



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-04-81-A
Date: 20 March 2014
Original: English

BEFORE THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Carmel Agius
Judge William H. Sekule
Judge Liu Daqun
Judge Arlette Ramaroson

Registrar: Mr. John Hocking

Decision of: 20 March 2014

PROSECUTOR
v.
MOMČILO PERIŠIĆ
PUBLIC

DECISION ON MOTION FOR RECONSIDERATION

The Office of the Prosecutor:

Mr. Serge Brammertz and Mr. Peter Kremer

Counsel for Momčilo Perišić:

Mr. Novak Lukić and Mr. Gregor Guy-Smith

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 that on 28 February 2013, the Appeals Chamber rendered a final judgement which, *inter alia*, reversed, by majority, Momčilo Perišić’s (“Perišić”) convictions for aiding and abetting murder, inhumane acts, and persecutions as crimes against humanity, and murder and attacks on civilians as violations of the laws or customs of war (collectively “Reversal of Aiding and Abetting Convictions”);¹

BEING SEISED of the “Motion for Reconsideration” filed by the Office of the Prosecutor of the Tribunal (“Prosecution”) on 3 February 2014 (“Motion”);

NOTING that the Prosecution asks, *inter alia*, that the Appeals Chamber reconsider the Reversal of Aiding and Abetting Convictions on the basis that a subsequent panel of the Appeals Chamber found that elements of the relevant reasoning “were based on a clearly erroneous legal standard which misconstrued the prevailing law”;²

NOTING FURTHER the Prosecution’s submissions: i) that the “power to reconsider [the Appeals Chamber’s] prior decisions is derived from its inherent responsibility to administer justice and to ensure that its conclusions do not cause prejudice to the parties”;³ ii) that the need to “rectify the manifest miscarriage of justice” resulting from the Reversal of Aiding and Abetting Convictions constitutes cogent reasons for the Appeals Chamber to depart from its holding that it has no power to reconsider a final judgement;⁴ and iii) that this need outweighs Perišić’s “interest in finality of proceedings”;⁵

NOTING “Momčilo Perišić’s Response to Motion for Reconsideration Filed by the Prosecution” filed by Perišić on 13 February 2014 (“Response”);

NOTING Perišić’s submissions, *inter alia*: i) that the Motion should be dismissed because Appeals Chamber Judgements are final and not subject to reconsideration; ii) that the Appeal Judgement’s

¹ Judgement (“Appeal Judgement”), 28 February 2013, paras 13, 74, 122.

² Motion, para. 5. *See also* Motion, paras 6-12.

³ Motion, para. 2.

⁴ Motion, para. 5. *See also* Motion, paras 2-4.

⁵ Motion, para. 5.

relevant holdings do not constitute a miscarriage of justice; iii) that the Appeals Chamber should respect Perišić's right to finality of proceedings; and iv) that the Prosecution does not present cogent reasons for departing from relevant Appeals Chamber precedent;⁶

NOTING the "Prosecution Reply in Support of Motion for Reconsideration" filed on 18 February 2014 by the Prosecution ("Reply"), which, *inter alia*, reiterates that the Appeals Chamber should grant reconsideration in order to prevent a "manifest miscarriage of justice",⁷ and maintains that interest in the finality of proceedings is insufficient, in the circumstances of this case, to justify following the Appeals Chamber's position on reconsideration;⁸

RECALLING that the Appeals Chamber has repeatedly held that it has no power to reconsider its final judgements as the Statute of the Tribunal ("Statute") 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;⁹

RECALLING FURTHER that "the Appeals Chamber should follow its previous decisions, but should be free to depart from them for cogent reasons in the interests of justice";¹⁰

CONSIDERING that the Appeals Chamber has underscored the importance of "certainty and finality of legal judgements" for both victims and individuals who have been convicted or acquitted by the Tribunal, and that "existing appeal and review proceedings under the Statute provide for sufficient guarantees of due process for the parties in a case before the [...] Tribunal";¹¹

⁶ See Response, paras 2-20.

⁷ Reply, para. 1. See also Reply, paras 2-7.

⁸ See Reply, paras 4-6.

⁹ See *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, Decision on Sredoje Lukić's Motion Seeking Reconsideration of the Appeal Judgement and on the Application for Leave to Submit an *Amicus Curiae* Brief, 30 August 2013, p. 3 ("Lukić Decision"); *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, pp 2-3; *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Decision on Strugar's Request to Reopen Appeal Proceedings, 7 June 2007, para. 23; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Decision on Prosecutor's Request for Review or Reconsideration, 23 November 2006 (Public Redacted Version) ("Blaškić Decision"), paras 79-80; *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. See also *Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-R, Decision on Hassan Ngeze's Motions and Requests Related to Reconsideration, 31 January 2008, p. 3; *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-03-R, Decision on Requests for Reconsideration, Review, Assignment of Counsel, Disclosure, and Clarification, 8 December 2006, para. 6.

¹⁰ Lukić Decision, p. 3 (internal quotations omitted).

¹¹ See Blaškić Decision, para. 79, quoting Žigić Decision, para. 9.

CONSIDERING that victims' interest in the success of the Motion¹² does not constitute a legal basis which would justify granting the Motion;

CONSIDERING that the Prosecution has failed to establish cogent reasons in the interests of justice for departing from the settled jurisprudence of the Tribunal regarding the reconsideration of final judgements, as set out in the *Žigić* Decision and certain subsequent decisions;¹³

FOR THE FOREGOING REASONS,

DENIES the Motion.

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

Dated this 20th day of March 2014
At The Hague
The Netherlands



Judge Theodor Meron
Presiding Judge

[Seal of the Tribunal]

¹² See Motion, para. 5.

¹³ See *supra*, n. 9.