



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-R.1
Date: 21 September 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: 21 September 2010

PROSECUTOR

v.

VESELIN ŠLJIVANČANIN

PUBLIC

**DECISION ON ADMISSION OF
EVIDENCE AND SCHEDULING ORDER**

The Office of the Prosecutor:

Ms. Helen Brady
Mr. Paul Rogers

Counsel for Veselin Šljivančanin:

Mr. Novak Lukić
Mr. Stéphane Bourgon

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 “Tribunal”, respectively);

RECALLING the “Decision with Respect to Veselin Šljivančanin’s Application for Review” (“Review Decision”) filed on 14 July 2010, which granted Veselin Šljivančanin’s (“Šljivančanin”) request for a review hearing (“Review Hearing”) with respect to his conviction on appeal for aiding and abetting murder as a violation of the laws or customs of war,¹ and the “Order Regarding Prosecution’s Motion for Extension of Time” (“Extension Decision”) filed on 23 July 2010, in which the Appeals Chamber directed the parties to submit, by 10 September 2010, “a list of evidence and witnesses, if any, each proposes to introduce at the Review Hearing”;²

BEING SEISED of the “Prosecution’s List of Evidence and Witnesses” filed confidentially by the Office of the Prosecutor (“Prosecution”) on 10 September 2010 (“Prosecution Submission”), and “Veselin Šljivančanin’s List of Evidence and Witnesses” filed confidentially by Šljivančanin on the same day (“Šljivančanin Submission”);

NOTING that the Prosecution seeks to admit in the Review Hearing a number of exhibits “as relevant to [Miodrag] Panić’s [(“Panić”)] credibility”,³ and also seeks to adduce the evidence of expert witness Reynaud Theunens (“Theunens”), who, the Prosecution submits, can testify, *inter alia*, as to the plausibility of the testimony offered by Panić at an oral hearing held on 3 June 2010 (“Pre-Review Hearing”);⁴

NOTING that the Prosecution submits that “both parties should be given the opportunity to file written submissions” with respect to the “impact of Panić’s evidence on the Appeals [*sic*] Judgement” following “the admission of evidence in the Review Hearing”;⁵

NOTING that Šljivančanin seeks to adduce the evidence of three witnesses who Šljivančanin submits can testify, *inter alia* and “if required”, that Mile Mrkšić and Šljivančanin had a conversation in the evening of 20 November 1991 (“Conversation”), but who are not able to testify as to the content of the Conversation;⁶

¹ See Review Decision, pp. 3-4. See also *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Judgement, 5 May 2009 (“Appeal Judgement”), para. 103, pp. 169-170. Judges Pocar and Vaz dissented on entering the new conviction.

² Extension Decision, p. 2. See also Review Decision, p. 4.

³ Prosecution Submission, para. 3.

⁴ *Id.*, paras 2, 4.

⁵ *Id.*, para. 6.

⁶ See Šljivančanin Submission, para. 2.

RECALLING the Appeals Chamber's instruction that "all evidence [the parties] propose to submit must be limited to supporting or casting doubt on" the new information offered by Panić concerning the Conversation;⁷

CONSIDERING that the exhibits and testimony the Prosecution seeks to admit and adduce may be relevant to evaluating Panić's credibility;

CONSIDERING that the testimony Šljivančanin seeks to adduce does not appear necessary, at this time, to assist the Appeals Chamber's evaluation of Panić's testimony, given that none of the proposed testimony will address the content of the Conversation;⁸

CONSIDERING FURTHER that the filing of written submissions following the Review Hearing will facilitate the work of the Appeals Chamber;

EMPHASISING that the present order in no way expresses the Appeals Chamber's views with regards to the outcome of the Review Hearing;

FOR THE FOREGOING REASONS,

GRANTS the Prosecution Submission and **ADMITS** as exhibits the documents listed in paragraph 3 of the Prosecution Submission;

ADMITS as an exhibit the expert report prepared by Theunens mentioned in paragraph 4 of the Prosecution Submission;

ALLOWS the Prosecution to call Theunens as a witness during the Review Hearing;

INSTRUCTS the Registrar to assign exhibit numbers to the admitted exhibits and to place the exhibit mentioned in paragraph 3(6) of the Prosecution Submission under seal;⁹

DENIES Šljivančanin's request to adduce the evidence of the three witnesses listed in paragraph 2 of the Šljivančanin Submission;

HEREBY INFORMS the parties that the date and timetable for the Review Hearing shall be as follows:

⁷ Review Decision, p. 4.

⁸ The Appeals Chamber notes that the parties do not dispute that the Conversation took place. *See, e.g.*, Application on Behalf of Veselin Šljivančanin for Review of the Appeals Chamber Judgment [*sic*] of 5 May 2009, 28 January 2010, paras 31, 33, 34; Public Redacted Prosecution Response to Šljivančanin's Application for Review, 9 March 2010, para. 8. The Appeals Chamber also notes that, should it become necessary, the Appeals Chamber retains the option of calling the witnesses identified by the Šljivančanin Submission at a future date.

⁹ *See* Prosecution Submission, para. 1, fn. 1.

12 October 2010:

14:30 – 14:45 Introductory Statement by the Presiding Judge (15 minutes)

Examination of Witness Theunens:

14:45 – 15:45 Examination-in-chief of Theunens by the Prosecution (1 hour)

15:45 – 16:05 *Pause (20 minutes)*

16:05 – 17:05 Cross-examination of Theunens by Šljivančanin (1 hour)

17:05 – 17:20 Re-examination of Theunens by the Prosecution (15 minutes)

17:20 – 17:40 *Pause (20 minutes)*

Summary Arguments:

17:40 – 18:10 Summary Arguments by the Prosecution (30 minutes)

18:10 – 18:40 Summary Arguments by Šljivančanin (30 minutes)

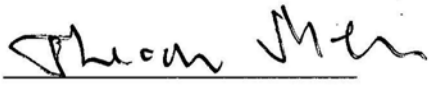
DIRECTS the Registrar to communicate this scheduling order to Theunens and to make the necessary arrangements for him to appear at the Review Hearing;

REQUESTS the Registrar to make all other necessary arrangements for the Review Hearing as scheduled;

ORDERS the parties to file written submissions following the Review Hearing, with the Prosecution being granted seven days following the Review Hearing to file its submission, Šljivančanin being granted seven days from the date of the Prosecution's filing to respond, and the Prosecution given a further four days from the date of Šljivančanin's filing to reply.

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

Dated this 21st day of September 2010,
At The Hague,
The Netherlands.



Judge Theodor Meron
Presiding Judge

[Seal of the Tribunal]