



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: 7 October 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: 7 October 2010

PROSECUTOR

v.

VESELIN ŠLJIVANČANIN

PUBLIC

**DECISION ON MOTION ON BEHALF OF VESELIN
ŠLJIVANČANIN CONCERNING THE 12 OCTOBER REVIEW
HEARING**

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

RECALLING FURTHER the “Decision on Admission of Evidence and Scheduling Order” (“Scheduling Decision”) filed on 21 September 2010, which, *inter alia*, admitted certain exhibits identified by the Office of the Prosecutor (“Prosecution”), including the expert witness report of Reynaud Theunens (“Theunens Report” and “Theunens”, respectively); granted the Prosecution’s request to call Theunens as an expert witness during the Review Hearing; denied Šljivančanin’s request to adduce the evidence of the three witnesses identified by Šljivančanin; and set a date and timetable for the Review Hearing;³

BEING SEISED of the “Motion on Behalf of Veselin Šljivančanin Concerning the 12 October Review Hearing” (“Motion”) filed by Šljivančanin on 4 October 2010;

NOTING the “Response to Motion on Behalf of Veselin Šljivančanin Concerning the 12 October Review Hearing” (“Response”) filed by the Prosecution on 5 October 2010, the “Reply on Behalf of Veselin Šljivančanin to Prosecution Response” (“Reply”) filed by Šljivančanin on 6 October 2010, and the “Notice on Behalf of Veselin Šljivančanin” (“Notice”) filed by Šljivančanin on 7 October 2010;⁴

NOTING that Šljivančanin submits that he is providing notice pursuant to Rule 94*bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”)⁵ that he “does not accept the expert report

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, 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 See Scheduling Decision, pp. 2, 3.

⁴ In view of the impending date of the Review Hearing and the disposition of the Motion set forth herein, the Appeals Chamber considers that it is in the interests of justice that it rules on the Motion without awaiting a response to the Notice from the Prosecution.

⁵ Motion, para. 3.

prepared by Mr. Theunens”,⁶ challenges the relevance of that report, and will cross-examine Theunens on the contents thereof;⁷

NOTING that, with regard to his challenge to the Theunens Report, Šljivančanin submits that he reserves the right, “if need be following the testimony of Mr. Theunens”, to move for admission of a report prepared by a consultant/expert, to have the consultant/expert heard as a witness in these proceedings, and to request the appearance of additional witnesses who previously testified at trial;⁸

NOTING that Šljivančanin requests leave for the consultant/expert to be present at the Review Hearing;⁹

NOTING that Šljivančanin has identified the consultant/expert he requests to have present at the Review Hearing as Lieutenant-Colonel (Retired) Rémi Landry (“Landry”), PhD and former Canadian military officer;¹⁰

NOTING that Šljivančanin also submits, *inter alia*, that a number of issues addressed in the Theunens Report “go way beyond the credibility of witness Miodrag Panić”¹¹ (“Panić”), and requests a minimum of 30 extra minutes for his cross-examination of Theunens in addition to the hour for cross-examination provided in the Scheduling Decision;¹²

NOTING that Šljivančanin further requests that the statements provided by the three witnesses he previously identified¹³ be admitted pursuant to either Rule 89(F) or Rule 92bis of the Rules on the grounds that they are “highly relevant in light of the Prosecution’s theory put forward and the report prepared by Mr. Theunens”¹⁴ and “will ultimately be of assistance” in adjudicating Šljivančanin’s application for review,¹⁵ and that it is therefore “in the interests of justice that these statements be admitted in evidence even if their testimony does not appear necessary to the Appeals Chamber at this time”;¹⁶

⁶ Motion, para. 4.

⁷ Motion, para. 4.

⁸ Motion, paras 15, 16.

⁹ Motion, para. 9. *See also* Motion, para. 8.

¹⁰ *See* Notice, para. 9.

¹¹ Motion, para. 6.

¹² Motion, paras 5-7. *See also* Scheduling Decision, p. 3.

¹³ Veselin Šljivančanin’s List of Evidence and Witnesses, 10 September 2010 (confidential) (“Šljivančanin Submission”), para. 2.

¹⁴ Motion, para. 11.

¹⁵ Motion, para. 13.

¹⁶ Motion, para. 14.

NOTING that the Prosecution submits that the Motion should be dismissed in its entirety, although it “does not oppose in principle an oral application for a small addition to cross-examination, should it become necessary in light of the parties’ experience during the Review Hearing”;¹⁷

NOTING that the Prosecution also submits that, insofar as the Motion challenges the Theunens Report and seeks to have statements by the three witnesses identified in the Šljivančanin Submission admitted into evidence, the Motion seeks reconsideration of the Appeals Chamber’s Scheduling Decision “without demonstrating an error of reasoning or the presence of particular circumstances which threaten an injustice”, and is therefore moot;¹⁸

NOTING that the Prosecution further submits that Šljivančanin’s request for the presence of an unidentified expert at the Review Hearing is “superfluous”,¹⁹ that Šljivančanin’s implicit request to reserve the right to call rejoinder evidence is “inappropriate[]”,²⁰ and that Šljivančanin “has made no attempt to demonstrate his alleged expert’s credentials to the Appeals Chamber”;²¹

NOTING that, in reply, Šljivančanin submits, *inter alia*, that he is not seeking to re-litigate issues decided in the Scheduling Decision,²² that the Prosecution’s suggestion that rejoinder evidence is not justified is premature,²³ and that the proposed witness statements “can be of assistance in challenging Mr. Theunens[’s] report and testimony”;²⁴

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 a conversation between Mile Mrkšić and Šljivančanin on the evening of 20 November 1991;²⁵

RECALLING that the Appeals Chamber stated in the Scheduling Decision 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”;²⁶

¹⁷ Response, para. 18. *See also* Response, para. 17.

¹⁸ Response, para. 2. *See also* Response, paras 5-11.

¹⁹ Response, para. 14.

²⁰ Response, para. 8.

²¹ Response, para. 14.

²² Reply, para. 3.

²³ *See* Reply, para. 15.

²⁴ Reply, para. 18.

²⁵ Review Decision, p. 4.

²⁶ Scheduling Decision, p. 2. The Appeals Chamber recalls that, should it become necessary, the Appeals Chamber retains the option of calling the witnesses identified by the Šljivančanin Submission at a future date. *See* Scheduling Decision, fn. 8.

CONSIDERING that Šljivančanin has not established how statements of the three witnesses whose testimony the Appeals Chamber previously concluded “does not appear necessary”²⁷ would now be relevant to the adjudication of Šljivančanin’s application for review;

CONSIDERING that Šljivančanin has failed to establish that it is necessary to allot additional time for cross-examination at this stage and that the Prosecution has stated that it “does not oppose in principle an oral application being made within the Review Hearing itself for a small extension of time”;²⁸

CONSIDERING that Landry’s attendance at the Review Hearing may facilitate, *inter alia*, Šljivančanin’s cross-examination of Theunens;²⁹

CONSIDERING that Šljivančanin’s remaining requests for relief do not require action by the Appeals Chamber at this time;

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

FOR THE FOREGOING REASONS,

GRANTS leave to Šljivančanin to have Landry present at the Review Hearing;

DIRECTS the Registrar of the Tribunal to communicate this Decision to OLAD and Landry, and **REQUESTS** the Registrar of the Tribunal to make the necessary arrangements for Landry to be present at the Review Hearing;

DENIES Šljivančanin’s request for additional time for cross-examination of Theunens during the Review Hearing without prejudice to a renewal of this request at the Review Hearing; and

OTHERWISE DENIES the Motion.

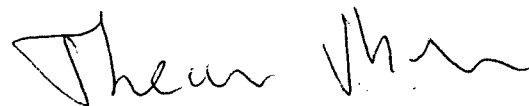
²⁷ Scheduling Decision, p. 2.

²⁸ Response, para. 17.

²⁹ The Appeals Chamber notes that the present decision in no way expresses the Appeals Chamber’s views concerning Landry’s credentials and recalls that it remains the responsibility of the Office of Legal Aid and Detention Matters (“OLAD”) to assess Defence applications for the assignment of consultants/experts or the funding of expenses for such consultants/experts.

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

Dated this 7th day of October 2010,
At The Hague,
The Netherlands.



Judge Theodor Meron
Presiding Judge

[Seal of the Tribunal]