

**UNITED
NATIONS**



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-05-88-A

Date: 29 April 2014

Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge William H. Sekule
Judge Fausto Pocar
Judge Arlette Ramaroson
Judge Mandiaye Niang

Registrar: Mr. John Hocking

Decision of: 29 April 2014

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
RADIVOJE MILETIĆ
VINKO PANDUREVIĆ**

PUBLIC

**DECISION ON VUJADIN POPOVIĆ'S EIGHTH MOTION
PURSUANT TO RULE 115**

The Office of the Prosecutor:

Mr. Peter Kremer QC

Counsel for the Accused:

Mr. Zoran Živanović and Ms. Mira Tapušković for Mr. Vujadin Popović

Mr. John Ostojić for Mr. Ljubiša Beara

Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Mr. Drago Nikolić

Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić for Mr. Radivoje Miletić

Mr. Peter Haynes QC and Mr. Simon Davis for Mr. Vinko Pandurević

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 (“Appeals Chamber” and “Tribunal”, respectively);

BEING SEISED OF “Vujadin Popović’s Eighth Rule 115 Motion” filed by Vujadin Popović (“Popović”) on 14 January 2014 (“Motion”), in which he seeks admission of additional evidence on appeal pursuant to Rule 115 of the Tribunal’s Rules of Procedure and Evidence (“Rules”);

NOTING that Popović seeks to admit a statement of Petar Ušćumlić (“Ušćumlić”) given to the defence team of Radovan Karadžić on 12 March 2013 pursuant to Rule 92 *ter* of the Rules (“Ušćumlić’s Rule 92 *ter* Statement”) and Ušćumlić’s *viva voce* testimony given in the *Karadžić* trial on 21 May 2013 (“Ušćumlić’s *viva voce* Testimony”) (collectively, “Ušćumlić’s Evidence”);¹

RECALLING that Trial Chamber II of the Tribunal relied upon Momir Nikolić’s evidence to find that on the morning of 12 July 1995, in front of the Hotel Fontana, Popović told Momir Nikolić that “all the balija had to be killed”,² and to subsequently conclude that Popović was aware of the plan to murder Bosnian Muslim men by the morning of 12 July 1995;³

NOTING that Popović submits that Ušćumlić’s Evidence disproves Momir Nikolić’s account of the events of the morning of 12 July 1995⁴ and thus shows that the verdict is unsafe;⁵

NOTING the public redacted version of the “Prosecution Response to Vujadin Popović’s Eighth Rule 115 Motion” filed by the Office of the Prosecutor (“Prosecution”) on 11 February 2014 (“Response”), in which it opposes the Motion arguing, *inter alia*, that Popović has failed to show cogent reasons for the delay in filing the Motion months after he became aware of Ušćumlić’s Evidence;⁶

NOTING the “Reply to Prosecution Response to Vujadin Popović’s Eighth Rule 115 Motion” filed by Popović on 25 February 2014 (“Reply”), in which, without addressing any reasons for the delay in filing the Motion, he requests that Ušćumlić’s Evidence be admitted in the interests of justice as it could have fundamentally affected the verdict;⁷

¹ Motion, paras 1, 7, 20. See also Motion, Annex A, Witness Statement of Petar Ušćumlić [sic] dated 12 March 2013; Motion, Annex B, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, T. 38505-38521 (21 May 2013).

² *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Judgement, 10 June 2010 (public redacted version) (“Trial Judgement”), para. 280 and reference cited therein. See also Trial Judgement, paras 1097, 1179.

³ Trial Judgement, para. 1166 & fn. 3784. See also Trial Judgement, para. 1051.

⁴ Motion, paras 1, 12.

⁵ Motion, para. 2. See Motion, paras 15-17.

⁶ Response, paras 1-3, 14. The Prosecution filed a confidential version of its Response on the same day.

⁷ Reply, paras 1, 8. See also Reply, paras 2-7.

RECALLING that, pursuant to Rule 115(A) of the Rules, a party may submit a request to present additional evidence on appeal no later than 30 days from the date of filing the brief in reply, unless good cause or, after the appeal hearing, cogent reasons are shown for a delay;⁸

NOTING that in this case the 30-day time limit prescribed under Rule 115 of the Rules expired on 1 June 2011;⁹

CONSIDERING that neither Ušćumlić's Rule 92 *ter* Statement nor Ušćumlić's *viva voce* Testimony were available to Popović before the 1 June 2011 deadline;¹⁰

NOTING that the appeal hearing in this case was completed on 6 December 2013;¹¹

RECALLING FURTHER that in order to have additional evidence admitted at this highly advanced stage of the proceedings, the cogent reasons requirement obliges the applicant to demonstrate that the proffered material could not have been obtained despite the exercise of due diligence and that the motion was submitted as soon as possible after the applicant became aware of the existence of the evidence sought to be admitted;¹²

NOTING that the Motion is void of submissions which: (1) indicate when Popović became aware of the existence of Ušćumlić's Evidence; and (2) demonstrate that it was filed as soon as possible after he became aware of the existence of Ušćumlić's Evidence;¹³

CONSIDERING that Ušćumlić's Evidence was publicly available by 21 May 2013¹⁴ and that Popović filed the Motion more than seven months later;

FINDING, therefore, that Popović has failed to demonstrate cogent reasons for a delay of over seven months in filing the Motion, as required by Rule 115 of the Rules;

FOR THE FOREGOING REASONS

DISMISSES the Motion.

⁸ See also, *e.g.*, Decision on Drago Nikolić's First Motion for Admission of Additional Evidence on Appeal Pursuant to Rule 115 of the Rules, 19 November 2013 ("Decision of 19 November 2013"), p. 1 and reference cited therein.

⁹ Decision of 19 November 2013, p. 1 and reference cited therein. Popović filed his original brief in reply on 2 May 2011. See Reply Brief on Behalf of Vujadin Popović, 2 May 2011 (confidential) (public redacted version filed on 6 July 2011). See also Corrigendum to Brief in Reply on Behalf of Vujadin Popovic [*sic*] and Notice of Refiling of Vujadin Popovic's [*sic*] Reply Brief, 18 May 2011 (confidential).

¹⁰ Motion, para. 7.

¹¹ Appeal Hearing, AT. 606 (6 Dec 2013).

¹² *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Decision on Dragomir Milošević's Third Motion to Present Additional Evidence, 8 September 2009, para. 16 and reference cited therein.

¹³ See generally Motion; Reply. See also Response, para. 3.

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



Judge Patrick Robinson
Presiding

Dated this twenty-ninth day of April 2014,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

¹⁴ See Annex B, pp. 38505-38506 (Ušćumlić testified in open session and Ušćumlić's Rule 92 *ter* Statement was admitted as exhibit D3552 on 21 May 2013).