



**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: IT-95-10-R  
Date: 2 May 2002  
Original: English**

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**IN THE APPEALS CHAMBER**

**Before: Judge Mohamed Shahabuddeen, Presiding  
Judge Mehmet Güney  
Judge Asoka de Z. Gunawardana  
Judge Pocar  
Judge Meron**

**Registrar: Mr. Hans Holthuis**

**Decision of: 2 May 2002**

**PROSECUTOR**

**v**

**GORAN JELISIĆ**

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**DECISION ON MOTION FOR REVIEW**

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**Counsel for the Prosecution:**

**Mr. Norman Farrell**

**Counsel for the Defence:**

**Mr. William Clegg**

**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 (“Tribunal”),

**NOTING** the Judgement pronounced by the Appeals Chamber in the case of Goran Jelisić on 5 July 2001 (“Appeal Judgement”);

**BEING SEIZED** of the “Motion for Review of the Sentence of Goran Jelisić set out in the Judgements of the Trial Chamber (IT-95-10-A [sic]) and of the Appeal [sic] Chamber (IT-95-10-A),” filed by counsel for Goran Jelisić (“Applicant”) on 24 December 2001 (“Motion”), in which the Applicant seeks a review of the Judgements of the Trial Chamber and of the Appeals Chamber with respect to the decisions on the sentence of Goran Jelisić;

**NOTING** the “Prosecution Response to ‘Motion for Review of the Sentence of Goran Jelisić set out in the Judgements of the Trial Chamber (IT-95-10-A [sic]) and of the Appeals Chamber (IT-95-10-A)’”, filed confidentially on 7 January 2002, in which the Prosecution asserts that the Motion should be dismissed;

**NOTING** the Applicant’s “Reply to the Prosecution Response dated 7<sup>th</sup> January 2002”, filed confidentially on 22 January 2002, in which the Applicant, *inter alia*, limited the Motion to a request for a review of the Appeal Judgement;

**NOTING** the Applicant’s submissions that a new fact has arisen, being the development, since the Appeal Judgement, in the case law of the Tribunal with respect to the approach to sentencing, namely, that a plea of guilty and a showing of remorse should be considered as two separate mitigating factors, and that the Tribunal failed to give the Applicant the appropriate credit, if any, for his guilty plea;

**NOTING** that, in accordance with Article 26 of the Statute of the Tribunal (“Statute”) and Rules 119 and 120 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), an Applicant seeking review must satisfy the four criteria, namely:

1. there must be a new fact;
2. this new fact must not have been known by the moving party at the time of the original proceedings;

3. the lack of discovery of the new fact must not have been through the lack of due diligence on the part of the moving party; and
4. the new fact could have been a decisive factor in reaching the original decision;<sup>1</sup>

**CONSIDERING** that a new fact within the meaning of Article 26 of the Statute and Rules 119 and 120 of the Rules refers to new information of an evidentiary nature of a fact that was not in issue during the trial or appeal proceedings;

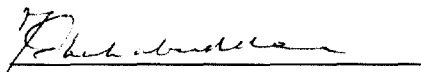
**FINDING** that the alleged new fact relied upon by the Applicant is not of an evidentiary nature and, therefore, that the Applicant has failed to show the existence of a new fact in terms of Article 26 of the Statute and Rules 119 and 120 of the Rules;

**RECALLING** that, in any event, the issue of giving the Applicant the appropriate credit for his guilty plea has already been raised by the Applicant on Appeal and dismissed by the Appeals Chamber;

**HEREBY DISMISSES** the Motion.

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

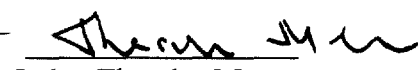
Dated this 2<sup>nd</sup> day in May 2002.  
At The Hague,  
The Netherlands.

  
Judge Mohamed Shahabuddeen  
Presiding

  
Judge Mehmet Güney

  
Judge Aseka de Zoysa Gunawardana

  
Judge Fausto Pocar

  
Judge Theodor Meron

**[Seal of the Tribunal]**

<sup>1</sup> *Prosecutor v. Barayagwiza*, ICTR-97-19-AR72, Decision (Prosecutor's Request for Review or Reconsideration), 31 March 2000, para. 41.