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International pour
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JUDGEMENT SUMMARY

(Exclusively for the use of the media. Not an official document)

APPEALS CHAMBERS

The Hague, 8 December 2010

Review Judgement Summary for Veselin Šljivančanin

Please find below the summary of the Judgement read out today by Judge Meron:

As the Registrar announced, the case on our agenda today is The Prosecutor v. Veselin Šljivančanin. In accordance with the Scheduling Order issued on 1 December 2010, today the Appeals Chamber will deliver its review judgement. This oral summary does not constitute any part of the official and authoritative judgement of the Appeals Chamber which is rendered in writing and will be distributed to the parties at the close of the hearing. In addition, not every point addressed in the judgement will be mentioned in this summary, which focuses only on central issues.

Background of the Case

Briefly, the background of this case is as follows. Veselin 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, or "JNA". He also held the post of head of the security organ of both the Guards Motorised Brigade and Operational Group South, the latter of which is commonly referred to as "OG South".

On 27 September 2007, Trial Chamber II issued a Judgement addressing individual criminal responsibility for the torture and murder of more than 190 Prisoners removed from Vukovar hospital and brought to Ovčara. More specifically, the Trial Chamber found that in the morning of 20 November 1991 these Prisoners, almost all men, the vast majority of whom had been involved in the hostilities, were removed by JNA soldiers of OG South from Vukovar hospital and brought via the JNA barracks in Vukovar to a hangar at Ovčara, near Vukovar, where they were severely mistreated.

The Trial Chamber also found that Mile Mrkšić at the time a colonel in the JNA, appointed Mr. Šljivančanin to evacuate Vukovar hospital and to be responsible for the transport and security of the Prisoners; that an order to withdraw the last remaining JNA troops securing the Prisoners was made by Mr. Mrkšić in the early evening of 20 November 1991; and that this withdrawal was completed at no later than 9:00 p.m. that evening. The Trial Chamber found that thereafter, in 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 9:00 pm and continued until well after midnight. The bodies were buried in the large hole, a mass grave, and remained undiscovered until several years later.

The Trial Chamber concluded that Mr. Šljivančanin had failed to protect the Prisoners from mistreatment on 20 November 1991, prior to the withdrawal of the JNA troops. It thus found Mr. Šljivančanin guilty of aiding and abetting torture as a violation of the laws or customs of war, and sentenced him to five years' imprisonment. The Trial

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Chamber did not, however, enter a conviction against Mr. Šljivančanin in relation to the murder of the 194 Prisoners.

On 5 May 2009, the Appeals Chamber issued the Mrkšić and Šljivančanin Appeal Judgement, which, inter alia, upheld Mr. 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. The Appeals Chamber also entered an additional conviction, finding, Judges Pocar and Vaz dissenting, that Mr. Šljivančanin aided and abetted the murder of 194 Prisoners as a violation of the laws or customs of war. On the basis of these findings the Appeals Chamber quashed Mr. Šljivančanin's original sentence of five years' imprisonment and imposed, Judges Pocar and Vaz dissenting, a new sentence of 17 years' imprisonment.

Underlying the additional conviction for murder was a new factual finding relating to Mr. 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 in the night of 20 November 1991, Mr. Mrkšić must have told Mr. Šljivančanin that he had withdrawn the JNA protection from the Prisoners held at Ovčara. On the basis of this analysis, the Appeals Chamber concluded that Mr. Šljivančanin possessed the *mens rea* for aiding and abetting murder as a violation of the laws or customs of war.

Review application

On 28 January 2010, Mr. Šljivančanin filed an application for review of the Mrkšić and Šljivančanin Appeal Judgement. In his Application, Mr. Šljivančanin asserted that Miodrag Panić, a Lieutenant-Colonel and Chief of Staff of the Guards Motorised Brigade and OG South,¹ was prepared to offer testimony about the Conversation which would exonerate Mr. Šljivančanin with respect to the additional conviction for murder. Mr. Šljivančanin asserted that this testimony constituted a "new fact" in the context of Article 26 of the Statute of the Tribunal and Rules 119 and 120 of the Rules of Procedure and Evidence of the Tribunal. The Application sought, inter alia, review of the Mrkšić and Šljivančanin Appeal Judgement and the quashing of Mr. Šljivančanin's Additional Conviction.

The Appeals Chamber, Judge Pocar dissenting, ordered an oral hearing on 3 June 2010 to hear Mr. Panić's testimony. At the Pre-Review Hearing, Mr. Panić testified that on the night of 20 November 1991 he was in a position to follow the Conversation and that Mr. Mrkšić did not inform Mr. Šljivančanin of the Withdrawal Order.

On 14 July 2010, the Appeals Chamber granted Mr. Šljivančanin's request for a review hearing, explaining that the new information provided by Mr. Panić concerning the Conversation constituted a "new fact" that, if proved, would lead to a miscarriage of justice by eliminating the basis for the Mrkšić and Šljivančanin Appeal Judgement's conclusion that Mr. Šljivančanin possessed the *mens rea* for aiding and abetting murder as a violation of the laws or customs of war.

On 12 October 2010, the Appeals Chamber convened a review hearing at which Prosecution expert witness Reynaud Theunens gave testimony and the parties made oral submissions.

The Appeals Chamber finds that Mr. Panić's testimony at the Pre-Review Hearing was credible with respect to both the Conversation and his motives for coming forward to testify. His 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 Mr. Panić's account of the Conversation, it

¹ *Mrkšić et al.* Trial Judgement, paras 62, 70.

has raised a number of contentions concerning Mr. Panić's general credibility that warrant serious consideration.

The Prosecution's most direct challenge to Mr. Panić's testimony concerning the Conversation is its contention that Mr. Panić's testimony at the Pre-Review Hearing contradicts certain of his prior statements. The Appeals Chamber finds, however, that the statements referred to by the Prosecution are either compatible with Mr. Panić's testimony at the Pre-Review Hearing or that the differences can be explained by the context in which Mr. Panić made them. Similarly, minor inconsistencies between Mr. Panić's testimony at the Pre-Review Hearing, the Trial Chamber's findings, and Mr. Šljivančanin's testimony before the Trial Chamber are not significant.

The Appeals Chamber considered with particular attention the Prosecution's submission that Mr. Panić's testimony is tainted by a self-interested desire to reduce the chances of being prosecuted for crimes he may have personally committed. However, the Appeals Chamber discerns no additional substantive protection from criminal prosecution that Mr. Panić could have anticipated gaining through his participation in these review proceedings. The Appeals Chamber notes that as a former witness, Mr. 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. Had Mr. Panić been motivated by the desire to reduce his risk of criminal prosecution, as the Prosecution suggests, he would presumably not have contacted Mr. Šljivančanin's Defence team and offered to testify in review proceedings.

The Appeals Chamber notes that in his testimony before the Appeals Chamber, Mr. Panić has generally been reluctant to assign blame for the crimes committed against the Prisoners. However, the Appeals Chamber considers that the Prosecution's allegations that he is biased are somewhat speculative. Mr. Panić's testimony at the Pre-Review Hearing did little to portray the JNA, its units, Mr. Mrkšić, Mr. Šljivančanin, or himself in a favourable light.

The Prosecution submits that aspects of Mr. Panić's testimony not directly related to the Conversation are implausible, especially with respect to when he learned of the order to withdraw JNA troops, and that this undermines his overall credibility. In particular, the Prosecution asserts that Mr. Panić's account of actions taken by officers of OG South is at odds with the procedures and actions required by JNA doctrine. However, the Appeals Chamber recalls the Trial Chamber's finding that the 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. In these circumstances, the variations between the actions Mr. Panić describes and those prescribed by JNA doctrine do not necessarily undermine Mr. Panić's credibility with respect to the Conversation.

The Prosecution also asserts that the contrast between the operational exigencies within OG South and Mr. Panić's testimony of his delayed discovery of the order to withdraw JNA troops, as well as the discrepancies between Mr. Panić's behaviour on 20 and 21 November 1991, call Mr. Panić's overall credibility into question. The Prosecution's evidence raises significant questions about the veracity of Mr. 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 Mr. Panić's testimony, both during the review proceedings and before the Trial Chamber, may have been influenced by Mr. Panić's desire to protect himself from possible prosecution. However, the Appeals Chamber recalls that no convincing motive has been presented for Mr. Panić to volunteer false testimony concerning the Conversation. Indeed, as the Appeals Chamber has previously noted, it appears that Mr. Panić's decision to testify in review proceedings regarding the Conversation quite possibly went against his personal interest. The Appeals Chamber further recalls its finding that Mr. Panić's testimony regarding the Conversation was coherent and that Mr. Panić's demeanour did not suggest he was untruthful. In this context, the Appeals Chamber finds that Mr. Panić's credibility with

respect to the Conversation is not undermined by the potential discrepancies in other parts of his evidence.

For the foregoing reasons, the Appeals Chamber finds that Mr. Panić's testimony is credible with respect to the Conversation, and thus that the new fact testified to by Mr. Panić has been proved. The Appeals Chamber recalls its prior finding that the impact of the new fact alleged by Mr. Panić, if proved, is such that to ignore it would lead to a miscarriage of justice. In this respect, the Appeals Chamber notes that the additional conviction for murder was premised on both a delineation of Mr. Šljivančanin's duty to protect the Prisoners, and the Appeals Chamber's finding that Mr. Šljivančanin possessed the *mens rea* to aid and abet murder as a violation of the laws and customs of war. The Appeals Chamber further observes that its finding concerning Mr. Šljivančanin's *mens rea* rested on the conclusion that the only reasonable interpretation from the available circumstantial evidence was that Mr. Mrkšić informed Mr. Šljivančanin of the Withdrawal Order during the Conversation. The new fact testified to by Mr. Panić renders this latter inference untenable, and thus undermines the Mrkšić and Šljivančanin Appeal Judgement's finding that Mr. Šljivančanin was guilty of aiding and abetting murder as a violation of the laws and customs of war. Accordingly, the Appeals Chamber vacates the additional conviction for murder.

Sentencing

The Appeals Chamber recalls that in the Mrkšić and Šljivančanin Appeal Judgement, it found that the sentence of five years' imprisonment for aiding and abetting torture imposed by the Trial Chamber did not adequately reflect the level of gravity of the crimes committed by Mr. Šljivančanin. The Appeals Chamber proceeded to quash Mr. Šljivančanin's original sentence of five years' imprisonment and imposed, Judges Pocar and Vaz dissenting, a new sentence of 17 years' imprisonment. Because the Appeals Chamber has now vacated the additional conviction for murder, which constituted a partial basis for the increase in Mr. Šljivančanin's sentence, the Appeals Chamber must consider whether the sentence of 17 years' imprisonment should be revised.

The Appeals Chamber considers that the reversal of the additional conviction for murder represents a significant reduction in Mr. Šljivančanin's culpability and calls for a revision in sentence. The Appeals Chamber notes, however, that Mr. Šljivančanin's mistreatment of the Prisoners was an extremely serious crime.

I will now read out in full the Disposition of the Appeals Chamber's Review Judgement. Mr. Šljivančanin, will you please stand?

Disposition

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 10 years, subject to credit being given under Rule 101(C) of the Rules for the period already spent in detention; and

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

Judge Meron attaches a concurring opinion.

Judge Güney attaches a concurring opinion.

Judge Pocar attaches a partially dissenting opinion.

Mr. Šljivančanin, you may be seated.

I now request the Registrar to please deliver copies of the Judgement to the Parties in this case. This hearing of the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia stands adjourned.