



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-98-32/1-A

Date: 30 August 2013

Original: English

IT-98-32/1-A
A3633 - A3629
30 August 2013.

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IN THE APPEALS CHAMBER

Before: Judge Mehmet Güney, Presiding
Judge Carmel Agius
Judge Fausto Pocar
Judge Liu Daqun
Judge Howard Morrison

Registrar: Mr. John Hocking

Decision of: 30 August 2013

PROSECUTOR

v.

**MILAN LUKIĆ
SREDOJE LUKIĆ**

PUBLIC

**DECISION ON SREDOJE LUKIĆ'S MOTION SEEKING
RECONSIDERATION OF THE APPEAL JUDGEMENT AND
ON THE APPLICATION FOR LEAVE TO SUBMIT AN
AMICUS CURIAE BRIEF**

The Office of the Prosecutor:

Mr. Peter Kremer, QC

Counsel for Milan Lukić:

Mr. Tomislav Višnjić
Mr. Dragan Ivetić

Counsel for Sredoje Lukić:

Mr. Đuro Čepić
Mr. Jens Dieckmann

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 its Judgement issued on 4 December 2012 (“Appeal Judgement”): (i) affirming, by majority, Sredoje Lukić’s (“Lukić”) convictions for aiding and abetting murder and cruel treatment as violations of the laws or customs of war as well as murder, persecutions, and other inhumane acts as crimes against humanity committed at the Memić house and the Omeragić house; (ii) reversing, by majority, Lukić’s convictions in relation to the Uzamnica camp events; and (iii) reducing, by majority, Lukić’s sentence from 30 years to 27 years of imprisonment;¹

BEING SEISED of the “Corrigendum to the Motion on Behalf of Sredoje Lukić Seeking Reconsideration of the Judgement Rendered by the Appeals Chamber on 04 December 2012” filed by Lukić on 26 June 2013 (“Motion for Reconsideration”);²

BEING FURTHER SEISED of the “Application for Leave to Submit an *Amicus Curiae* Observations [sic] Pursuant to Rule 74 of the Rules of Procedure and Evidence in Support of the Defense Motion for Reconsideration of the Appeals [sic] Judgment [sic]” filed by Professors Tom Zwart and Geert-Jan Alexander Knoops on 28 June 2013 (“*Amicus Curiae* Motion”);³

NOTING the “Prosecution Response to Sredoje Lukić’s Motion Seeking Reconsideration of the Appeal Judgement” filed as an annex to “Corrigendum and Notice of Re-Filing of Prosecution Response to Sredoje Lukić’s Motion Seeking Reconsideration of the Appeal Judgement by the Office of the Prosecutor (“Prosecution”) on 5 July 2013 (“Response”);

NOTING the “Motion Seeking Leave to Reply and Reply to the Prosecution Response to Sredoje Lukic’s Motion Seeking Reconsideration of the Appeal Judgement” filed by Lukić on 11 July 2013, in which he requests leave to file a reply and attaches his reply therein;

¹ Appeal Judgement, para. 672 as corrected by Corrigendum to Judgement of 4 December 2012, 4 March 2013, p. 1. See also Appeal Judgement, Separate and Partially Dissenting Opinion of Judge Mehmet Güney, 4 December 2012, paras 1-9; Appeal Judgement, Joint Dissenting Opinion of Judge Pocar and Judge Liu, 4 December 2012, paras 1-10 as corrected by Corrigendum to Judgement of 4 December 2012, 4 March 2013, p. 1; Appeal Judgement, Dissenting Opinion of Judge Morrison, paras 1-68.

² See Motion for Reconsideration, para. 1, whereby Lukić explains that the initial motion (see Motion on Behalf of Sredoje Lukić Seeking Reconsideration of the Judgement Rendered by the Appeals Chamber on 04 December 2012, 24 June 2013) was replaced by the Motion for Reconsideration. See also Book of Authorities in Support of the Corrigendum to the Motion on Behalf of Sredoje Lukić Seeking Reconsideration of the Judgement Rendered by the Appeals Chamber on 04 December 2012, 11 July 2013.

³ See also *Amicus Curiae* Brief on the Admissibility of the Request for Reconsideration of the Appeals Chamber Judgment [sic] Re Sredoje Lukić and Implications *Ratione Materiae*, 28 June 2013; Prosecution Response to Application for Leave to Submit Observations by Proposed *Amicus Curiae*, 4 July 2013.

NOTING as an initial matter that, although Lukić requested leave to file an oversized motion, he did not obtain the authorisation of the Appeals Chamber before filing his Motion for Reconsideration;⁴

NOTING that the Prosecution opposes Lukić's request to exceed the prescribed word limit;⁵

NOTING that the Motion for Reconsideration contains 24,896 words, which far exceeds the prescribed word limit of 3,000 words and that Lukić has failed to demonstrate exceptional circumstances which would necessitate an extension of the word limit;⁶

CONSIDERING, however, that it is in the interests of judicial economy and expeditiousness of the proceedings to review the Motion for Reconsideration in its entirety rather than to require its re-filing;⁷

NOTING that, on the substance of the Motion for Reconsideration, Lukić requests the Appeals Chamber to reconsider its Appeal Judgement and to acquit him, arguing that: (i) the Appeals Chamber has the power to reconsider a final appeal judgement;⁸ (ii) the Appeal Judgement contains a clear error of reasoning;⁹ (iii) the Appeal Judgement was rendered *per incuriam*;¹⁰ and (iv) the Appeal Judgement led to an injustice;¹¹

NOTING in particular, that Lukić argues that in order to avoid a miscarriage of justice, the Appeals Chamber should depart from its jurisprudence, settled since the *Žigić* Decision, which establishes that the Appeals Chamber has no power to reconsider its final judgements;¹²

NOTING FURTHER that, in the alternative, Lukić requests the Appeals Chamber to re-open the appellate proceedings or to remit the case to a new trial chamber;¹³

⁴ Motion for Reconsideration, para. 6, referring to Practice Direction on the Length of Briefs and Motions, IT/184 Rev. 2, 16 September 2005 ("Practice Direction").

⁵ Response, fn. 3.

⁶ Practice Direction, paras 5, 7.

⁷ *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Motion on Behalf of Vinko Pandurević for Provisional Release, 6 June 2012, fn. 1.

⁸ Motion for Reconsideration, paras 5, 7-49.

⁹ Motion for Reconsideration, paras 4, 84-199, 229-240.

¹⁰ Motion for Reconsideration, paras 4, 50-83.

¹¹ Motion for Reconsideration, paras 4-5, 200-228.

¹² Motion for Reconsideration, paras 31-49, referring to *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 ("Žigić Decision"), para. 9.

¹³ Motion for Reconsideration, para. 253.

NOTING that the Prosecution responds that: (i) the Appeals Chamber has repeatedly held that it has no jurisdiction to reconsider its final judgements;¹⁴ and (ii) there are no cogent reasons in the interests of justice to depart from the settled jurisprudence;¹⁵

RECALLING that it is the established jurisprudence of the Tribunal that the Appeals Chamber does not possess an inherent power to reconsider its final judgements as the Statute of the Tribunal only provides “for a right of appeal and a right of review but not for a second right of appeal by the avenue of reconsideration of a final judgement”;¹⁶

RECALLING FURTHER that the Appeals Chamber has found “that a proper construction of the Statute, taking due account of its text and purpose, yields the conclusion that in the interests of certainty and predictability, the Appeals Chamber should follow its previous decisions, but should be free to depart from them for cogent reasons in the interests of justice”, *inter alia* in cases “where the previous decision has been decided on the basis of a wrong legal principle or cases where a previous decision has been given *per incuriam*, that is a judicial decision that has been ‘wrongly decided usually because the judge or judges were ill-informed about the applicable law’”;¹⁷

CONSIDERING that Lukić is attempting to re-litigate issues finally decided on appeal and has failed to demonstrate that there are cogent reasons in the interests of justice to depart from the jurisprudence of the Tribunal given that “the existing appeal and review proceedings established under the Statute provide sufficient guarantees to persons convicted before the Tribunal that they have been tried fairly and in accordance with norms of due process”;¹⁸

FINDING therefore that the requests for reconsideration, re-opening, or remittal to a new trial chamber have no legal basis;

FOR THE FOREGOING REASONS,

DISMISSES *in limine* the Motion for Reconsideration, and

DISMISSES consequently as moot the *Amicus Curiae* Motion.

¹⁴ Response, paras 1-3. *See also* Corrigendum and Notice of Re-filing of Prosecution Response to Sredoje Lukić’s Motion Seeking Reconsideration of the Appeal Judgement, 5 July 2013.

¹⁵ Response, paras 4-10.

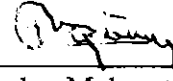
¹⁶ *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Decision on Motion on Behalf of Veselin Šljivančanin Seeking Reconsideration of the Judgement Rendered by the Appeals Chamber on 5 May 2009 – or an Alternative Remedy, 8 December 2009, p. 3; *Žigić* Decision, para. 9.

¹⁷ *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 March 2000, paras 107-108, *quoting* Black’s Law Dictionary (7th ed. 1999).

¹⁸ *Žigić* Decision, para. 9.

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

Dated this 30th day of August 2013,
At The Hague,
The Netherlands.



Judge Mehmet Güney
Presiding

[Seal of the Tribunal]