the substance of the additional evidence admitted by the Appeals Chamber”, and that “items sought to be admitted as rebuttal material, but which were trial exhibits or which have been admitted on appeal pursuant to Rule 115, are inadmissible as rebuttal material”;⁶

CONSIDERING that the evidence contained in the three witness statements attached to the Prosecution’s Motion is admissible as rebuttal material under Rule 115 of the Rules, as it directly affects the substance of the additional evidence admitted by the Appeals Chamber in the Decision of 16 February 2004;

CONSIDERING, further, that the Appellant is mistaken in considering rebuttal material to be additional evidence under Rule 115 of the Rules, and in submitting that the same test of admissibility should be applied to both types of evidence;

HEREBY, granting the Prosecution’s Motion,

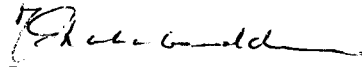
1. **FINDS** the evidence contained in the three witness statements attached to the Prosecution’s Motion to be admissible as rebuttal material;

⁵ Prosecution’s Motion, paras 6-8.

⁶ *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on Evidence, 31 October 2003, p.5.

2. **ORDERS** the Prosecution in conjunction with the Victims and Witnesses Unit to arrange for the rebuttal witnesses to appear before the Appeals Chamber on 23 March 2004,
3. **AND ORDERS** the Prosecution to indicate to the Appeals Chamber, within seven days of the filing of this decision, any protective measures that the rebuttal witnesses may seek during their testimony before the Appeals Chamber.

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



Mohamed Shahabuddeen
Presiding Judge

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

[Seal of the Tribunal]