IT-95-13/1-R.1
D558-D535
08 December 2010

558
SMS

UNITED NATIONS

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: 8 December 2010

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Theodor Meron, Presiding**
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Andrésia Vaz

Registrar: **Mr. John Hocking**

Judgement of: **8 December 2010**

PROSECUTOR

v.

VESELIN ŠLJIVANČANIN

PUBLIC

REVIEW JUDGEMENT

The Office of the Prosecutor:

Ms. Helen Brady
Mr. Paul Rogers
Ms. Najwa Nabti
Mr. Kyle Wood

Counsel for Veselin Šljivančanin:

Mr. Novak Lukić
Mr. Stéphane Bourgon

CONTENTS

TM

I. BACKGROUND

1. 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) is seised of the "Application on Behalf of Veselin Šljivančanin for Review of the Appeals Chamber Judgment [*sic*] of 5 May 2009", filed by Veselin Šljivančanin ("Šljivančanin") on 28 January 2010 ("Application").[1] The Office of the Prosecutor ("Prosecution") filed its response on 9 March 2010[2] and Šljivančanin replied on 29 March 2010.[3] Pursuant to orders by the Appeals Chamber,[4] Šljivančanin filed an additional "Written Submission on Behalf of Veselin Šljivančanin" on 19 October 2010 ("Additional Submission"). The Prosecution filed its response to the Additional Submission on 26 October 2010,[5] and Šljivančanin replied on 1 November 2010.[6]

2. Šljivančanin was born on 13 June 1953 in Pavez, Zabljak municipality, in present-day Montenegro. In November 1991, he was a major in the Yugoslav Peoples' Army ("JNA") and held the post of head of the security organ of both the Guards Motorised Brigade ("Gmtbr") and Operational Group South ("OG South").[7] On 27 September 2007, Trial Chamber II of the Tribunal ("Trial Chamber") issued a Judgement addressing individual criminal responsibility for the torture and murder of more than 190 individuals removed from Vukovar hospital and brought to Ovčara ("Prisoners"). More specifically, the Trial Chamber found that:

> in the morning of 20 November 1991 over 200 individuals, almost all men, the vast majority of whom had been involved in the hostilities, were removed by JNA soldiers of OG South from

---

[1] The Appeals Chamber recalls that it has granted the Application in part, hearing the testimony of Miodrag Panić ("Panić") and granting review of the Appeal Judgement in *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Judgement, 5 May 2009 ("*Mrkšić and Šljivančanin* Appeal Judgement"). However, the Appeals Chamber has not yet addressed Šljivančanin's request that one of his convictions be quashed. *See* Application, para. 39; Scheduling Order for Hearing Regarding Veselin Šljivančanin's Application for Review, 20 April 2010 ("Pre-Review Scheduling Order"), pp. 1-2; Decision with Respect to Veselin Šljivančanin's Application for Review, 14 July 2010 ("Decision Granting Review"), p. 4; Pre-Review Hearing, AT. 3 June 2010.

[2] Prosecution Response to Šljivančanin's Application for Review, 9 March 2010 (confidential). A public redacted version was filed on the same day.

[3] Reply to Prosecution Response to Šljivančanin's Application for Review, 29 March 2010.

[4] *See* Decision on Admission of Evidence and Scheduling Order, 21 September 2010 ("Scheduling Order"), p. 3; Order Clarifying Schedule of Written Submissions Following the Review Hearing, 13 October 2010 ("Clarifying Order"), p. 1.

[5] Prosecution Response to Šljivančanin's Written Submission, 26 October 2010 (confidential). A public redacted version was filed on 27 October 2010 ("Public Second Response").

[6] Reply on Behalf of Veselin Šljivančanin to Prosecution Response, 1 November 2010 (confidential) ("Confidential Second Reply"). A public redacted version was filed on 3 November 2010 ("Public Second Reply").

[7] *Mrkšić and Šljivančanin* Appeal Judgement, para. 2.

> Vukovar hospital and brought via the JNA barracks in Vukovar to a hangar at Ovčara, near Vukovar, where they were severely mistreated.[8]

The Trial Chamber also found that: (i) Mile Mrkšić ("Mrkšić"), at the time a colonel in the JNA,[9] appointed Šljivančanin to evacuate Vukovar hospital and to be responsible for the transport and security of the Prisoners;[10] (ii) an order to withdraw the last remaining JNA troops securing the Prisoners was made by Mrkšić in the early evening of 20 November 1991[11] ("Withdrawal Order"); and (iii) this withdrawal was completed at no later than 9:00 p.m. that evening.[12] The Trial Chamber found that thereafter:

> [i]n the evening and night hours of 20/21 November 1991 [Prisoners] were taken in groups of some 10 to 20 from the hangar to a site located nearby where earlier that afternoon a large hole had been dug. There, [Territorial Defence] and paramilitary soldiers of OG South executed at least 194 of them. The killings started after 2100 hours and continued until well after midnight. The bodies were buried in the large hole, a mass grave, and remained undiscovered until several years later.[13]

The Trial Chamber concluded, *inter alia*, that Šljivančanin had failed to protect the Prisoners from mistreatment on 20 November 1991, prior to the withdrawal of the JNA troops. It thus found Šljivančanin guilty of aiding and abetting torture as a violation of the laws or customs of war, and sentenced him to five years' imprisonment.[14] The Trial Chamber did not, however, enter a conviction against Šljivančanin in relation to the murder of 194 Prisoners.[15]

3. On 5 May 2009, the Appeals Chamber issued the *Mrkšić and Šljivančanin* Appeal Judgement, which, *inter alia*, upheld Šljivančanin's conviction for aiding and abetting torture as a violation of the laws or customs of war, but found that his sentence of five years' imprisonment did not "adequately reflect the level of gravity of the crimes committed by Šljivančanin".[16] The Appeals Chamber also entered an additional conviction, finding, Judges Pocar and Vaz dissenting, that Šljivančanin aided and abetted the murder of 194 Prisoners as a violation of the laws or customs of war ("Additional Conviction").[17] On the basis of these findings the Appeals Chamber quashed Šljivančanin's original sentence of five years' imprisonment and imposed, Judges Pocar and Vaz dissenting, a new sentence of 17 years' imprisonment.[18]

---

[8] *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13/1-T, Judgement, 27 September 2007 ("*Mrkšić et al.* Trial Judgement"), para. 9.
[9] *Id.*, para. 2.
[10] *Id.*, para. 400.
[11] *Id.*, para. 293.
[12] *Id.*, para. 294.
[13] *Id.*, para. 9.
[14] *Id.*, paras 667-670, 674, 715-716.
[15] *Id.*, paras 674, 715.
[16] *Mrkšić and Šljivančanin* Appeal Judgement, p. 169. *See also id.*, para. 211.
[17] *Id.*, para. 103, p. 169.
[18] *Id.*, p. 170.

TM

4. Underlying the Additional Conviction was a new factual finding relating to Šljivančanin's *mens rea* for aiding and abetting murder. Relying on circumstantial evidence, the Appeals Chamber found that during a conversation between Šljivančanin and Mrkšić on the night of 20 November 1991 ("Conversation"), "Mrkšić must have told Šljivančanin that he had withdrawn the JNA protection from the [Prisoners] held at Ovčara".[19] The Appeals Chamber noted the Trial Chamber's finding that it was Šljivančanin's knowledge of the presence of JNA troops that precluded him from concluding that Prisoners were likely to be killed,[20] and reasoned that once Šljivančanin learned of the Withdrawal Order, he must have been aware that his failure to take action to save the Prisoners would assist in their killing. On the basis of this analysis, the Appeals Chamber concluded that Šljivančanin possessed the *mens rea* for aiding and abetting murder as a violation of the laws or customs of war.[21]

5. In his Application, Šljivančanin claimed that Panić, a lieutenant-colonel and chief of staff of the Gmtbr and OG South,[22] was prepared to offer testimony about the Conversation which would exonerate Šljivančanin with respect to the Additional Conviction. Šljivančanin asserted that this testimony constituted a "new fact" in the context of 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").[23] The Application sought, *inter alia*, review of the *Mrkšić and Šljivančanin* Appeal Judgement and the quashing of Šljivančanin's Additional Conviction.[24]

6. The Appeals Chamber, Judge Pocar dissenting, ordered an oral hearing on 3 June 2010 ("Pre-Review Hearing") to hear Panić's testimony.[25] At the Pre-Review Hearing, Panić testified, *inter alia*, that on the night of 20 November 1991 he was in a position to follow the Conversation and that Mrkšić did not inform Šljivančanin of the Withdrawal Order.[26] Panić explained that, had he personally learned of the withdrawal of JNA protection during the Conversation, he would have appreciated the danger to the Prisoners posed by such withdrawal, and his own potential criminal liability for not acting to countermand the Withdrawal Order.[27] Panić further specified that he was not aware of the Withdrawal Order until he had returned to Belgrade,[28] and that starting on 21 November 1991, the Gmtbr did not have responsibility for the JNA troops who had guarded the

[19] *Id.*, para. 62. *See also id.*, para. 61.
[20] *Id.*, para. 62, *citing Mrkšić et al.* Trial Judgement, para. 672.
[21] *See id.*, para. 63.
[22] *Mrkšić et al.* Trial Judgement, paras 62, 70.
[23] Application, paras 2-3, 5, 9-10, 30-38, Attachment A.
[24] *Id.*, para. 39.
[25] *See generally* Pre-Review Scheduling Order, pp. 1-2; Pre-Review Hearing, AT. 3 June 2010.
[26] Pre-Review Hearing, AT. 3 June 2010, pp. 26-32; 63-64.
[27] *Id.*, pp. 64-65.
[28] *Id.*, p. 56.

TH

Prisoners.[29] In addition, Panić claimed that he approached the Šljivančanin Defence team on his own initiative after learning of the *Mrkšić and Šljivančanin* Appeal Judgement and its findings regarding the Conversation,[30] and that he would not have contacted the Šljivančanin Defence team had he been concerned about his own criminal liability.[31] Finally, Panić suggested that Mrkšić may have issued the Withdrawal Order without informing subordinate commanders such as Panić himself.[32]

7. Following the Pre-Review Hearing, the Appeals Chamber granted Šljivančanin's request for a review hearing,[33] explaining that:

> the new information provided by Panić concerning the Conversation constitutes a "new fact" ("Panić New Fact"), that, if proved, could fundamentally alter the balance of evidence relating to this case, eliminating the basis for the *Mrkšić and Šljivančanin* Appeal Judgement's conclusion that Šljivančanin possessed the *mens rea* for aiding and abetting murder as a violation of the laws or customs of war[.][34]

While considering that "the Panić New Fact was discoverable through due diligence by Šljivančanin's counsel", the Appeals Chamber reasoned that "review of the *Mrkšić and Šljivančanin* Appeal Judgement is necessary because the impact of the Panić New Fact, if proved, is such that to ignore it *would* lead to a miscarriage of justice".[35]

8. Following the Decision Granting Review, the Appeals Chamber granted the Prosecution's request for additional time to gather rebuttal evidence,[36] agreed to hear the testimony of a Prosecution expert witness, Reynaud Theunens ("Theunens"),[37] and admitted several additional exhibits submitted by the Prosecution,[38] including a report written by Theunens.[39]

9. The Appeals Chamber convened the review hearing on 12 October 2010 ("Review Hearing"), at which Theunens gave testimony and the parties made oral submissions.[40] Theunens testified, *inter alia*, that Panić's claim that he did not learn of the Withdrawal Order until his return to Belgrade was not consistent with JNA doctrine or the operational context of OG South, given Panić's roles and responsibilities as chief of staff, and, on 21 November 1991, as acting commander

---

[29] *Id.*, pp. 71-72.
[30] *Id.*, pp. 11-18.
[31] *Id.*, p. 66.
[32] *Id.*, pp. 72-74.
[33] *See* Decision Granting Review, p. 4.
[34] *Id.*, p. 3.
[35] *Id.*, pp. 3-4.
[36] Order Regarding Prosecution's Motion for Extension of Time, 23 July 2010, p. 2.
[37] Scheduling Order, p. 2.
[38] *Id.*; Decision Addressing Various Prosecution Submissions, 7 October 2010, p. 3.
[39] *See* Scheduling Order, p. 2; Review Exhibit RP7, "Report on testimony Miodrag PANIĆ 'Pre-Review Hearing 03 June 2010'", 27 August 2010 (BCS translation and English original both filed on 29 September 2010) ("Theunens Report").
[40] Scheduling Order, pp. 2-3; Review Hearing, AT. 12 October 2010.

T14

of OG South.[41] Theunens reaffirmed that "any suggestion that M[rkšić] would have tried to '*hide*' his withdrawal order from his closest collaborator (and Deputy), [Panić], and the Officer he had put in charge of the evacuation operation, Š[ljivančanin], appears to be rather implausible".[42] With respect to the Trial Chamber's finding that standard JNA procedures were not consistently observed in OG South,[43] Theunens explained that he had not seen any evidence of basic principles of command and control being contravened.[44]

10. Theunens further testified that under JNA doctrine, it would not have been permissible for Mrkšić to issue orders as commander of OG South while Panić served as acting commander of OG South on 21 November 1991, and that in any event Panić would have been informed about such orders.[45] Theunens also asserted that, based on his understanding of JNA procedure and the underlying evidence, the JNA troops who had been guarding the Prisoners remained subordinated to OG South until at least 23 November 1991.[46] Additionally, Theunens testified that when Panić, in his capacity as acting commander of OG South, signed a report on 21 November 1991 about the situation at Ovčara that was incomplete with respect to the status of the Prisoners, he acted in a manner inconsistent with JNA doctrine, which required him to report on their fate.[47]

11. Following the Review Hearing, the parties filed additional written submissions.[48]

II. APPLICABLE LAW

12. The Appeals Chamber recalls that review proceedings are provided for by Article 26 of the Statute, and that according to Rules 119 and 120 of the Rules, if the Appeals Chamber determines that a judgement should be reviewed, it shall "pronounce a further judgement after hearing the parties."[49]

TM

[41] Review Hearing, AT. 12 October 2010, pp. 165-169, 195-197, 205-207. *See also* Theunens Report, pp. 3-7.
[42] Theunens Report, p. 6; Review Hearing, AT. 12 October 2010, pp. 212-213.
[43] *See Mrkšić et al.* Trial Judgement, para. 285.
[44] Review Hearing, AT. 12 October 2010, p. 194.
[45] *Id.*, pp. 150-154, 179-181. *See also* Theunens Report, pp. 17, 21-25.
[46] *See* Review Hearing, AT. 12 October 2010, pp. 163-165. *See also* Theunens Report, pp. 8-10; *Mrkšić et al.* Trial Judgement, paras 74, 275.
[47] Review Hearing, AT. 12 October 2010, pp. 150-155. *See also* Theunens Report, pp. 14-17; Trial Exhibit 368, "Regular Combat Report No. 467-1", 21 November 1991 (English translation and BCS original both filed on 26 April 2006).
[48] *See* Clarifying Order, p. 1. *See also* Additional Submission; Public Second Response; Public Second Reply.
[49] Rule 120 of the Rules.

III. DISCUSSION

A. Submissions of the Parties

13. Šljivančanin contends that in light of the Decision Granting Review, the sole issue remaining before the Appeals Chamber is "whether the Panić New Fact has been proved",[50] and asserts that the Prosecution's submissions have not demonstrated that Panić's testimony lacks probative value. Šljivančanin concludes that the Panić New Fact was proved and that the Additional Conviction must be overturned for lack of *mens rea*.[51]

14. Šljivančanin submits that the Prosecution has not succeeded in demonstrating that Panić is not a credible witness.[52] Šljivančanin asserts that Panić's testimony was mostly accepted by the Trial Chamber, that those parts of his testimony about which the Trial Chamber "expressed reservations" were unrelated to events relevant to the Panić New Fact,[53] and that at trial the Prosecution implicitly accepted Panić's testimony concerning the Withdrawal Order and partly relied on Panić's testimony in prosecuting Mrkšić.[54]

15. Šljivančanin also rejects the Prosecution contentions that Panić's testimony was motivated by self-interest to lie, that Panić's evidence is not plausible, and that Panić is biased in favour of Šljivančanin and the Gmtbr.[55] Šljivančanin notes Panić's testimony that he contacted Šljivančanin's counsel on his own initiative, and observes that the Prosecution did not challenge Panić's explanation of how he contacted the Šljivančanin Defence team.[56] Šljivančanin also asserts that neither the Trial Chamber nor the Appeals Chamber considered whether Panić heard the Conversation.[57] In this context, he concludes that there was no self-interested reason for Panić to proffer false testimony.[58] Šljivančanin adds that the Prosecution's suggestion that Panić would invent false evidence concerning the Conversation and then agree to testify about it before the Tribunal in order "to hide that he gained knowledge of the [W]ithdrawal [O]rder later[...] simply makes no sense."[59]

16. Šljivančanin further contends that the Theunens Report and Theunens's testimony did not undermine the credibility of the Panić New Fact. He maintains that Theunens relied on sources

[50] Additional Submission, para. 2.
[51] *Id.*, paras 4-5, 9-10, 43, 50.
[52] *Id.*, paras 21-22.
[53] *Id.*, para. 17.
[54] *See id.*, para. 19.
[55] *Id.*, paras 21-22.
[56] *Id.*, paras 27-28.
[57] *Id.*, para. 29.
[58] *Id.*, paras 24-26, 30.
[59] *Id.*, para. 31.

already before the Trial Chamber, failed to take into account the Trial Chamber's finding that standard JNA procedures were frequently not observed during events at Vukovar, and did not exclude the possibility that Mrkšić could have issued an illegal order to withdraw without informing Panić.[60] Šljivančanin also submits that Theunens confirmed that an "uneasy relationship" existed between JNA officers and members of the JNA's security branch, and asserts that this could help explain why Mrkšić did not inform Šljivančanin about the Withdrawal Order.[61]

17. The Prosecution responds that Panić's description of the Conversation is not credible and that the Panić New Fact has thus not been proved.[62] The Prosecution contends that the new information Panić provides is inconsistent with some of his prior statements, and concludes that this discrepancy suggests Panić could be providing false testimony.[63] The Prosecution likewise claims that Panić's description of the Conversation contradicts aspects of the Trial Chamber's factual findings and Šljivančanin's testimony before the Trial Chamber.[64]

18. The Prosecution also highlights inconsistencies in Panić's testimony concerning issues other than the Conversation, which it asserts further undermine his credibility.[65] In particular, the Prosecution refers to circumstantial evidence which, it maintains, undercuts Panić's claim that he did not learn of the Withdrawal Order and its consequences before returning to Belgrade. This evidence concerns operational exigencies and JNA doctrine, which the Prosecution avers would have required Panić and Mrkšić to communicate regarding the Withdrawal Order and the situation at Ovčara, and which also would have led to Panić learning about the Withdrawal Order from sources other than Mrkšić.[66] The Prosecution alludes to the Trial Chamber's finding that JNA procedures were not consistently observed at OG South,[67] but cites Theunens's testimony at the Review Hearing, and Panić's testimony at trial, to support its position that OG South's reporting systems were "fully functioning" on 20 November 1991 and that OG South was not "generally dysfunctional".[68] In this context, the Prosecution notes that on 21 November 1991, Panić filed a report making no mention of the Prisoners and failed to investigate their fate, while undertaking less significant activities such as preparing for a press conference.[69] The Prosecution asserts that Panić's

[60] *See id.*, paras 32-39. *See also Mrkšić et al.* Trial Judgement, para. 285.
[61] Additional Submission, para. 40.
[62] Public Second Response, paras 1-3.
[63] *Id.*, paras 14-18.
[64] *Id.*, paras 14, 18-19.
[65] *See, e.g., id.*, para. 22.
[66] *Id.*, paras 23-29.
[67] *See id.*, para. 30. *See also Mrkšić et al.* Trial Judgement, para. 285.
[68] Public Second Response, para. 30.
[69] *See id.*, paras 31-34.

conduct on 21 November 1991 is "consistent only with guilty knowledge" of the Withdrawal Order and the murder of 194 Prisoners which followed its implementation.[70]

19. In addition, the Prosecution maintains that Panić is self-interested and "has every reason to support Šljivančanin's false claim", because "Panić is implicated by the Appeals Chamber's finding that Šljivančanin learned of the JNA withdrawal in the Conversation".[71] The Prosecution notes that Panić may be subject to prosecution in national jurisdictions because of his past actions, and that Panić admitted that knowledge of the Withdrawal Order would incriminate him.[72] In this respect, the Prosecution underscores that the Trial Chamber declined to rely on Panić's testimony concerning issues that could implicate him in criminal conduct.[73]

20. The Prosecution also alleges that Panić is biased and motivated by a "code of loyalty" to protect the Gmtbr and its members, including Šljivančanin.[74] It notes that Panić and Šljivančanin served in the same unit for five years, maintains that Panić's testimony to the Trial Chamber sought to portray Šljivančanin and the Gmtbr in a positive light, observes that Panić acknowledged cooperating extensively with Mrkšić's Defence team, and contends that Panić was reluctant to attribute criminal responsibility to Mrkšić.[75]

21. Šljivančanin replies that, given the Prosecution's failure to adduce evidence disproving the Panić New Fact, it should be considered proved.[76] He asserts that Panić was candid and steadfast in his testimony that Mrkšić did not tell Šljivančanin of the Withdrawal Order during the Conversation.[77] In addition, Šljivančanin contends that Panić's testimony was broadly consistent with Panić's prior statements, and that minor discrepancies with Šljivančanin's testimony to the Trial Chamber actually bolster Panić's credibility.[78] Šljivančanin also underscores that the Trial Chamber found Panić to be a credible witness overall.[79]

22. Furthermore, Šljivančanin maintains that Panić had no personal interest in testifying, and notes that Panić had been extensively cross-examined at trial and was aware that his credibility

[70] *Id.*, p. 10 (emphasis omitted). *See also id.*, paras 30-35.
[71] *Id.*, para. 5.
[72] *Id.*, paras 7-8.
[73] *See id.*, para. 9, *citing Mrkšić et al.* Trial Judgement, para. 297.
[74] *Id.*, para. 10.
[75] *See id.*, paras 11-13. *See also* Review Hearing, AT. 12 October 2010, pp. 229-232.
[76] Public Second Reply, para. 1. *See also id.*, paras 6-10.
[77] *Id.*, paras 23-24.
[78] *Id.*, paras 7-9, 18-19, 27-28.
[79] *Id.*, para. 20.

TH

would be challenged during any review proceedings.[80] Šljivančanin further maintains that Panić's testimony implicating Mrkšić undermines the Prosecution's suggestions of bias.[81]

B. Analysis

23. In the *Mrksic and Šljivančanin* Appeal Judgement, the Appeals Chamber reviewed the relevant circumstantial evidence, and found that the only reasonable conclusion was that Šljivančanin learned of the Withdrawal Order during the Conversation. On that basis, the Appeals Chamber concluded that Šljivančanin possessed the *mens rea* necessary for aiding and abetting murder as a violation of the laws or customs of war.[82] The Appeals Chamber considers, however, that the Panić New Fact, if proved, constitutes direct evidence that Šljivančanin did not learn of the Withdrawal Order during the Conversation and in this regard recalls that "the impact of the Panić New Fact, if proved, is such that to ignore it *would* lead to a miscarriage of justice".[83] The central question now before the Appeals Chamber is whether the Panić New Fact is proved.

24. The Appeals Chamber finds that, in his testimony at the Pre-Review Hearing, Panić was credible with respect to both the Conversation and his motives for coming forward to testify. Panić's description of these two points was coherent and reasonably detailed, and his demeanour did not suggest that he was trying to conceal the truth. In reaching this conclusion, the Appeals Chamber is mindful that even though the Prosecution has not presented evidence which directly contradicts Panić's account of the Conversation, it has raised a number of contentions concerning Panić's general credibility that warrant serious consideration.

25. The Prosecution's most direct challenge to Panić's testimony concerning the Conversation is its contention that Panić's testimony at the Pre-Review Hearing contradicts some of his prior statements.[84] At the Pre-Review Hearing, Panić testified that during the Conversation Šljivančanin discussed the issue of the Prisoners' removal from the hospital with Mrkšić.[85] By contrast, the Prosecution notes that in a 2005 statement to the Prosecution, Panić stated that he assumed Šljivančanin informed Mrkšić about the hospital evacuation.[86] The Appeals Chamber finds, however, that these two statements are not necessarily incompatible, and notes that the differences could reflect the passage of time, the context in which Panić's statement was elicited, and Panić's personal circumstances.[87] The Prosecution also observes that before the Trial Chamber, Panić

[80] *Id.*, paras 12, 25, fn. 10.
[81] *Id.*, para. 17. *See also id.*, para. 26.
[82] *See supra*, paras 3-4.
[83] Decision Granting Review, p. 4.
[84] *See supra*, para. 17.
[85] Pre-Review Hearing, AT. 3 June 2010, pp. 26-28.
[86] Public Second Response, para. 16 and references cited therein.
[87] *See, e.g.*, Pre-Review Hearing, AT. 3 June 2010, pp. 46-47.

TM

claimed not to know "whether anyone addressed Šljivančanin about the civilian authorities or threats posed to the prisoners from the hospital".[88] However, the Appeals Chamber observes that the contrast between this statement and Panić's testimony at the Pre-Review Hearing can be explained by the broad scope and nature of the question put to him at trial.[89] Considered in context, Panić's prior statements do not undermine his credibility with respect to the Conversation. Similarly, minor inconsistencies between Panić's testimony at the Pre-Review Hearing, the Trial Chamber's findings, and Šljivančanin's testimony before the Trial Chamber[90] are not significant. In fact, these minor inconsistencies suggest that Panić's account was not tailored to support the Application.

26. More broadly, the Appeals Chamber notes the Prosecution's submission that Panić's testimony is tainted by a self-interested desire to reduce the chances of being prosecuted for crimes he may have personally committed.[91] This contention is particularly serious in light of the Trial Chamber's finding that "in his evidence [...] Panić sought to present aspects of his own role in a more favourable light and to avoid disclosing matters which could be construed as implicating Panić himself in criminal conduct."[92] The Appeals Chamber observes, however, that Panić's testimony at the Pre-Review Hearing essentially mirrored his testimony before the Trial Chamber, insofar as it included no explicit admission of personal criminal conduct. The Appeals Chamber also notes that it is unlikely Panić would be motivated by self-interest to contradict new factual findings in the *Mrkšić and Šljivančanin* Appeal Judgement, given that the Appeals Chamber made no specific findings regarding the scope of his participation in the Conversation.[93] Consequently, the Appeals Chamber discerns no additional substantive protection from criminal prosecution that Panić could have anticipated gaining through his participation in these review proceedings.

27. By contrast, the Appeals Chamber notes that as a former witness, Panić was doubtless aware that the Prosecution might seek to publicly highlight his own potential criminal liability during any review proceedings, potentially drawing the attention of prosecutors in national jurisdictions.[94] Had Panić been motivated by the desire to reduce his risk of criminal prosecution, as the Prosecution suggests,[95] he would presumably not have contacted the Šljivančanin Defence team and offered to

[88] Public Second Response, para. 16.
[89] *See* Panić Trial Testimony, T. 13 November 2006, p. 14551 ("Q. Did you know, since you were later that day you were at the command post in Negoslavci that anyone on that day at all addressed Sljivancanin [*sic*] about the civilian authorities or any threats posed to those people there, those persons there on that day?").
[90] *See* Public Second Response, paras 18-19.
[91] *See supra*, para. 19.
[92] *Mrkšić et al.* Trial Judgement, para. 297.
[93] *See Mrkšić and Šljivančanin* Appeal Judgement, paras 61-63.
[94] *Cf.* Public Second Response, paras 7, 30-35; Public Second Reply para. 12; Confidential Second Reply, para. 16.
[95] *See* Public Second Response, paras 5-8.

TM

testify in review proceedings. In these circumstances, Panić's decision to testify bolsters his credibility with respect to the Conversation.[96]

28. On the issue of bias, the Prosecution contends that Panić is motivated to lie about the Conversation because of his personal loyalty to the Gmtbr and Šljivančanin.[97] The Appeals Chamber agrees that in his testimony before the Appeals Chamber, Panić has generally been reluctant to assign blame for the crimes committed against the Prisoners. However, the Appeals Chamber considers that the Prosecution evidence is somewhat speculative. The most specific evidence of possible bias the Prosecution adduces is that Panić worked with the Mrkšić Defence team "extensively".[98] This suggests that Panić may have been biased in favour of Mrkšić, but does not suggest bias in favour of Šljivančanin. The Appeals Chamber also observes that Panić admitted that Mrkšić could bear responsibility for the crimes committed at Ovčara, and suggested that Mrkšić may have bypassed standard JNA procedures and effectively managed to mislead subordinates in order to issue and implement the Withdrawal Order.[99] In this sense, Panić's testimony did little to portray the JNA, its units, Mrkšić, Šljivančanin, or himself in a favourable light. Panić's testimony also runs counter to the potential personal bias that was most clearly demonstrated by the Prosecution—in favour of Mrkšić. Given these circumstances, the Prosecution has not demonstrated that bias undermines Panić's credibility with respect to his account of the Conversation.

29. The Prosecution submits that aspects of Panić's testimony not directly related to the Conversation are implausible, especially with respect to when he learned of the Withdrawal Order, and that this undermines his overall credibility. In particular, the Prosecution asserts that Panić's account of actions taken by officers of OG South is at odds with the procedures and actions required by JNA doctrine.[100] However, the Appeals Chamber recalls the Trial Chamber's finding that "[t]he facts of this case disclose frequent non-observance of normal JNA procedures and standards, at all levels, affecting matters as varied as the very establishment and structure of OG South to the observance of the chain of command."[101] Under these circumstances, the variations between the

[96] The Appeals Chamber notes that the Prosecution agrees that Panić's testimony concerning the Conversation is consistent with his previous denials of having been aware of the Withdrawal Order at the time. *See* Review Hearing, AT. 12 October 2010, p. 228.
[97] *See supra*, para. 20.
[98] *See* Pre-Review Hearing, AT. 3 June 2010, p. 22; Public Second Response, para. 13.
[99] *See* Pre-Review Hearing, AT. 3 June 2010, pp. 72-74.
[100] *See supra*, para. 18.
[101] *Mrkšić et al.* Trial Judgement, para. 285. The Appeals Chamber observes that Theunens testified that in the evidence he reviewed he saw no example of a "violation of the principle of command and control", Review Hearing, AT. 12 October 2010, p. 194, but notes that he admitted that he "did not analyse the [*Mrkšić et al.* Trial Judgement]", *id.*, p. 193.

actions Panić describes and those prescribed by JNA doctrine do not necessarily undermine Panić's credibility with respect to the Conversation.

30. The Prosecution also asserts that the contrast between the operational exigencies within OG South and Panić's testimony of his delayed discovery of the Withdrawal Order, as well as the discrepancies between Panić's behaviour on 20 and 21 November 1991, call Panić's overall credibility into question.[102] The Prosecution evidence raises significant questions about the veracity of Panić's testimony regarding issues other than the Conversation, such as his actions on 21 November 1991; in context, it appears that some portions of Panić's testimony, both during the review proceedings and before the Trial Chamber, may have been influenced by Panić's desire to protect himself from possible prosecution.[103] However, the Appeals Chamber recalls that no convincing motive has been presented for Panić to volunteer false testimony concerning the Conversation. Indeed, as the Appeals Chamber has noted, it appears that Panić's decision to testify in review proceedings regarding the Conversation was quite possibly contrary to his personal interest.[104] The Appeals Chamber further recalls its finding that Panić's testimony regarding the Conversation was coherent and that Panić's demeanour did not suggest he was untruthful.[105] In this context, the Appeals Chamber finds that Panić's credibility with respect to the Conversation is not undermined by the potential discrepancies in other parts of his evidence.[106]

31. For the foregoing reasons, the Appeals Chamber finds that Panić's testimony is credible with respect to the Conversation, and thus that the Panić New Fact has been proved.

C. Conclusion

32. The Appeals Chamber recalls its prior conclusion that "the impact of the Panić New Fact, if proved, is such that to ignore it *would* lead to a miscarriage of justice".[107] In this respect, the Appeals Chamber notes that the Additional Conviction was premised on both a delineation of

[102] *See supra*, para. 18.
[103] *See supra*, para. 26.
[104] *See supra*, para. 27.
[105] *See supra*, para. 24.
[106] The Appeals Chamber notes that while it can discern no self-interested motive for Panić to participate in review proceedings, once he decided to participate, he would certainly have had a motive to repeat any self-serving testimony he had already given before the Trial Chamber in order to protect himself from accusations of perjury and possible national prosecutions. The Appeals Chamber considers that the incentive to repeat any such untruths would, however, be limited to issues regarding which he had already testified before the Trial Chamber, which by definition do not include his new evidence regarding the Conversation. In this context, the Appeals Chamber recalls that it is not unreasonable for a trier of fact to accept some but reject other parts of a witness's testimony. *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-A, Judgement, 19 July 2010, para. 237; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Judgement, 17 March 2009, para. 150.
[107] Decision Granting Review, p. 4.

Šljivančanin's duty to protect the Prisoners,[108] and the Appeals Chamber's finding that Šljivančanin possessed the *mens rea* to aid and abet murder as a violation of the laws or customs of war.[109] The Appeals Chamber further observes that its finding concerning Šljivančanin's *mens rea* rested on the conclusion that the only reasonable interpretation from the available circumstantial evidence was that Mrkšić informed Šljivančanin of the Withdrawal Order during the Conversation. The Panić New Fact renders this latter inference untenable, and thus undermines the *Mrkšić and Šljivančanin* Appeal Judgement's finding that Šljivančanin was guilty of aiding and abetting murder as a violation of the laws or customs of war.[110] Accordingly, the Appeals Chamber vacates the Additional Conviction.[111]

IV. SENTENCE

33. In the *Mrkšić and Šljivančanin* Appeal Judgement, the Appeals Chamber considered that the sentence of five years' imprisonment imposed by the Trial Chamber on Šljivančanin for aiding and abetting torture did not "adequately reflect the level of gravity of the crimes committed by Šljivančanin".[112] In particular, the Appeals Chamber noted that the torture was "characterized by extreme cruelty and brutality towards the [Prisoners], some of whom may have been previously injured as they had been taken from the Vukovar hospital",[113] and referred to "the consequences of the torture upon the victims and their families, the particular vulnerability of the [P]risoners, and the very large number of victims".[114] Based on the circumstances of the case, "including the seriousness of the crimes for which Šljivančanin was convicted" by the Trial Chamber as well as the entry of the Additional Conviction,[115] the Appeals Chamber proceeded to quash Šljivančanin's original sentence of five years' imprisonment and imposed, Judges Pocar and Vaz dissenting, a new sentence of 17 years' imprisonment.[116] Because the Appeals Chamber has now vacated the Additional Conviction, which constituted a partial basis for the increase in Šljivančanin's sentence, the Appeals Chamber must consider whether the sentence of 17 years' imprisonment should be revised.

---

[108] *See Mrkšić and Šljivančanin* Appeal Judgement, para. 74. The Appeals Chamber observes that this conclusion of the *Mrkšić and Šljivančanin* Appeal Judgement is not at issue in these review proceedings.
[109] *Id.*, para. 63. *See also id.*, para. 75.
[110] *Id.*, para. 103, p. 169.
[111] In light of this determination, the Appeals Chamber will not entertain Šljivančanin's request to call his own military expert. *See* Public Second Reply, para. 32.
[112] *Mrkšić and Šljivančanin* Appeal Judgement, paras 413, 417.
[113] *Id.*, para. 412.
[114] *Id.*, para. 413.
[115] *Id.*, para. 419.
[116] *Id.*, p. 170.

TM

34. Šljivančanin submits that the "increase in [his] sentence [on appeal] must have been mainly the result of [his] conviction for aiding and abetting murder",[117] and that in determining any new sentence, "the Appeals Chamber must consider the exceptional circumstances of this case, including the trauma associated with the possibility of having to serve a sentence for a crime he did not commit."[118] On these bases, Šljivančanin maintains that any new sentence imposed on him "should not exceed 6 years, amounting to the time already served."[119]

35. The Prosecution responds that six years is "manifestly inadequate and no meaningful remedy to the Trial Chamber's abuse of its sentencing discretion."[120] In light of the scale and brutality of the crimes at issue and other factors, the Prosecution proposes a minimum sentence of 15 years.[121]

36. The Appeals Chamber considers that the reversal of the Additional Conviction represents a significant reduction in Šljivančanin's culpability and calls for a revision in sentence. The Appeals Chamber observes, however, that Šljivančanin's aiding and abetting the torture of the Prisoners was an extremely serious crime. In the circumstances of this case, the Appeals Chamber, Judge Pocar dissenting, reduces Šljivančanin's sentence of 17 years' imprisonment to ten years' imprisonment.

V. DISPOSITION

37. For the foregoing reasons, the **APPEALS CHAMBER**,

PURSUANT TO Article 26 of the Statute and Rules 119 and 120 of the Rules;

NOTING the respective written submissions of the Parties and the arguments they presented at the Review Hearing;

SITTING in open session;

GRANTS the remaining portions of the Application;

VACATES Veselin Šljivančanin's conviction for aiding and abetting the murder of 194 Prisoners;

QUASHES Veselin Šljivančanin's sentence of 17 years of imprisonment imposed by the Appeals Chamber and **IMPOSES**, Judge Pocar dissenting, a sentence of ten years, subject to credit being given under Rule 101(C) of the Rules for the period already spent in detention; and

TM

[117] Additional Submission, para. 47.
[118] *Id.*, para. 48.
[119] *Id.*, para. 49.

CONFIRMS that the *Mrkšić and Šljivančanin* Appeal Judgement remains in force in all other respects.

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

Judge Theodor Meron, Presiding

Judge Mehmet Güney

Judge Fausto Pocar

Judge Liu Daqun

Judge Andrésia Vaz

Judge Meron appends a separate opinion.
Judge Güney appends a separate opinion.
Judge Pocar appends a partially dissenting opinion.

Dated this 8th day of December 2010,

At The Hague, The Netherlands.

[Seal of the Tribunal]

[120] Public Second Response, para. 38.
[121] *Id.*

VI. SEPARATE OPINION OF JUDGE MERON

1. The Appeals Chamber has granted review of the *Mrkšić and Šljivančanin* Appeal Judgement, and vacated Šljivančanin's conviction on appeal for aiding and abetting murder as a violation of the laws or customs of war. In light of the new fact adduced by Šljivančanin, and the context in which relevant events took place, I support this action. I write separately in order to underscore the continuing persuasiveness of the *Mrkšić and Šljivančanin* Appeal Judgement's reasoning with respect to the responsibility that agents of Detaining Powers bear towards prisoners of war in their custody.

2. The *Mrkšić and Šljivančanin* Appeal Judgement explained, *inter alia*, that:

> Although the duty to protect prisoners of war belongs in the first instance to the Detaining Power, this is not to the exclusion of individual responsibility. The first paragraph of Article 12 of Geneva Convention III places the responsibility for prisoners of war squarely on the Detaining Power; however, it also states that this is '[i]rrespective of the individual responsibilities that may exist'. The ICRC Commentaries clarify that '[a]ny breach of the law is bound to be committed by one or more individuals and it is normally they who must answer for their acts'.[1]

The Appeals Chamber went on to conclude that:

> Geneva Convention III invests all agents of a Detaining Power into whose custody prisoners of war have come with the obligation to protect them by reason of their position as agents of that Detaining Power. No more specific investment of responsibility in an agent with regard to prisoners of war is necessary. The Appeals Chamber considers that all state agents who find themselves with custody of prisoners of war owe them a duty of protection regardless of whether the investment of responsibility was made through explicit delegation such as through legislative enactment or a superior order, or as a result of the state agent finding himself with *de facto* custody over prisoners of war such as where a prisoner of war surrenders to that agent.[2]
>
> The Appeals Chamber therefore considers that Šljivančanin was under a duty to protect the prisoners of war held at Ovčara and that his responsibility included the obligation not to allow the transfer of custody of the prisoners of a war to anyone without first assuring himself that they would not be harmed. Mrkšić's order to withdraw the JNA troops did not relieve him of his position as an officer of the JNA. As such, Šljivančanin remained an agent of the Detaining Power and thus continued to be bound by Geneva Convention III not to transfer the prisoners of war to another agent who would not guarantee their safety.[3]

3. As set out in the Appeals Chamber's Review Judgement, the vacatur of Šljivančanin's conviction for aiding and abetting murder is mandated by determinations of fact concerning a particular interaction between Mrkšić and Šljivančanin. These determinations are not related to the Appeals Chamber's broader legal analysis. Thus, the vacatur does not undermine the logic of the *Mrkšić and Šljivančanin* Appeal Judgement's delineation of the legal responsibilities that

[1] *Mrkšić and Šljivančanin* Appeal Judgement, para. 72, *quoting, inter alia,* ICRC Commentaries to Geneva Convention III, Article 12, p. 128.
[2] *Id.*, para. 73.

Šljivančanin bore, and agents of Detaining Powers continue to bear, with respect to prisoners of war in their custody.

4. As recognized in the Review Judgement, the Trial Chamber noted that standard procedures were frequently not observed by JNA forces at Vukovar.[4] This finding is one of the key reasons I accept Panić's testimony, despite its suggestion that JNA officers took certain facially implausible actions. But even in a "fog of war" like that which apparently enveloped JNA forces at Vukovar, some rules still stand clear. Among these are the legal responsibilities assumed by agents of Detaining Powers holding custody of prisoners of war. No matter what other procedures might be bypassed in times of stress and conflict, these responsibilities are neither vague nor elective, and the *Mrkšić and Šljivančanin* Appeal Judgement's careful guidance on this subject remains valid.

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

Done this 8th day of December 2010,
At The Hague, The Netherlands.

Judge Theodor Meron

[3] *Id.*, para. 74.
[4] *See* Review Judgement, para. 29, *citing Mrkšić et al.* Trial Judgement, para. 285.

VII. OPINION INDIVIDUELLE DU JUGE GÜNEY

1. Je tiens à joindre ma voix à celle du juge Meron et affirmer la validité de la conclusion juridique libellée au paragraphe 74 de l'Arrêt selon laquelle tout agent étatique responsable des prisonniers de guerre (« les Prisonniers ») soit investi de l'obligation légale continue de protection de ces Prisonniers.[1] L'infirmation de l'Arrêt quant à la conclusion factuelle servant d'assise à la condamnation n'altère, à mon avis, en rien le raisonnement juridique ayant abouti à l'énoncé du principe de droit susmentionné.[2].

2. La Chambre d'appel émet la conclusion juridique suivante :

> The Appeals Chamber therefore considers that Šljivančanin was under a duty to protect the prisoners of war held at Ovčara and that his responsibility included the obligation not to allow the transfer of custody of the prisoners of a war to anyone without first assuring himself that they would not be harmed. Mrkšić's order to withdraw the JNA troops did not relieve him of his position as an officer of the JNA.[3]

Cette conclusion juridique annulait celle de la Chambre de première instance qui limitait la responsabilité de Šljivančanin à la période précédant l'ordre de retirer les troupes affectées à la sécurité des Prisonniers.[4] À mon avis, le transfert imputait donc l'obligation aux agents de la Puissance détentrice de s'assurer de la continuité de la protection des Prisonniers afin d'éviter qu'ils ne s'exonèrent de cette obligation par le biais du transfert à une autorité quelconque.

[1] Arrêt, 5 mai 2009 (« Arrêt »).
[2] *Le Procureur c/ Mile Mrkšić et consorts*, IT-95-13/1-T, Jugement, 27 septembre 2007 (« Jugement »), par. 673.

Fait en anglais et en français, la version française faisant foi.

Le 8 décembre 2010
La Haye (Pays-Bas)

Mehmet Güney

[3] Arrêt, par. 74.
[4] Jugement, par. 673.

VIII. PARTIALLY DISSENTING OPINION OF JUDGE POCAR

1. In this Judgement, the Appeals Chamber vacates Šljivančanin's conviction entered on appeal for aiding and abetting the murder of the 194 Prisoners, quashes his sentence of 17 years of imprisonment imposed by the Appeals Chamber, and imposes a new sentence of ten years.[1] For the reasons already expressed, I reaffirm my dissenting opinion that scheduling an oral hearing with the aim of assessing "the evidentiary value and relevance" of the testimony of Miodrag Panić on an alleged "new fact", before a decision on the existence of such a new fact has been made by the Appeals Chamber, was outside the scope of the review proceedings as envisaged by Article 26 of Tribunal's Statute ("Statute") and Rules 119 and 120 of the Tribunal's Rules of Procedure and Evidence.[2] Nevertheless, I agree with the Appeals Chamber's present decision to vacate Šljivančanin's conviction entered on appeal for aiding and abetting the murder of the 194 Prisoners and to quash his sentence of 17 years of imprisonment imposed by the Appeals Chamber, for the reasons already expressed in my dissenting opinion to the *Mrkšić and Šljivančanin* Appeal Judgement.[3] However, to my regret, for the reasons expressed below, I respectfully disagree with the Majority's decision to impose a new sentence of ten years of imprisonment on Šljivančanin.[4]

2. By imposing a new sentence of ten years, the Majority reduces the sentence of 17 years of imprisonment it imposed on appeal on Šljivančanin. However, this still represents a substantial increase to the five-year sentence of imprisonment imposed on Šljivančanin by the Trial Chamber.[5] In my partially dissenting opinion to the *Mrkšić and Šljivančanin* Appeal Judgement, I agreed with the Majority that the Trial Chamber committed a discernible error in the exercise of its discretion when it found that a sentence of five years' imprisonment adequately reflected the gravity of the crimes committed by Šljivančanin, and in particular, the consequences of the torture upon the victims and their families, the particular vulnerability of the prisoners, and the very large number of

[1] Review Judgement, para. 37.
[2] Scheduling Order for Hearing Regarding Veselin Šljivančanin's Application for Review, 20 April 2010, Dissenting Opinion of Judge Pocar, pp. 3-4, paras 1-8.
[3] *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Judgement, 5 May 2009 ("*Mrkšić and Šljivančanin* Appeal Judgement"), Partially Dissenting Opinion of Judge Pocar, pp. 171-177, paras 1-13. *See* in particular, *ibid.*, paras 1-2, 12. However, I recall my agreement with the legal principles articulated in paragraphs 72-74 of the *Mrkšić and Šljivančanin* Appeal Judgement, which are in accordance with those already articulated by the Appeals Chamber, in respect to any protected person, in *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004, paras 668, 670.
[4] Review Judgement, para. 37.
[5] *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13/1-T, Judgement, 27 September 2007, para. 716.

victims.[6] Nonetheless, I disagreed with the Majority's decision to increase the sentence imposed on Šljivančanin by the Trial Chamber.[7]

3. For the reasons already expressed in great detail in my dissenting opinions in the cases of *Galić*,[8] *Semanza*,[9] *Rutaganda*,[10] and in particular *Mrkšić and Šljivančanin*,[11] I hereby reaffirm that I do not believe that the Appeals Chamber has the power to impose a new sentence on the accused that is higher than that which was imposed by the Trial Chamber. Even if the possibility to increase the "sentence imposed on Šljivančanin as a result of his review application" has been imprudently conceded by Šljivančanin's Counsel,[12] I believe the Appeals Chamber is bound to apply Article 25(2) of the Statute in compliance with fundamental principles of international human rights law as enshrined in, *inter alia*, the International Covenant on Civil and Political Rights ("ICCPR").[13] Article 14(5) of the ICCPR provides that "[e]veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law". Accordingly, the right to appeal a sentence should be granted to an accused before the Tribunal in all situations, which is not the case for the new sentence imposed on Šljivančanin. Unfortunately, in the present case, the Majority fails to seize the opportunity to recognise its error and simply confirm the sentence of five years of imprisonment imposed on Šljivančanin by the Trial Chamber.

4. For the foregoing reasons, I respectfully dissent with the Majority's decision to impose a new sentence on Šljivančanin of ten years.

---

[6] *Mrkšić and Šljivančanin* Appeal Judgement, Partially Dissenting Opinion of Judge Pocar, p. 171, para. 1, *referring to Mrkšić and Šljivančanin* Appeal Judgement, para. 413.
[7] *Mrkšić and Šljivančanin* Appeal Judgement, Partially Dissenting Opinion of Judge Pocar, p. 171, para. 1, *referring to Mrkšić and Šljivančanin* Appeal Judgement, paras 418-419.
[8] *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006, Partially Dissenting Opinion of Judge Pocar, p. 187, para. 2.
[9] *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Judgement, 20 May 2005, Dissenting Opinion of Judge Pocar, pp. 131-133, paras 1-4.
[10] *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-A, Judgement, 26 May 2003, Dissenting Opinion of Judge Pocar, pp. 1-4.
[11] *Mrkšić and Šljivančanin* Appeal Judgement, Partially Dissenting Opinion of Judge Pocar, pp. 171-177, paras 1-13.
[12] Written Submission on Behalf of Veselin Šljivančanin, 19 October 2010, paras 49-50.
[13] International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, *entered into force* 23 March 1976.

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

Done this 8th day of December 2010,
At The Hague, The Netherlands.

Judge Fausto Pocar