



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: 28 August 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: 28 August 2006

PROSECUTOR

v.

STANISLAV GALIĆ

**DECISION ON DEFENCE MOTION TO PRESENT
ADDITIONAL 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

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 to Present Before the Appeals Chamber Additional Evidence” (“Defence Motion”), filed on 22 August 2006 by Stanislav Galić (“Galić”).

I. THE PARTIES’ SUBMISSIONS

2. The Defence Motion informs the Appeals Chamber that Defence Counsel has recently obtained certain documents from the archives of the Ministry of Defence of the Republic of Bosnia and Herzegovina (“BiH”).³ The Defence Motion seeks to have 64 of these documents admitted as additional evidence pursuant to Rule 115 of the Rules of Procedure and Evidence (“Rules”). According to the Defence, they “could have brought, if they were used in trial, dismissal of the charges.”⁴

3. On 23 August, the “Prosecution’s Motion to Dismiss Defence’s 5th Motion for Additional Evidence” (“Motion to Dismiss”) was filed. Because the parties have not yet completed their briefing of the Motion to Dismiss,⁵ it will not be considered in assessing the Defence Motion. Given that Defence Motion will be denied – as will be explained in more detail below – the Appeals Chamber’s decision not to consider the Motion to Dismiss will not prejudice the Prosecution.⁶ In light of the fact that the hearing in this appeal is scheduled for 29 August 2006, the Appeals Chamber deems it appropriate to consider the Defence Motion on an urgent basis, without waiting for additional briefing on the Motion to Dismiss and the Defence Motion.

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

² Notice of Appeal, 4 May 2004.

³ Defence Motion, p. 1.

⁴ *Ibid.*

⁵ On 24 August 2006, Galić filed the “Appellant’s Response to Prosecution’s Motion to Dismiss Defence’s 5th Motion for Additional Evidence”. Paragraph 14 of the Practice Direction on the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal, IT/155/Rev.3 (“Practice Direction on Written Submissions”), provides that when a motion has been filed during an appeal from judgement, “the moving party may file a reply within four days of the filing of the response”.

⁶ The Motion to Dismiss will be dismissed as moot. In light of this Decision’s disposition, the Prosecution likewise suffers no prejudice from the fact that the Appeals Chamber has considered the Defence Motion – filed on 22 August 2006 -- before the Prosecution has filed a response to it, and before the deadline for responding has expired. *See* Practice Direction on Written Submissions, para. 13 (providing that a response to a Rule 115 motion is due within thirty days of the filing of the motion).

II. DISCUSSION

4. Rule 115 of the Rules provides that a “motion to present additional evidence . . . must be served on the other party and filed with the Registrar not later than thirty days from the date for filing the brief in reply, unless good cause [is] shown for a delay.”⁷ The last Respondent’s brief in this case was filed on 6 September 2004.⁸ The deadline for replying to it passed later in September 2004,⁹ far more than thirty days ago. Hence, the good cause requirement applies to the Defence Motion. In the Defence Motion, Galić never explicitly asserts that he has good cause for his delay in filing. Nonetheless, in a section of the Defence Motion entitled “Arguments in relation to the requirement of non-availability at trial” – a title referencing Rule 115(B)’s requirement that “the additional evidence was not available at trial” – Galić asserts that “the Prosecution informed the Defence as late as 19.06.2006 that documents could be inspected” in the abovementioned archives, and that “[i]t is evident that the Defence couldn’t inspect those documents earlier”.

5. The Appeals Chamber need not determine here whether Galić has “good cause” for the “delay”.¹⁰ Regardless of whether he does, the Defence Motion is defective, as it does not comply with Rule 115(A)’s requirement that motions to present additional evidence “identify with precision the specific finding of fact made by the Trial Chamber to which the evidence is directed.”¹¹ To be sure, the Defence Motion explains what facts Galić thinks his proposed pieces of additional evidence show.¹² Yet he nowhere identifies which Trial Chamber findings he thinks each piece of additional evidence will undermine.¹³ Galić’s statement that his proposed additional evidence relates “to the Fourteenth, Fifteenth and Seventeenth Ground of Appeal”¹⁴ does not suffice – grounds of appeal are not “specific finding[s] of fact”. Galić likewise fails to meet the standard

⁷ Rule 115(A) of the Rules.

⁸ Prosecution Response Brief, 6 September 2004. Galić’s “Respondent’s Brief” was filed on 2 April 2004.

⁹ Rule 113 of the Rules provides that an “Appellant may file a brief in reply within fifteen days of the filing of the Respondent’s brief.” Galić’s deadline for replying to the Prosecution Response Brief was extended by 6 days beyond the 15 provided for in the Rules. See Decision on Defence’s Motion to Increase the Page Limit and Extend the Time Limit, 17 September 2004, p. 3.

¹⁰ Rule 115(A) of the Rules.

¹¹ The Defence Motion is divided into sections that appear to address, in order, the requirements of paragraph 11 of the Practice Direction on Formal Requirements for Appeals from Judgement, IT/201 (“Practice Direction of Formal Requirements”). However, as paragraph 11 of the Practice Direction of Formal Requirements makes clear, a motion to present additional evidence must also comply with the requirements of Rule 115, including its requirement that the motion “identify with precision the specific finding of fact made by the Trial Chamber to which the evidence is directed.”

¹² See Defence Motion, pp. 3-7.

¹³ At one point, the Defence Motion states that the “Fourteenth ground of Appeal includes erroneous definitions established by the Chamber for campaign, sniping, shelling, military targets, civilians and civilian zones and lack of establishing legitimate military objectives and defining confrontation lines”. See p. 3. The Defence Motion then lists a series of documents, stating that they “directly show that civilian buildings in Sarajevo were in military use.” *Ibid.* At no point does the motion state that the documents prove that the Trial Chamber’s definitions of the abovementioned words were erroneous. Galić likewise never explains how specific pieces of evidence show that the Trial Chamber might have erred in finding that specific military activities were not aimed at legitimate objectives.

¹⁴ Defence Motion, p. 3.

with his assertion that certain documents relate to paragraphs 189 and 191-194 in his Appeal Brief,¹⁵ and that others relate to paragraphs 216-222 in his Appeal Brief,¹⁶ as these paragraphs do not “identify with precision” any “specific finding[s] of fact made by the Trial Chamber” that are being attacked. Galić asserts that “all of the[] documents apply to the seventeenth ground of Appeal relating to para 261-267, 281-290, 314-316, 350-352, 404-407, 417-422, 428-430, 468-470, 472-482.”¹⁷ Yet ground seventeen in general – ground 17 is 55 pages long – and the cited paragraphs in particular contain challenges to numerous Trial Chamber factual findings. All of the documents submitted with the Rule 115 motion – which include orders issued over a period in excess of a year – clearly do not relate to all of the factual findings challenged in ground seventeen. Thus, by simply suggesting that the proposed evidence relates to ground seventeen and paragraphs 261-267, 281-90, 314-16, 350-52, 404-407, 417-422, 428-430, 468-470, 472-482, Galić again failed to “identify with precision the specific finding[s] of fact made by the Trial Chamber to which” the different pieces of proposed additional evidence are directed.¹⁸

III. CONCLUSION

6. For the foregoing reasons, the Defence Motion is **DENIED**,¹⁹ and the Motion to Dismiss is **DISMISSED** as moot.²⁰

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

Dated this 28th day of August 2006,
At The Hague,
The Netherlands.



Judge Fausto Pocar,
Presiding

[Seal of the Tribunal]

¹⁵ *Ibid.*

¹⁶ *Ibid.*, p. 7.

¹⁷ *Ibid.*

¹⁸ Galić also asserts that the proposed additional evidence establishes that the Trial Chamber should have made a site-visit to Sarajevo. Defence Motion, p. 6. The decision not to travel to Sarajevo is not a “specific finding of fact made by the Trial Chamber”. Hence, additional evidence could not be admitted for purposes of challenging the decision not to travel to Sarajevo.

¹⁹ Galić, of course, remains free to file another Rule 115 motion seeking to have the documents at issue here admitted as additional evidence. Such a motion would have to comply with the requirements of Rule 115, and the Appeals Chamber expresses no position here on whether such a motion could meet these requirements.

²⁰ If Galić files another Rule 115 motion seeking to have the documents at issue here admitted as additional evidence, the Prosecution will be free to again raise the arguments it raises in the Motion to Dismiss.