



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: 23 July 2008
Original: English

BEFORE THE PRE-APPEAL JUDGE

Before : Judge Theodor Meron, Pre-Appeal Judge
Registrar: Mr. Hans Holthuis
Order of: 23 July 2008

PROSECUTOR

**v.
MILE MRKŠIĆ
VESELIN ŠLJIVANČANIN**

PUBLIC

**ORDER CONCERNING THE PROSECUTION'S
RESPONDENT'S BRIEF**

The Office of the Prosecutor:

Ms. Helen Brady

Defense Counsel:

Mr. Miroslav Vasić and Mr. Vladimir Domazet for Mile Mrkšić
Mr. Novak Lukić and Mr. Stéphane Bourgon for Veselin Šljivančanin

I, THEODOR MERON, Judge of 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) and Pre-Appeal Judge in the present case,

NOTING that on 27 September 2007, Trial Chamber II (“Trial Chamber”) convicted Veselin Šljivančanin (“Mr. Šljivančanin”) of one count of aiding and abetting torture and sentenced him to a single term of five years imprisonment;¹

NOTING that on 27 September 2007, the Trial Chamber convicted Mile Mrkšić (“Mr. Mrkšić”) of three counts of aiding and abetting murder, torture and cruel treatment and sentenced him to 20 years imprisonment;²

NOTING that on 29 October 2007, Mr. Šljivančanin, Mr. Mrkšić and the Office of the Prosecutor (“Prosecution”) filed notices of appeal against the Trial Judgement and the Appeals Chamber is presently seized of the case;³

NOTING that on 8 July 2008, Mr. Šljivančanin filed his Appellant’s brief⁴ in which he abandons “Ground 5, Ground 6, [paragraphs] 27, 28 and 29, and sub-error 1, a), b), c), and g),”⁵ and explains that he has reorganized the remaining grounds and sub-grounds of appeal “with a view to facilitating adjudication of this Appeal”;⁶

NOTING that on 8 July 2008, Mr. Mrkšić filed his Appellant’s brief;⁷

BEING SEIZED OF the “Prosecution Motion to Order Šljivančanin to Seek Leave to File an Amended Notice of Appeal and to Strike New Grounds Contained in His Appeal Brief” filed on 18 July 2008 (“Motion”);

NOTING that in the Motion the Prosecution: (i) submits that Šljivančanin’s Appellant’s Brief impermissibly goes beyond the scope of Šljivančanin’s Notice of Appeal by introducing “the equivalent of two new grounds and three new sub-grounds [of appeal] setting out completely new

¹ *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13/1-T, Judgement, 27 September 2007 (“Trial Judgement”), paras 715, 716.

² Trial Judgement, para. 713.

³ Notice of Appeal from the Judgement of 27 September 2007 by the Defence of Veselin Šljivančanin, 29 October 2007 (“Šljivančanin’s Notice of Appeal”); Mr. Mile Mrkšić Defence Notice of Appeal and Request for Leave to Exceed the Word Limit, 29 October 2007 (“Mrkšić’s Notice of Appeal”); Prosecution’s Notice of Appeal, 29 October 2007. On 7 May 2008, the Prosecution filed the “Prosecution’s Amended Notice of Appeal”.

⁴ Appellant’s Brief on Behalf of Veselin Šljivančanin, Confidential, 8 July 2008 (“Šljivančanin’s Appellant’s Brief”).

⁵ Šljivančanin’s Appellant’s Brief, footnote 23.

⁶ Šljivančanin’s Appellant’s Brief, para. 19.

⁷ Mile Mrkšić’s Appeal Brief, 8 July 2008 (“Mrkšić’s Appellant’s Brief”).

legal and factual arguments”⁸, namely, Ground 2, sub-grounds A and C; Ground 5, sub-grounds A and B; Ground 1, sub-ground D and Ground 6, sub-ground A(I) and sub-ground A(II);⁹ (ii) objects to the introduction of these alleged new grounds and sub-grounds of appeal at this stage of the appellate proceedings on the basis that this “causes prejudice to the Prosecution which has operated for over eight months on the basis of the grounds and sub-grounds set out in [Šljivančanin’s] Notice of Appeal”¹⁰; (iii) requests the Appeals Chamber to strike the alleged new grounds and sub-grounds of appeal;¹¹ and (iv) requests an additional twenty-one days to file its response to Šljivančanin’s Appellant’s Brief if the Appeals Chamber were to allow him to pursue these “new” grounds of appeal;¹²

NOTING the “Response on Behalf of Veselin Šljivančanin to ‘Prosecution Motion to Order Šljivančanin to Seek Leave to File an Amended Notice of Appeal and to Strike New Grounds contained in his Appeal Brief’” filed on 22 July 2008 (“Response”);

NOTING that an amended notice of appeal is attached to the Response¹³ in which Mr. Šljivančanin submits that (i) his Appellant’s brief does not introduce new grounds and sub-grounds of appeal; (ii) the Prosecution has not suffered any prejudice; and (iii) it is in the interests of justice that all arguments raised in his Appellant’s brief be adjudicated by the Appeals Chamber;¹⁴

NOTING that the Prosecution has orally informed the Appeals Chamber that it will not file a reply to the Response;

NOTING that on 14 July 2008, the Prosecution filed the “Prosecution Motion to Strike Mrkšić Appeal Brief and Annex” where it requests the Appeals Chamber to: (i) strike Mrkšić’s Appellant’s Brief on the grounds that it exceeds the word limit and its Annex is inaccurate and contains substantive argument; (ii) order Mr. Mrkšić to re-file his brief and annex correcting all errors identified by the Prosecution; and (iii) grant the Prosecution an extension of time to file its Respondent’s brief, to run from the date of the filing of the corrected version of Mrkšić’s Appellant’s Brief;

NOTING “Mile Mrkšić’s Defence Response Motion to Prosecution’s Motion to Strike A [sic] Appeal Brief and Annex from 14 July 2008” filed on 18 July 2008, which admits that Mrkšić’s

⁸ Motion, para. 2 c).

⁹ Motion, para. 2 i) –iv).

¹⁰ Motion, para. 4.

¹¹ Motion, paras 1 and 5(2).

¹² Motion, para. 6.

¹³ Amended Notice of Appeal on Behalf of Veselin Šljivančanin, 22 July 2008 attached as “Enclosure”. See also Response, para. 56.

¹⁴ Response, paras 7 and 14.

Appellant’s Brief and Annex contain errors; requests the Appeals Chamber’s permission to file a corrected version of the Brief and Annex on 22 July 2008, and states that Mr. Mrkšić does not oppose the Prosecution’s request for an extension of time to file its Respondent’s brief;

NOTING that a corrected version of Mrkšić’s Appellant Brief and Annex was filed confidentially on 22 July 2008;¹⁵

CONSIDERING that a determination on the issues raised by the Prosecution in the Motion shall be made by the whole Bench and thus it is unlikely that a decision could be rendered before the court recess;

CONSIDERING that pursuant to the Decision of 14 December 2007, the Prosecution’s Respondent’s brief is due on 18 August 2008;¹⁶

NOTING FURTHER that the Prosecution has expressed its intention to file a consolidated Respondent’s brief;¹⁷

CONSIDERING that the Prosecution would not be in a position to know whether its consolidated Respondent’s brief should address the alleged “new” grounds and sub-grounds of appeal in Šljivančanin’s Appellant’s Brief before a decision on the Motion is issued;

CONSIDERING that in light of the changes made to the Corrected Mrkšić’s Appellant’s Brief, the Prosecution would require more time to structure its Respondent’s brief, and that it would be unfair to punish the Prosecution for a delay in the briefing schedule that was actually caused by Mr. Mrkšić’s failure to comply with Practice Direction IT/184;

HEREBY RECOGNIZE the Corrected Mrkšić’s Appellant’s Brief (and Annex A) as the valid Appellant’s brief filed by Mr. Mrkšić;

DECLARE Mrkšić’s Appellant Brief and Annex A to be null and void;

ORDER the Prosecution to file a consolidated Respondent’s brief by Thursday 28 August 2008, which shall not address the following grounds and sub-grounds of appeal advanced in

¹⁵ Mile Mrkšić Appeal Brief, Confidential, Corrected on 22 July 2008 (and Annex A), 22 July 2008 (“Corrected Mrkšić’s Appellant’s Brief”).

¹⁶ “Decision on Joint Defense Motion for Extension of Time Limits on Submission of Briefs,” 14 December 2007.

¹⁷ Motion, footnote 22; see also “Prosecution Motion to Strike Mrkšić Appeal Brief and Annex,” 14 July 2008, footnote 17.

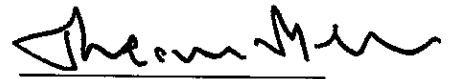
Šljivančanin's Appellant's Brief: Ground 2, sub-grounds A and C; Ground 5, sub-grounds A and B; Ground 1, sub-ground D; and Ground 6, sub-ground A(I) and sub-ground A(II), and

INFORM the Prosecution that it may be allowed to supplement its Respondent's brief upon the Appeals Chamber's determination of the issues raised in the Motion.

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

Done this 23rd day of July 2008,

At The Hague,
The Netherlands.



Judge Theodor Meron
Pre-Appeal Judge

[Seal of the International Tribunal]