



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-95-10-A
Date: 15 November 2000
Original: English

BEFORE THE APPEALS CHAMBER

Before: Judge Mohamed Shahabuddeen, Presiding
Judge Lal Chand Vohrah
Judge Rafael Nieto-Navia
Judge Patricia Wald
Judge Fausto Pocar

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 15 November 2000

PROSECUTOR

v.

GORAN JELISIĆ

**DECISION ON REQUEST TO ADMIT
ADDITIONAL EVIDENCE**

The Office of the Prosecutor:

Mr. Upawansa Yapa

Counsel for Goran Jelisić:

**Mr. Jovan Babić
Mr. Michael Greaves**

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 (“the International Tribunal” and “the Appeals Chamber” respectively),

BEING SEISED OF “The Defence’s Brief for the Presentation of (sic) the Additional Evidence”, filed by the Defence on 8 September 2000 (“the Defence Motion”), in which the Appellant seeks an order allowing the admission of the following additional evidence in accordance with Rules 107 and 115 of the Rules of Procedure and Evidence (“the Rules”):

1. An expert’s report from Mrs. Ljiljana Mijovic, professor at the Police Academy in Banja Luka and research assistant at the law school in Banja Luka, with respect to the Defendant’s rank in the police hierarchy and powers deriving from this rank (“the Expert’s Report”); and
2. A report and/or testimony from Mr. Timothy McFadden, Commanding Officer of the UN Detention Unit, with respect to the overall behaviour of the accused as a detainee (“the Detention Report”);

NOTING the various filings in the case, in particular Trial Chamber I’s written “Judgement” against Goran Jelisić, issued on 14 December 1999 (“the written Judgement”), and the “Prosecution Response to the Defence’s Brief for the Presentation of the Additional Evidence”, filed on 18 September 2000;

CONSIDERING that Rule 107 of the Rules extends the application of the Rules that govern proceedings in the Trial Chambers to proceedings in the Appeals Chamber *mutatis mutandis*, but that such extension does not apply as the presentation of evidence on appeal is governed by Rule 115;

NOTING that, to be admissible under Rule 115 of the Rules, evidence must meet two requirements: first, it must be shown that the material was not available at the trial and, second, if it was not available at trial, it must be shown that its admission is required by the interests of justice;

NOTING that, with respect to the Expert’s Report, the Defence submits that it did not present this evidence at trial because it thought that “no further insisting had been necessary”, as the place of the Defendant in the police hierarchy had been sufficiently pleaded in “The Agreement on the Factual Grounds for Pleading Guilty of Goran Jelisić”;

CONSIDERING that this does not show that the evidence was unavailable at the trial and that, consequently, it is not necessary to consider whether the admission of this evidence would be required in the interests of justice pursuant to Rule 115(B) of the Rules;

CONSIDERING HOWEVER that the Appeals Chamber maintains an inherent power to admit such evidence even if it was available at trial, in cases in which its exclusion would lead to a miscarriage of justice;

CONSIDERING that the exclusion of the Expert's Report would not lead to a miscarriage of justice, regard being had to a reasonable presumption that the substance of the matters raised in the Report was before the Trial Chamber;

CONSIDERING that the second issue raised in the Defence Motion, that of the overall behaviour of the Defendant as a detainee, was addressed by the Trial Chamber;¹

NOTING that the Detention Report pertains to the Defendant's behaviour before and after the written Judgement and sentence handed down therein;

CONSIDERING that those parts of the Detention Report which relate to the Defendant's behaviour prior to sentencing were available within the meaning of Rule 115(A) of the Rules, and that exclusion of evidence on this issue would not lead to a miscarriage of justice, regard being had to a reasonable presumption that the substance of the matters raised in the Report was before the Trial Chamber;

CONSIDERING HOWEVER that those aspects of the Detention Report which concern the Defendant's post-sentencing behaviour were unavailable at the time of trial, and that it is, therefore, necessary to establish whether their admission is required by the interests of justice pursuant to Rule 115(B) of the Rules;

CONSIDERING that the admission of evidence is in the interests of justice if it is relevant to a material issue, if it is credible and if it is such that it would probably show that the conviction or sentence was unsafe;

¹ Judgement, *The Prosecutor v. Jelisić*, Case No. IT-95-10-A, 14 December 1999, para 127.

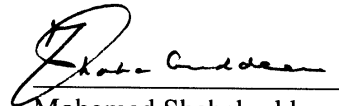
CONSIDERING that the Appeals Chamber may review a sentence handed down by a Trial Chamber where that Trial Chamber has erred in the exercise of the discretion conferred upon it with respect to sentencing by the Statute of the International Tribunal and the Rules;

CONSIDERING that the Defendant's post-sentence behaviour could be neither relevant to any issue before the Trial Chamber nor capable of being considered by it and, therefore, cannot show that the Trial Chamber committed any error in the exercise of its discretion;

FINDING that it has not been shown that it is in the interests of justice to admit the Detention Report as additional evidence;

HEREBY DISMISSES THE DEFENCE MOTION.

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


Mohamed Shahabuddeen
Presiding

Dated this fifteenth day of November 2000
At The Hague,
The Netherlands.

[Seal of the Tribunal]