



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-95-13/1-A
Date: 12 December 2008
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Andrézia Vaz

Registrar: Mr. Hans Holthuis

Order of: 12 December 2008

PROSECUTOR

v.

**MILE MRKŠIĆ
VESELIN ŠLJIVANČANIN**

PUBLIC

**ADDENDUM TO THE SCHEDULING ORDER FOR APPEALS
HEARING**

The Office of the Prosecutor:

Ms. Helen Brady

Counsel for Veselin Šljivančanin:

Mr. Novak Lukić and Mr. Stéphane Bourgon

Counsel for Mile Mrkšić:

Mr. Miroslav Vasić and Mr. Vladimir Domazet

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);

RECALLING the Scheduling Order issued by the Appeals Chamber on 25 November 2008, which set the dates for the hearing of the merits of the appeals in this case as Wednesday, 21 January and Friday, 23 January 2009, and includes the timetable for the hearing;¹

CONSIDERING the need to ensure that the time allotted for the appeals hearing is used as efficiently as possible;

EMPHASISING that the present order in no way expresses the Appeals Chamber’s views on the merits of the appeal, which will be set forth in the Appeal Judgement;

HEREBY INFORMS the Parties that, during the course of the appeals hearing and without prejudice to any other matter which the Parties or the Appeals Chamber may wish to address, the Appeals Chamber invites the Parties to develop their submissions with regard to, *inter alia*, the following issues:

(1) Prosecution’s First Ground of Appeal (Acquittals of Šljivančanin and Mrkšić for Crimes Against Humanity)

The Prosecution submits that the Appeals Chamber should reverse the acquittals under Article 5 of the Statute for the crimes committed in Ovčara.² The Appeals Chamber invites the Parties to discuss the evidence on the trial record related to: (i) the requirement of a widespread and systematic attack against a civilian population, especially in relation to the events in Vukovar; and (ii) the nexus between the acts of the accused and such an attack.

(2) Prosecution’s Second Ground of Appeal (Šljivančanin’s Duty Pursuant to International Humanitarian Law)

The Prosecution submits that Šljivančanin was under an ongoing duty to protect the prisoners of war pursuant to international humanitarian law and that this duty survived Mrkšić’s order to

¹ Decision on Šljivančanin and Mrkšić Motions Seeking Additional Time for the Presentation of Supplementary Submissions during the Appeals Hearing or an Alternative Remedy and Scheduling Order for Appeals Hearing, 25 November 2008.

² Prosecution’s Notice of Appeal, 29 October 2007 (amended on 7 May 2008) (“Prosecution Notice of Appeal”), paras 4-7; Prosecution’s Appeal Brief (Confidential), 14 January 2008 (Public Redacted and Corrected Version filed 8 February 2008) (“Prosecution Appeal Brief”), paras 63-66.

withdraw from Ovčara.³ In response, Šljivančanin argues that there was no duty applicable to him pursuant to international humanitarian law and that, should the Appeals Chamber find that there was, it should uphold the Trial Chamber's finding that his duty was terminated by Mrkšić's order to withdraw.⁴

The Appeals Chamber invites the Prosecution and Šljivančanin to address the following question: should the Appeals Chamber find that Šljivančanin was under a duty to protect the prisoners of war pursuant to international humanitarian law, did this duty continue and if so on what basis?

(3) Prosecution's Second Ground of Appeal (Šljivančanin's Knowledge of Mrkšić's Order to Withdraw the JNA Troops from Ovčara)

The Prosecution submits that upon learning that Mrkšić ordered the JNA troops to withdraw from Ovčara on the evening of 20 November 1991, Šljivančanin's knowledge of the probability of the murder of the prisoners of war became even greater.⁵ However, Šljivančanin counters that he did not know that Mrkšić ordered the withdrawal.⁶ The Appeals Chamber invites the Prosecution and Šljivančanin to elaborate on when Šljivančanin learned of Mrkšić's order to withdraw the JNA troops.

(4) Šljivančanin's Second Ground of Appeal (Degree of Contribution Required for Aiding and Abetting by Omission)

Relying on the Appeal Judgements in *Orić* and *Blaškić*, Šljivančanin submits that, at a minimum, the *actus reus* of aiding and abetting by omission (substantial contribution standard) requires an elevated degree of "concrete influence"⁷. Šljivančanin further submits that the failure to act must have a "decisive effect" on the commission of the crime in question.⁸ The Appeals Chamber invites Šljivančanin to clarify the extent to which, if at all, the "concrete influence" and the "decisive effect" criteria he proposes are relevant to an assessment of the *actus reus* of aiding and abetting by omission (should the Appeals Chamber recognise this mode of liability).

³ Prosecution Notice of Appeal, para. 8(ii); Prosecution Appeal Brief, paras 111-119.

⁴ Response Brief on Behalf of Veselin Šljivančanin (Confidential), 18 June 2008 (Public Redacted Version filed on 15 September 2008) ("Šljivančanin Respondent's Brief"), paras 240-249.


⁵ Prosecution Appeal Brief, paras 101-103. See also Prosecution's Consolidated Reply to Mile Mrkšić and Veselin Šljivančanin Response Briefs (Confidential), 3 July 2008 (Public Redacted Version filed on 9 July 2008), paras 60-62, 92.

⁶ Šljivančanin Respondent's Brief, paras 178, 208-210.

⁷ Appellant's Brief on Behalf of Veselin Šljivančanin (Confidential), 8 July 2008 (Amended Public Redacted Version filed on 28 August 2008) ("Šljivančanin Appeal Brief") para. 245, citing *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Judgement, 3 July 2008, para. 41; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004, para. 664. See also Additional Reply on Behalf of Veselin Šljivančanin (Confidential), 18 September 2008 (Public Redacted Version filed on 26 September 2008), paras 46-50.

⁸ Šljivančanin Appeal Brief, para. 247(d).

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



Judge Theodor Meron
Presiding Judge

Dated this 12th day of December 2008,
At The Hague,
The Netherlands

[Seal of the International Tribunal]