



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: 22 January 2010
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: 22 January 2010

PROSECUTOR
v.
MILE MRKŠIĆ
VESELIN ŠLJIVANČANIN
PUBLIC

**DECISION ON MOTION ON BEHALF OF VESELIN ŠLJIVANČANIN
SEEKING RECONSIDERATION OF THE APPEALS CHAMBER'S
DECISION OF 8 DECEMBER 2009**

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 (“Appeals Chamber” and “International Tribunal” 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

RECALLING that on 8 December 2009, the Appeals Chamber unanimously issued its “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” (“Impugned Decision”), in which it rejected a request by Šljivančanin to reconsider the Appeal Judgement or provide alternative remedies;²

BEING SEISED of the “Motion on Behalf of Veselin Šljivančanin Seeking Reconsideration of the Appeals Chamber’s Decision of 8 December 2009” (“Motion”) filed by Šljivančanin on 7 January 2010;

NOTING that the Motion invites the Appeals Chamber to reconsider the Impugned Decision, contending that: (a) there has been a change in circumstances;³ and (b) the Impugned Decision’s reasoning is insufficient;⁴

NOTING the “Prosecution’s Response to ‘Motion on Behalf of Veselin Šljivančanin Seeking Reconsideration of the Appeals Chamber’s Decision of 8 December 2009’” (“Response”) filed by the Office of the Prosecutor on 18 January 2010;

NOTING that the Response maintains that there has been no change in circumstances justifying reconsideration of the Impugned Decision,⁵ and contends that the Impugned Decision adequately responded to Šljivančanin’s arguments;⁶

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

² Impugned Decision, pp. 2-3.

³ Motion, paras 15-21.

⁴ *Id.*, paras 22-33.

⁵ Response, paras 4-6.

⁶ *Id.*, paras 7-9.

CONSIDERING that the Appeals Chamber may only reconsider its own non-final decisions where the appellant demonstrates a clear error of reasoning or the existence of new circumstances that justify reconsideration in order to avoid injustice;⁷

NOTING that Šljivančanin's assertion of new circumstances warranting reconsideration partly rests on a letter from the Serbian National Council for Cooperation with the International Criminal Tribunal for the former Yugoslavia ("National Council") to the President of the International Tribunal, expressing the view that the Appeals Chamber should reconsider the Appeal Judgement;⁸

CONSIDERING that the Letter falls far short of constituting new circumstances that would warrant reconsideration, as it merely repeats Šljivančanin's previously rejected legal arguments;⁹

NOTING that Šljivančanin contends that the Impugned Decision fails to address a number of issues he raised;¹⁰

CONSIDERING that the Impugned Decision sufficiently addressed all of the arguments advanced by Šljivančanin,¹¹ and that he has failed to provide any convincing explanation for why the reasoning contained in the Impugned Decision is inadequate;

CONSIDERING moreover that the Impugned Decision is a final decision in that it denies the competence of the Appeals Chamber to reconsider a final judgement;

FOR THE FOREGOING REASONS,

DISMISSES the Motion in its entirety.

⁷ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on "Motion by Momcilo Krajisnik [sic] for Reconsideration of the Appellate Chamber's Decision of September 11, 2007", 27 September 2007, pp. 1-2 (granting request for reconsideration of decision on time limit). See also *Prosecutor v. Enver Hadžihasanović & Amir Kuruba*, Case No. IT-01-47-A, Decision on Appellant's Motion for Reconsideration and Extension of Time Limits, 30 January 2007, para. 9 (denying request for reconsideration of decision on word limit); *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Request for Reconsideration of the Decision on Request for Review, 27 September 2006, pp. 2-3 (denying request for reconsideration of a review decision). This power to reconsider does not extend, however, to final judgements. See Impugned Decision, p. 2 (quoting *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, para. 9).

⁸ Motion, paras 1, 15. See also Letter from Rasim Ljajić, President of the National Council, to Judge Patrick Robinson, President of the International Tribunal, 18 December 2009 ("Letter").


⁹ Compare Motion on Behalf of Veselin Šljivančanin Seeking Reconsideration of the Judgment [sic] Rendered by the Appeals Chamber on 5 May 2009 – or an Alternative Remedy, 13 November 2009, paras 22-29, 164-165, with Letter. Cf. *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.16, Decision on Jadranko Prlić's Interlocutory Appeal Against the Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence ("Prlić Decision"), 3 November 2009, para. 19 (upholding a Trial Chamber's denial of reconsideration where the appellant had provided new information that "merely add[ed] to the arguments that it had previously submitted" (internal quotation and citation omitted)). The Appeals Chamber also notes that the Impugned Decision found "it unnecessary to invite or accept appearances or submissions by *amici curiae*". Impugned Decision, p. 3.

¹⁰ Motion, paras 15-33.

¹¹ See Impugned Decision, pp. 2-3.

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

Dated this 22nd day of January 2010
At The Hague
The Netherlands



Judge Theodor Meron
Presiding Judge

[Seal of the International Tribunal]