

**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: 4 December 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: 4 December 2014

PROSECUTOR

v.

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

PUBLIC

**DECISION ON VUJADIN POPOVIĆ'S SEVENTH MOTION
FOR ADMISSION OF ADDITIONAL EVIDENCE ON APPEAL
PURSUANT TO RULE 115**

The Office of the Prosecutor:

Ms. Barbara Goy

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 Seventh Rule 115 Motion” filed publicly with a confidential appendix and confidential annexes by Vujadin Popović (“Popović”) on 11 November 2013 (“Motion”), in which he seeks the admission, as additional evidence on appeal, of his statement given pursuant to Rule 92 *ter* of the Rules of Procedure and Evidence of the Tribunal (“Rules”) and his testimony on 5 and 6 November 2013 in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T;¹

NOTING the “Prosecution Response to Vujadin Popović’s Seventh Rule 115 Motion” filed confidentially by the Office of the Prosecutor (“Prosecution”) on 29 November 2013 (“Response”), in which it opposes the Motion;²

NOTING the “Reply to Prosecution Response to Vujadin Popović’s Seventh Rule 115 Motion” filed confidentially by Popović on 12 December 2013 (“Reply”);³

NOTING that Popović submits that he exercised his right not to testify at his own trial and that the due diligence requirement pursuant to Rule 115 of the Rules does not give rise to an obligation on the part of his counsel to compel such testimony;⁴

NOTING the Prosecution’s submission that Popović’s strategic choice not to testify at trial and subsequent attempt to invoke Rule 115 of the Rules to admit his own evidence on appeal constitute an abuse of the appellate process and procedures developed under Rule 115 of the Rules;⁵

NOTING Popović’s contentions that he chose not to testify at trial out of concerns for the safety of his family, that the Prosecution’s allegation of abuse of process is categorically unfair, and that the Appeals Chamber ought to have the option to hear his side of the story;⁶

¹ Motion, para. 1, p. 8 (Relief Sought). See Motion, Annexes A (92 *ter* Statement), B (Testimony), Appendix.

² Response, paras 1-3, 41. The Prosecution also filed a public redacted version of the Response on 29 November 2013.

³ The Appeals Chamber notes that Popović requests leave to reply. See Reply, para. 1. However, the Appeals Chamber notes that, where a motion under Rule 115 of the Rules is filed during an appeal from judgement, the moving party may file a reply within 14 days of the filing of the response without first seeking leave to file such a reply. See Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal, IT/155 Rev. 4, 4 April 2012, para. 14; Decision on Vujadin Popović’s Sixth Motion for Admission of Additional Evidence on Appeal Pursuant to Rule 115, 22 July 2014, fn. 3. Additionally, notwithstanding the confidential status of the Reply (see Reply, fn. 1), the Appeals Chamber finds no reason to render the present decision confidentially.

⁴ Motion, paras 1, 5-6.

⁵ Response, paras 2, 6, 39-41. See also Response, para. 4.

CONSIDERING that Popović could have exercised his right to testify in his own defence at trial;⁷

FINDING that the testimony of an appellant in another case, being sought to be tendered in his own case on appeal, merely constitutes the appellant's own version of events, which he had the opportunity to present at the trial against him for the trial chamber to consider,⁸ and as such does not qualify as additional evidence on appeal;

FOR THE FOREGOING REASONS

HEREBY DISMISSES the Motion in its entirety.

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



Judge Patrick Robinson
Presiding

Dated this fourth day of December 2014,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

⁶ Reply, paras 5-6. Popović also refers to “counsel’s duties to make every effort to diligently represent his client” as context for his response regarding the alleged abuse of process. See Reply, para. 6, referring to Code of Professional Conduct for Counsel Appearing Before the International Tribunal, IT/125 Rev. 3, 22 July 2009, Article 11.

⁷ *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Judgement, 9 May 2007, para. 27; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006, paras 19, 22.

⁸ *Cf. Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Decision on Appellant’s Motion for the Extension of the Time-Limit and Admission of Additional Evidence, 16 October 1998, paras 42, 44, 50. See also *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellants Jean-Bosco Barayagwiza’s and Ferdinand Nahimana’s Motions for Leave to Present Additional Evidence Pursuant to Rule 115, 12 January 2007, para. 5.