

**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-95-11-A
Date: 16 April 2008
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andrésia Vaz
Judge Wolfgang Schomburg

Registrar: Mr. Hans Holthuis

Decision of: 16 April 2008

PROSECUTOR

v.

MILAN MARTIĆ

PUBLIC

**DECISION ON VESELIN ŠLJIVANČANIN'S MOTION
REQUESTING SIMULTANEOUS ADJUDICATION OF THE
PROSECUTOR V. MILAN MARTIĆ AND PROSECUTOR V.
MILE MRKŠIĆ AND VESELIN ŠLJIVANČANIN CASES**

The Office of the Prosecutor:

Ms. Michelle Jarvis
Ms. Helen Brady

Counsel for Milan Martić :

Mr. Predrag Milovančević
Mr. Nikola Perović

Counsel for Veselin Šljivančanin:

Mr. Novak Lukić
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Mr. Miroslav Vasić
Mr. Vladimir Domazet

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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 “International Tribunal”, respectively) is seized of two appeals in this case.¹ The Appeals Chamber is also currently seized of the “Motion on Behalf of Veselin Šljivančanin Requesting Simultaneous Adjudication of the Prosecution Martić Appeal and Prosecution Mrkšić/Šljivančanin Appeal” (“Motion”), submitted by Veselin Šljivančanin (“Applicant”) on 26 March 2008. The Prosecution responded on 4 April 2008.² Milan Martić did not file a response to the Motion. On 8 April 2008, the Applicant filed a reply to the Prosecution Response.³

A. Submissions of the Parties

2. In the Motion, the Applicant requests the Appeals Chamber to “postpone its deliberations” in relation to the appeals in *Prosecutor v. Milan Martić*, Case No. IT-95-11-A, (“Martić case”) until the appeals in *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, (“Mrkšić and Šljivančanin case”) have been fully argued. In addition he asks the Appeals Chamber “to adjudicate the Prosecution Martić Appeal and Ground I of the Prosecution Mrkšić/Šljivančanin appeal” together. In the alternative, the Applicant requests the Appeals Chamber to grant him standing in the *Martić* case.⁴

3. The Applicant submits that the appeal by the Prosecution in the *Martić* case and ground 1 of the Prosecution appeal in the *Mrkšić and Šljivančanin* case “raise a common legal issue regarding the application of Article 5 of the Statute [of the International Tribunal]” and that these appeals should be considered and adjudicated by the Appeals Chamber together.⁵ The Applicant states that both appeals concern the question of “(a) whether Article 5 of the Statute requires individual victims of crimes against humanity to be civilians; and (b) whether *hors de combat* victims should be regarded as civilians for the purpose of Article 5 of the Statute.”⁶

4. In the view of the Applicant, “the resolution of this matter is paramount to both appeals and the jurisprudence of the International Tribunal” and “[c]onsequently, there is a need for a coherent

¹ *Prosecutor v. Milan Martić*, Case No. IT-95-11-A, Prosecution’s Notice of Appeal, 12 July 2007; *Prosecutor v. Milan Martić*, Case No. IT-95-11-A, Defence Notice of Appeal, 14 January 2008.

² Prosecution Response to Motion on Behalf of Veselin Šljivančanin Requesting Simultaneous Adjudication of the Prosecution Martić Appeal and Prosecution Mrkšić/Šljivančanin Appeal, 4 April 2008 (“Prosecution Response”).

³ Applicant’s Reply to Prosecution Response to Motion on Behalf of Veselin Šljivančanin Requesting Simultaneous Adjudication of the Prosecution Martić Appeal and Prosecution Mrkšić/Šljivančanin Appeal, 8 April 2008 (“Applicant Reply”).

⁴ Motion, para. 26.

⁵ Motion, paras 1-2; Applicant Reply, para. 3.

⁶ Motion, para. 16.

resolution of the issues raised by the Appeals Chamber.”⁷ The Applicant avers that, given that the decision of the Appeals Chamber in the *Martić* case will “be a decisive consideration in its decision” in the *Mrkšić and Šljivančanin* case, he should be afforded “an opportunity to be heard on the issues raised in the Prosecution Martić Appeal, before adjudication of the matter by the Appeals Chamber,”⁸ “in accordance with the general principle of law *audi alteram partem*.”⁹ This is all the more so, considering that a finding by the Appeals Chamber in one case is binding for future cases.¹⁰ He submits that the “most appropriate way” for the Applicant to be heard is to postpone the Appeals Chamber’s deliberations in the *Martić* case until ground 1 of the Prosecution appeal in the *Mrkšić and Šljivančanin* case is fully argued “both in writing and orally” and then “simultaneously consider the arguments on the common issues raised in the briefs filed and the oral arguments presented by all parties to both appeals.”¹¹ In the alternative, the Applicant requests to grant him standing in the *Martić* case and authorize him to make written and oral submissions in response to the briefs by the Martić and the Prosecution in the *Martić* case.¹² The Applicant further submits that his participation in the *Martić* appellate proceedings would not cause undue delay.¹³

5. In response, the Prosecution asks the Appeals Chamber to dismiss the Motion.¹⁴ It argues that “there is no justification in principle” for the Applicant’s request and stresses that there is no right for parties in one case to delay the proceedings or have standing to make submissions in another case just because they await the determination of a legal issue.¹⁵ The Prosecution further argues that the course proposed by the Applicant “would significantly delay the Martić appeal proceedings” in light of the different briefing schedules.¹⁶ The Prosecution also notes the different composition of the appeal benches in the *Martić* and *Mrkšić and Šljivančanin* cases.¹⁷ Finally, it submits that the Applicant will be able to present his arguments before the Appeals Chamber in his own case and in this context may address any arguments emanating from the proceedings in the *Martić* case.¹⁸

⁷ Motion, para. 20; Applicant Reply, para. 8.

⁸ Motion, para. 22.

⁹ Motion, para. 23.

¹⁰ Applicant Reply, para. 9.

¹¹ Motion, para. 24.

¹² Motion, para. 25.

¹³ Applicant Reply, paras 10-16.

¹⁴ Prosecution Response, para. 7.

¹⁵ Prosecution Response, para. 3.

¹⁶ Prosecution Response, para. 4.

¹⁷ Prosecution Response, para. 5.

¹⁸ Prosecution Response, para. 6.

B. Discussion

6. The Applicant's request is unfounded. The *Martić* case and the *Mrkšić and Šljivančanin* case are distinct legal proceedings, both at the trial and appellate level. The Appeals Chamber is required to decide on the merits of the individual respective appeals. While similar legal issues in different cases may arise, those issues always have to be considered in the context of each individual case. There is no basis for the Appeals Chamber in the *Martić* case to consider the merits of the Prosecution's respective appeals in the *Martić* and *Mrkšić and Šljivančanin* cases together.

7. As for the Applicant's alternative request, the Appeals Chamber does not agree that the Applicant can draw support for this request from the "*audi alteram partem*"¹⁹ principle. The Applicant has no standing in the *Martić* case and is consequently unable to make submissions on the merits in those proceedings.

C. Disposition

For the foregoing reasons, the Appeals Chamber

DISMISSES the Motion in all respects.

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

Dated this 16th day of April 2008,
At The Hague, The Netherlands.



Fausto Pocar
Presiding Judge

[Seal of the International Tribunal]

¹⁹ Correctly: *Audiat et altera pars*.