

**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-04-74-A
Date: 20 April 2016
Original: English

IN THE APPEALS CHAMBER

Before: Judge Carmel Agius, Presiding
Judge Liu Daqun
Judge Fausto Pocar
Judge Theodor Meron
Judge Bakone Justice Moloto

Registrar: Mr. John Hocking

Decision of: 20 April 2016

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
BERISLAV PUŠIĆ**

PUBLIC

**DECISION ON VALENTIN ĆORIĆ'S MOTION FOR
ADMISSION OF ADDITIONAL EVIDENCE ON
APPEAL PURSUANT TO RULE 115**

The Office of the Prosecutor:

Mr. Douglas Stringer
Ms. Barbara Goy
Ms. Laurel Baig

Counsel for the Accused:

Mr. Michael G. Karnavas and Ms. Suzana Tomanović for Mr. Jadranko Prlić
Ms. Senka Nožica and Mr. Karim A. A. Khan for Mr. Bruno Stojić
Ms. Nika Pinter and Ms. Natacha Fauveau-Ivanović for Mr. Slobodan Praljak
Ms. Vesna Alaburić and Mr. Davor Lazić for Mr. Milivoj Petković
Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Mr. Valentin Ćorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Mr. Berislav Pušić

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 (“Appeals Chamber” and “Tribunal”, respectively) is seised of the “Motion of Valentin Ćorić Pursuant to Rule 115”, filed confidentially with a confidential annex by Valentin Ćorić (“Ćorić”) on 12 January 2015 (“Motion”),¹ which seeks the admission of additional evidence on appeal pursuant to Rule 115 of the Tribunal’s Rules of Procedure and Evidence (“Rules”).² The Office of the Prosecutor (“Prosecution”) filed its response on 11 February 2015, opposing the Motion.³ Ćorić replied on 24 February 2015.⁴ The Prosecution filed a request for leave to file a sur-reply on 2 March 2015, together with its proposed sur-reply.⁵

I. BACKGROUND

2. On 29 May 2013, Trial Chamber III of the Tribunal (“Trial Chamber”) convicted Ćorić pursuant to Articles 7(1) and 7(3) of the Tribunal’s Statute (“Statute”) of multiple counts of crimes against humanity, grave breaches of the Geneva Conventions of 1949, and violations of the laws or customs of war, for, *inter alia*, his participation in a joint criminal enterprise (“JCE”).⁶ He was sentenced to 16 years of imprisonment.⁷ Ćorić has appealed his conviction and sentence, and briefing was completed on 29 May 2015.⁸

II. APPLICABLE LAW

3. Pursuant to Rule 115(A) of the Rules, a party may submit a request to present additional evidence before the Appeals Chamber no later than 30 days from the date of filing of the brief in reply unless good cause or, after the appeal hearing, cogent reasons are shown for a delay.⁹

¹ The Motion was originally filed publicly, but was reclassified and redistributed as confidential by the Registry of the Tribunal on 23 January 2015 in response to a request by Ćorić on 22 January 2015. *See* Defence Request to Reclassify Status of Filing, 22 January 2015, paras 1-2.

² Motion, paras 2-3, p. 7.

³ Prosecution Response to Motion of Valentin Ćorić Pursuant to Rule 115, 11 February 2015 (confidential with confidential appendices) (“Response”), paras 1, 11.

⁴ Reply in Support of Rule 115 Submission, 24 February 2015 (confidential) (“Reply”).

⁵ Prosecution Motion for Leave to File Sur-Reply and Sur-Reply Concerning Motion of Valentin Ćorić Pursuant to Rule 115, 2 March 2015 (confidential) (“Sur-Reply Request”).

⁶ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Judgement, 6 June 2014 (French original filed on 29 May 2013) (“Trial Judgement”), Vol. 4, p. 431.

⁷ Trial Judgement, Vol. 4, p. 431.

⁸ *See* Notice of Appeal Filed on Behalf of Mr. Valentin Ćorić, 4 August 2014; Re-Filed Notice of Appeal Filed on Behalf of Mr. Valentin Ćorić, 23 December 2014; Corrigendum to Appellant’s Brief of Valentin Ćorić, 12 January 2015 (confidential; public redacted version filed on 23 March 2016); Prosecution Response to Valentin Ćorić’s Appellant’s Brief, 7 May 2015 (confidential with confidential and *ex parte* appendix; public redacted version filed on 19 August 2015); Reply Brief of Valentin Ćorić in Support of Appellant’s Brief, 29 May 2015 (confidential with confidential and *ex parte* annexes; public redacted version filed on 31 August 2015).

⁹ Rule 115(A) of the Rules. *See Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-A, Decision on Mićo Stanišić’s Second Motion Seeking Admission of Additional Evidence Pursuant to Rule 115, 11 February 2015

4. For additional evidence to be admissible under Rule 115 of the Rules, the applicant must first demonstrate that the additional evidence tendered on appeal was not available to him at trial in any form, or discoverable through the exercise of due diligence. The applicant's duty to act with due diligence includes making appropriate use of all mechanisms of protection and compulsion available under the Statute and the Rules to bring evidence on behalf of an applicant before the trial chamber. The applicant is therefore expected to apprise the trial chamber of all the difficulties he encounters in obtaining the evidence in question.¹⁰

5. The applicant must then show that the evidence is both relevant to a material issue and credible. Evidence is relevant if it relates to findings material to the conviction or sentence, in the sense that those findings were crucial or instrumental to the conviction or sentence. Evidence is credible if it appears to be reasonably capable of belief or reliance.¹¹

6. The applicant must further demonstrate that the evidence *could* have had an impact on the verdict; in other words, the evidence must be such that, if considered in the context of the evidence presented at trial, it could show that the verdict was unsafe. A decision will be considered unsafe if the Appeals Chamber ascertains that there is a realistic possibility that the trial chamber's verdict might have been different if the new evidence had been admitted.¹²

7. If the evidence was available at trial or could have been obtained through the exercise of due diligence, it may still be admissible on appeal if the applicant shows that the exclusion of the additional evidence would lead to miscarriage of justice, in that if it had been admitted at trial, it *would* have affected the verdict.¹³

8. In both cases, the applicant bears the burden of identifying with precision the specific finding of fact made by the trial chamber to which the additional evidence pertains, and of specifying with sufficient clarity the impact the additional evidence could or would have had upon

(“*Stanišić and Župljanin* Decision of 11 February 2015”), para. 11; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Public Redacted Version of 2 May 2014 Decision on Vujadin Popović's Third and Fifth Motions for Admission of Additional Evidence on Appeal Pursuant to Rule 115, 23 May 2014 (“*Popović et al.* Decision of 23 May 2014”), para. 6.

¹⁰ *Popović et al.* Decision of 23 May 2014, para. 7; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Radivoje Miletić's First and Second Motions for Admission of Additional Evidence on Appeal Pursuant to Rule 115, 15 April 2013 (“*Popović et al.* Decision of 15 April 2013”), para. 6.

¹¹ *Stanišić and Župljanin* Decision of 11 February 2015, para. 12; *Popović et al.* Decision of 23 May 2014, para. 8; *Popović et al.* Decision of 15 April 2013, para. 7.

¹² *Stanišić and Župljanin* Decision of 11 February 2015, para. 13; *Popović et al.* Decision of 23 May 2014, para. 9; *Popović et al.* Decision of 15 April 2013, para. 8.

¹³ *Stanišić and Župljanin* Decision of 11 February 2015, para. 14; *Popović et al.* Decision of 23 May 2014, para. 10; *Popović et al.* Decision of 15 April 2013, para. 9.

the trial chamber's verdict. A party that fails to do so runs the risk that the tendered material will be rejected without detailed consideration.¹⁴

9. Finally, the significance and potential impact of the tendered material shall not be assessed in isolation, but in the context of the evidence presented at trial.¹⁵

III. DISCUSSION

A. Availability at Trial, Relevance and Credibility

1. Arguments of the Parties

10. In the Motion, Ćorić requests the admission, as additional evidence on appeal, of a statement dated 17 January 1996, given to the Ministry of Internal Affairs of Bosnia and Herzegovina by Witness U ("Statement" and "Witness", respectively), a former detainee of the Heliodrom Prison ("Heliodrom").¹⁶ Ćorić submits that the Statement was not available to him during trial as it was only disclosed by the Prosecution on 22 September 2014.¹⁷ Ćorić asserts that the Statement is relevant as it provides a description of the events at the Heliodrom that contradicts the Trial Chamber's finding that he was criminally responsible for the mistreatment of detainees held there.¹⁸ Ćorić also submits that the Statement is a credible document as it, *inter alia*, constitutes "an official statement taken by law enforcement officials".¹⁹

11. The Prosecution responds that the Statement was available during trial since a "nearly identical" version of the Statement was disclosed to the Defence on 30 March 2005 ("30 March 2005 Version").²⁰ The Prosecution submits that, as the Witness was a Prosecution witness, Ćorić had access to his evidence during trial.²¹ The Prosecution further argues that the testimony of the Witness in the *Naletilić and Martinović* case, during which he was cross-examined on the basis of the Statement, was entered into evidence at trial under Rule 92*bis* of the Rules and

¹⁴ *Stanišić and Župljanin* Decision of 11 February 2015, para. 15; *Popović et al.* Decision of 23 May 2014, para. 11; *Popović et al.* Decision of 15 April 2013, para. 10.

¹⁵ *Stanišić and Župljanin* Decision of 11 February 2015, para. 16; *Popović et al.* Decision of 23 May 2014, para. 12; *Popović et al.* Decision of 15 April 2013, para. 11.

¹⁶ Motion, para. 9. *See also* Motion, Annex A; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Order Amending the Decision of 4 April 2006, 29 November 2007, pp. 4-5.

¹⁷ Motion, paras 3, 10.

¹⁸ Motion, para. 12(a). *See* Motion, para. 14.

¹⁹ Motion, para. 12(b).

²⁰ Response, paras 1-2, Appendix A. The Prosecution contends that this disclosure on 30 March 2005 occurred more than a year before the trial began and nearly five years before Ćorić opened his defence case. *See* Response, para. 2.

²¹ Response, para. 2.

thus all the relevant information “is already in the trial record”.²² It also submits that Ćorić could have cross-examined the Witness or called him as part of the Defence case.²³

12. Ćorić replies that the 30 March 2005 Version is not identical to the Statement, as the latter is multiple pages longer.²⁴ Ćorić asserts that the information contained in the Statement is not in the trial record as the cross-examination of the Witness in the *Naletilić and Martinović* case does not: (i) cover the relevant portions of the Statement; (ii) make it clear that the Statement was used as the basis for that testimony; or (iii) identify the exculpatory material.²⁵ Ćorić denies that he was given proper notice of the exculpatory nature of the Statement in order to request the cross-examination of the Witness.²⁶

2. Analysis

13. The Appeals Chamber first finds the Statement to be *prima facie* relevant and credible for the purposes of being considered admissible as additional evidence on appeal.²⁷ On the question of availability, the Appeals Chamber considers that, as the Statement was only disclosed to Ćorić on 22 September 2014, it was not available at trial. In determining whether the information contained therein was discoverable at trial through the exercise of due diligence,²⁸ the Appeals Chamber notes that the 30 March 2005 Version - which differs from the Statement only with respect to minor variations in the signatures of the Witness, clerk, and the person taking the statements²⁹ - was disclosed by the Prosecution before the trial commenced in April 2006.³⁰ Furthermore, the information contained in the Statement is almost identical to the 30 March 2005 Version, and in particular, they both contain the same description of events that Ćorić has identified as exculpatory.³¹ Thus, the information contained in the Statement was discoverable through the exercise of due diligence.

²² Response, para. 3.

²³ Response, para. 4.

²⁴ Reply, para. 5.

²⁵ Reply, para. 7.

²⁶ Reply, para. 8. Ćorić also argues that the disclosure of the 30 March 2005 Version did not comply with the jurisprudence on disclosures pursuant to Rule 68 of the Rules so as to alert the defence to the existence of exculpatory material. Reply, paras 5-6, 8-9.

²⁷ See *supra*, para. 5. See also *Popović et al.* Decision of 15 April 2013, paras 33-35, 40.

²⁸ See *supra*, para. 4.

²⁹ Compare Response, Appendix A with Motion, Appendix A. With respect to Ćorić’s submission that the Statement is multiple pages longer than the 30 March 2005 Version, the Appeals Chamber notes that the Statement in the original language clearly contains three duplicative pages. See Motion, Annex A, ERN page numbers 0635-3319-06350-3321.

³⁰ See Response, Appendix B. See also Response, para. 2 & fn. 5; Reply, para. 5.

³¹ Compare Response, Appendix A, pp. 11374-11377 (Registry pagination) with Motion, Appendix A., pp. 1682-1685 (Registry pagination). See Motion, paras 11-12; Reply, paras 5-8.

14. Additionally, evidence from the Witness regarding the events at the Heliodrom was entered into the trial record on 12 December 2007, by virtue of Rule 92*bis* of the Rules,³² which was sufficient to alert Ćorić to the likelihood that the Witness had information relevant to his defence. Regardless of whether the Witness was cross-examined in *Naletilić and Martinović* case on the specific portions of the Statement relevant to Ćorić, the information that Ćorić now seeks to admit into evidence was discoverable at trial. Further, Ćorić has not shown why he could not seek to cross-examine the Witness pursuant to Rule 92*ter* of the Rules or call him as a Defence witness. The Appeals Chamber therefore finds that Ćorić has not fulfilled his obligation to exercise due diligence.³³

15. Accordingly, the Statement can only be admitted as additional evidence on appeal if the Appeals Chamber is satisfied that if it had been admitted at trial, it *would* have affected the verdict.³⁴

B. Impact on the Verdict

1. Arguments of the Parties

16. Ćorić asserts that the Statement refutes the Trial Chamber's conclusions that he: (i) established the Heliodrom and was superior in the camp's hierarchy to the warden;³⁵ (ii) supervised access to the Heliodrom and regulated the use of detainees as labour outside the camp;³⁶ (iii) was ultimately responsible for the security of the detainees at the Heliodrom;³⁷ and (iv) had reason to believe that the detainees at the Heliodrom were subject to mistreatment, which he accepted.³⁸ Ćorić submits that the Statement provides a first-hand account of the command structure at the Heliodrom and specifically that, towards the end of July 1993, Colonel Nedeljko Obradović ("Obradović") assumed command of the facility.³⁹ He argues that this proves that he could not have been in command or control of the Heliodrom during the indictment period.⁴⁰ Ćorić

³² See Ex. P10220, pp. 36-44, 50-52, 121-122; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis* of the Rules (Heliodrom and Generally), 25 January 2008 (confidential) (French original filed on 12 December 2007), para. 42, p. 37.

³³ As a consequence, the Appeals Chamber declines to consider Ćorić's argument that there was a violation of disclosure obligations with regard to Rule 68 of the Rules, particularly as he has not sought the imposition of sanctions on the Prosecution. See Reply, paras 5-6, 8-9. The Appeals Chamber, thus, considers the Sur-Reply Request to be moot as the Prosecution only seeks an opportunity to respond to Ćorić's argument. See Sur-Reply Request, para. 1.

³⁴ See *supra*, para. 7.

³⁵ Motion, para. 12(a), *citing* Trial Judgement, Vol. 4, para. 895.

³⁶ Motion, para. 12(a), *citing* Trial Judgement, Vol. 4, paras 906, 908-910.

³⁷ Motion, para. 12(a), *citing* Trial Judgement, Vol. 4, para. 896.

³⁸ Motion, para. 12(a), *citing* Trial Judgement, Vol. 4, paras 955-957.

³⁹ Motion, paras 11-12(a), 12(c). See Reply, para. 10.

⁴⁰ Motion, paras 12(a), 12(c).

also argues that the Statement also proves that the mistreatment of detainees, including their use for labour outside the camp, only commenced after Obradović assumed command of the Heliodrom.⁴¹

17. Čorić asserts that the Statement undermines the safety of his conviction in relation to events at the Heliodrom.⁴² He submits that had the Trial Chamber considered the Statement, it would not have found the Prosecution witnesses who testified on the events at the Heliodrom to be credible and reliable and it would not have found him criminally liable, beyond reasonable doubt, for these events.⁴³

18. The Prosecution responds that Čorić has failed to demonstrate that the Statement's exclusion would lead to a miscarriage of justice or how any of the Trial Chamber's findings would have been different had it been admitted at trial.⁴⁴ In its view, the Statement is a "hearsay account" of a prisoner unfamiliar with the hierarchical structures of the Croatian Defence Council ("HVO"), the Military Police Administration, and the Heliodrom⁴⁵. According to the Prosecution, the Witness's account would not have had an impact on the Trial Chamber's conclusions regarding Čorić's functions and powers which, it argues, were based on "numerous documents" and the testimony of witnesses from the HVO and the Heliodrom's command structure.⁴⁶ It further asserts that information in the Statement concerning the increase of mistreatment and the use of detainees for labour after Obradović's arrival cannot undercut the Trial Chamber's findings and, if anything, corroborates the relevant findings concerning the detention conditions at the Heliodrom and Čorić's failure to intervene.⁴⁷

19. The Prosecution further submits that the Trial Chamber's findings on Čorić's participation in the JCE were based not only on evidence regarding his role in the events at the Heliodrom, but also on his involvement and contribution to other events.⁴⁸

2. Analysis

20. Regarding his arguments on the command structure of the Heliodrom, the Appeals Chamber notes that Čorić refers to the section of the Statement where the Witness says that he "heard that command over [the Heliodrom] prison would be taken by [Obradović]" in the end of July 1993.⁴⁹ However, the Appeals Chamber finds that this information is insufficient to call into question the

⁴¹ Motion, paras 11-12(a), 12(c).

⁴² Motion, para. 12(c).

⁴³ Motion, paras 14-15. *See also* Reply, paras 10-11.

⁴⁴ Response, paras 5, 8, 10.

⁴⁵ Response, para. 6.

⁴⁶ Response, para. 6.

⁴⁷ Response, para. 7.

⁴⁸ Response, para. 9.

Trial Chamber's findings concerning Ćorić's involvement in events at the Heliodrom, which include that: (i) Ćorić ordered the establishment of the Heliodrom;⁵⁰ (ii) various people were in charge of the Heliodrom between September 1992 and April 1994;⁵¹ (iii) Ćorić was hierarchically superior to the warden of the Heliodrom;⁵² and (iv) Ćorić and Obradović, among others, controlled access to the Heliodrom⁵³ and were involved in the release of detainees.⁵⁴ Notably, the Witness's recollection of what he heard does not contradict these key findings and Ćorić does not demonstrate that the Trial Chamber's conclusions would have differed had it considered this proposed evidence.

21. In relation to Ćorić's contention that, based on the Statement, the mistreatment of detainees – including their use as forced labour – began after Obradović took control over the Heliodrom,⁵⁵ the Appeals Chamber considers that he fails to explain how this proposed evidence would have had an effect on the Trial Chamber's findings concerning his knowledge of the mistreatment. The Statement speaks to the mistreatment of detainees,⁵⁶ but does not contradict the Trial Chamber's findings, *inter alia*, on Ćorić's role in detainees being used as forced labour, as well as his knowledge of the inhumane detention conditions at the Heliodrom and his acceptance of the mistreatment.⁵⁷

22. Additionally, the Appeals Chamber observes that the Trial Chamber's findings regarding Ćorić's participation in the JCE were not based solely on evidence concerning the Heliodrom and his role in the events there.⁵⁸ Specifically, the Trial Chamber found that, *inter alia*, Ćorić: (i) engaged Military Police units in the eviction operations carried out in Gornji Vakuf, Stolac, Čapljina, and Mostar;⁵⁹ (ii) contributed to the eviction of Muslims from Mostar in May 1993;⁶⁰ (iii) held a key role in the operation of the network of HVO detention centres;⁶¹ and (iv) contributed to the blockade of the Muslim population of East Mostar and of humanitarian aid.⁶² Ćorić has thus failed to show that the proposed evidence would have affected the verdict.

⁴⁹ Motion, Annex A, p. 1684 (Registry pagination). *See* Motion, para. 11(b).

⁵⁰ Trial Judgement, Vol. 2, paras 1390-1395; Trial Judgement, Vol. 4, paras 893, 895, 916.

⁵¹ Trial Judgement, Vol. 2, para. 1399. *See also* Trial Judgement, Vol. 2, paras 1400-1405.

⁵² Trial Judgement, Vol. 4, paras 895, 916, 968, 970.

⁵³ Trial Judgement, Vol. 2, paras 1420-1441; Trial Judgement, Vol. 4, paras 905-906.

⁵⁴ Trial Judgement, Vol. 2, paras 1445-1452; Trial Judgement, Vol. 4, paras 912, 916.

⁵⁵ *See supra*, para. 16.

⁵⁶ Motion, Annex A, p. 1684 (Registry pagination).

⁵⁷ Trial Judgement, Vol. 2, paras 1484, 1486-1492; Trial Judgement, Vol. 4, paras 908, 910, 962-966, 971.

⁵⁸ *See* Trial Judgement, Vol. 4, para. 1004.

⁵⁹ Trial Judgement, Vol. 4, para. 1000.

⁶⁰ Trial Judgement, Vol. 4, para. 1000.

⁶¹ Trial Judgement, Vol. 4, para. 1001.

⁶² Trial Judgement, Vol. 4, para. 1003.

23. Accordingly, as the exclusion of the Statement would not lead to miscarriage of justice, the Appeals Chamber will not admit the Statement as additional evidence on appeal pursuant to Rule 115 of the Rules.

24. The Appeals Chamber emphasises that its findings in the present decision pertain strictly to the admissibility of the Statement and not to the merits of the appeals filed by the parties.

IV. DISPOSITION

25. For the foregoing reasons, the Appeals Chamber:

DISMISSES the Sur-Reply Request as moot; and

DISMISSES the Motion in its entirety.

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

Dated this twentieth day of April 2016,
At The Hague,
The Netherlands.



Judge Carmel Agius
Presiding Judge

[Seal of the Tribunal]