



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-98-29-A
Date: 14 July 2006
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: Mr. Hans Holthuis

Decision of: 14 July 2006

PROSECUTOR

v.

STANISLAV GALIĆ

**DECISION ON DEFENCE MOTION REGARDING NEW
EVIDENCE**

The Office of the Prosecutor:

Ms. Helen Brady
Ms. Michelle Jarvis
Ms. Shelagh McCall

Counsel for the Defence:

Ms. Mara Pilipović
Mr. Stephane Piletta-Zanin

7/24

1. **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”) is seized of Appeals filed by the Prosecution¹ and the Defence² against the Judgement rendered by the Trial Chamber on 5 December 2003. The Appeals Chamber is also presently seized of the Defence Motion Regarding New Evidence (“Defence Motion”), filed on 11 July 2006 by Stanislav Galić.

I. THE DEFENCE MOTION

2. The Defence Motion informs the Appeals Chamber that Defence Counsel has recently visited a military barracks in Banja Luka to examine “documents regarding Main Staff VRS and SRK VRS”.³ According to the Defence Motion, Defence Counsel has “selected 25 documents which could, in accordance with other evidence, be considered documents for filing a motion under rule 115, because in the defences [sic.] opinion they fall under Rule 68.”⁴ The Defence Motion further asserts that on 14 July 2006 Defence Counsel will be examining the “archives of the ABiH 1st Corps”.⁵ Defence Counsel believes that “there is a possibility to find” exculpatory documents there.⁶

3. Having brought the foregoing points to the Appeals Chamber’s attention, the Defence makes four requests. First, “the Defences [sic.] ask for an extension before deciding if they will file a new motion under the rule 115.”⁷ Second, Defence “counsel pleads the Chamber to allow the counsel to examine the mentioned documents [in the archives of the ABiH 1st Corps] in the presence of its military expert.”⁸ Third, “the Defence requests that the Appeal Chamber orders the Defence to seek the translations in English from the Registry and, that being done, files a motion under Rule 115 in the next 10 days.”⁹ Fourth, the Defence “suggest[s] that the Appeal Chamber should ... decide about the hearing planned for the 29 August.”

II. DISCUSSION

4. With regard to the Defence’s request “for an extension”, the Appeals Chamber recalls that under Rule 115(A) of the Rules of procedure and Evidence (“Rules”), motions to admit additional

¹ Prosecution’s Notice of Appeal, 18 December 2003.

² Notice of Appeal, 4 May 2004.

³ Defence Motion, p. 1.

⁴ *Ibid.*, p. 1.

⁵ *Ibid.*, pp. 1&2.

⁶ *Ibid.*, p. 2.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

evidence must be “served on the other party and filed with the Registrar not later than thirty days from the date for filing of the brief in reply, unless good cause” is “shown for a delay”. As the reply briefs in this case were due well over a year ago,¹⁰ any party seeking to file a Rule 115 motion will need to show cause for its delay. Not knowing what specific evidence the Defence might seek to introduce in the Rule 115 motion being contemplated, the Appeals Chamber cannot now determine whether the Defence has good cause for failing to introduce that evidence until now, or for delaying its Rule 115 Motion until some specified date in the future. Hence, the Appeals Chamber cannot grant “an extension” of the deadline for the filing of Defence’s contemplated Rule 115 motion. If and when the Defence files this Motion, the Appeals Chamber will consider whether “good cause” has been “shown for [the] delay”.

5. The Appeals Chamber likewise cannot grant the request “to allow [Defence] counsel to examine the ... documents [in the archives of the ABiH 1st Corps] in the presence of its military expert.”¹¹ Though it explains why Defence Counsel would like to examine these documents in the presence of the military expert,¹² the Defence Motion never explains why this expert cannot accompany Defence Counsel without an order from the Appeals Chamber. Indeed, the Defence Motion does not even explain who the order in question should be directed to.

6. “[T]he Defence request[] that the Appeal Chamber order[] the Defence to seek the translations in English from the Registry”¹³ is also without merit. If the Defence is merely seeking an order to the effect that it should request translations from Registry, its request is frivolous. The Defence is free to make requests of the Registry without seeking permission from the Appeals Chamber. The Appeals Chamber therefore assumes that, with this request, the Defence is seeking an order compelling the Registry to have prospective Rule 115 evidence translated. Yet the Defence Motion suggests neither that the Defence has asked the Registry to translate proposed Rule 115 evidence nor that the Registry has denied a Defence request to this effect. As the Appeals Chamber will not ordinarily order the Registry to translate documents at the behest of an accused before the accused has asked the Registry whether it will have the documents translated,¹⁴ the

¹⁰ Rule 113 of the Rules states that an “appellant may file a brief in reply within fifteen days of the filing of the Respondent’s brief.” In this case, the Prosecution Response Brief was filed on 6 September 2004. Stanislav Galić’s Respondent’s Brief was filed on 2 April 2004.

¹¹ Defence Motion, p. 2.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *C.f. Prosecutor v. Limaj et al.*, Case No. IT-03-66-A, Decision on Extension of Time to File Response, 5 April 2006, para. 10 (“[I]n the first instance, accused should address concerns about legal aid-related matters to the Registry”).

Appeals Chamber declines to order the Registry to translate prospective Rule 115 evidence at the present time.¹⁵


7. Finally, as the Defence Motion is nothing but a fishing expedition, the Appeals Chamber declines to take any decision about the hearing in this case that has been scheduled for 29 August 2006.¹⁶ Not having seen the Defence's contemplated Rule 115 Motion, the Appeals Chamber cannot determine whether it, or any additional evidence the Defence might seek to introduce, compel a postponement of the hearing.

III. CONCLUSION

8. For the foregoing reasons, the Defence Motion is **DENIED**.

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

Dated this 14th day of July 2006,
At The Hague,
The Netherlands.



Judge Fausto Pocar,
Presiding

[Seal of the Tribunal]

¹⁵ As mentioned in paragraph 3 *supra*, connected with the translation-related request is the statement that the Defence should be ordered to file a Rule 115 Motion within 10 days after "that" is "done". In connection with this statement, the Appeals Chamber notes that the Defence does not need its permission to file a Rule 115 motion. If the Defence is requesting that the Appeals Chamber treat as timely any Rule 115 motion filed within 10 days of a certain event, the request is denied for the reasons explained in paragraph 4 *supra*.

¹⁶ Scheduling Order for Appeal Hearing, 21 June 2006, p. 1 (scheduling the hearing of the Appeals in the present case for 29 August 2006).