



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-95-13/1-A
Date: 8 December 2009
Original: English

BEFORE THE APPEALS CHAMBER

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

Registrar: Mr. John Hocking

Decision of: 8 December 2009

PROSECUTOR
v.
MILE MRKŠIĆ
VESELIN ŠLJIVANČANIN
PUBLIC

**DECISION ON MOTION ON BEHALF OF VESELIN ŠLJIVANČANIN
SEEKING RECONSIDERATION OF THE JUDGEMENT RENDERED
BY THE APPEALS CHAMBER ON 5 MAY 2009 – OR AN
ALTERNATIVE REMEDY**

The Office of the Prosecutor:

Mr. Peter Kremer, QC

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 (“International Tribunal” and “Appeals Chamber” respectively);

RECALLING that on 5 May 2009, the Appeals Chamber issued a final judgement that affirmed Veselin Šljivančanin’s (“Šljivančanin”) conviction under Count 7 of the Indictment for aiding and abetting torture; by majority quashed his acquittal under Count 4 of the Indictment for aiding and abetting murder and entered a conviction under this count; found that the Trial Chamber’s original sentence of five years imprisonment for aiding and abetting torture was inadequate and quashed that sentence; and by majority sentenced him to a total of 17 years imprisonment;¹

BEING SEISED of the “Motion on Behalf of Veselin Šljivančanin Seeking Reconsideration of the Judgment Rendered by the Appeals Chamber on 5 May 2009 – or an Alternative Remedy” (“Motion”) filed by Šljivančanin on 13 November 2009;²

NOTING that the Motion invites the Appeals Chamber to either reconsider the Appeal Judgement with the benefit of submissions by *amici curiae* and an oral hearing and allow Šljivančanin to appeal his conviction and sentence before a different composition of the Appeals Chamber or order a new trial in respect to Count 4 of the Indictment; or, acting through the President of the International Tribunal, to obtain from the Security Council a “correct interpretation and/or modification of Article 25(2) of the Statute” that takes into account Article 14(5) of the International Covenant on Civil and Political Rights;³

BEING SEISED of the “Prosecution’s Response to Motion on Behalf of Veselin Šljivančanin Seeking Reconsideration of the Judgment Rendered by the Appeals Chamber on 5 May 2009 – or

¹ Judgement (“Appeal Judgement”), 5 May 2009, pp. 169-70; *see also id.*, para. 132.

² The Motion states that “[d]ue to the complexity and number of issues addressed in the Applicant’s Motion, the Defence hereby seeks leave to exceed the authorized word limit”. Motion, p. 1. The Appeals Chamber notes that Šljivančanin should have applied for permission to exceed the word limit prior to filing the Motion. *See* Practice Direction on the Length of Briefs and Motions (“Practice Direction”), IT/184 Rev. 2, 16 September 2005, para. 7. The Appeals Chamber also notes that Šljivančanin has not provided a word count at the end of the Motion before the signature line as is required by the Practice Direction. *See id.*, para. 8. The Appeals Chamber considers that there are no exceptional circumstances to justify an extension to the word count in this case; however, in the interests of judicial economy, it will consider this Motion.

³ Motion, para. 255; *see also id.*, paras 3-9; 240-42.

an Alternative Remedy” (“Response”) filed by the Office of the Prosecutor on 23 November 2009;⁴

NOTING that the Response contends that the Motion should be dismissed because Appeals Chamber Judgements are final and not subject to reconsideration;⁵ and further contends that in any event, the Appeal Judgement did not include errors in reasoning that warrant reconsideration, review or alternative remedies;⁶

RECALLING that it is the established jurisprudence of the Appeals Chamber that it has no power to reconsider its final judgements as the Statute of the International Tribunal (“Statute”) only provides “for a right of appeal and a right of review but not for a second right of appeal by the avenue of reconsideration of a final judgement”;⁷

NOTING that Šljivančanin contends that he is in fact attempting to claim a first rather than a second right of appeal;⁸

CONSIDERING that this argument is in fact an attempt to re-litigate issues finally decided on appeal;⁹

CONSIDERING that the jurisprudence of the Appeals Chamber has already given a constant interpretation of Article 25(2) of the Statute on multiple occasions;¹⁰

⁴ Šljivančanin filed a “Motion Seeking [sic] Leave to Reply and Reply to Prosecution’s Response to Motion on Behalf of Veselin Šljivančanin Seeking Reconsideration of the Judgment Rendered by the Appeals Chamber on 5 May 2009 – or an Alternative Remedy” on 30 November 2009.

⁵ Response, para. 3.

⁶ *Id.*, paras 4, 18.

⁷ *Prosecutor v. Zoran Žigić*, Case No. IT-98-30/1-A, Decision on Zoran Žigić’s “Motion for Reconsideration of Appeals Chamber Judgement IT-98-30/1-A Delivered on 28 February 2005”, 26 June 2006 (“Žigić Decision”), para. 9. See also *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Decision on Prosecutor’s Request for Review or Reconsideration, 23 November 2006, paras 79-80 (Public Redacted Version); *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-03-R, Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification, 8 December 2006, para. 6.; *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Decision on Strugar’s Request to Reopen Appeal Proceedings, 7 June 2007, para. 23; *Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-R, Decision on Hassan Ngeze’s Motions and Requests Related to Reconsideration, 31 January 2008, p. 3.

⁸ Motion, paras 5-6.

⁹ Cf. Appeal Judgement (*compare* majority opinion, pp. 1-170, with partially dissenting opinion of Judge Pocar, pp. 171-77).

¹⁰ *Id.*; see also *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006 (*compare* majority opinion, pp. 1-185, with partially dissenting opinion of Judge Pocar, pp. 186-88); *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Judgement, 20 May 2005 (*compare* majority opinion, pp. 1-127, with dissenting opinion of Judge Pocar, pp. 131-33); *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-A, Judgement, 26 May 2003 (*compare* majority opinion pp. 1-169, with dissenting opinion of Judge Pocar, pp. 1-4).

CONSIDERING FURTHER that no approach to the Security Council to further clarify or modify the Statute is necessary in the current circumstances, especially considering that the approach adopted in the *Žigić* Decision is settled jurisprudence;¹¹

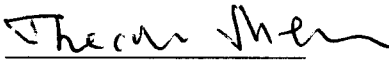
FINDING it unnecessary to invite or accept appearances or submissions by *amici curiae*;

FOR THE FOREGOING REASONS,

DISMISSES the Motion.

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

Dated this 8th day of December 2009
At The Hague
The Netherlands



Judge Theodor Meron
Presiding Judge

[Seal of the Tribunal]

¹¹ See *supra*, n. 7.