Appeals Judges Overturn Sljivancanin Verdict

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Their decision to more than triple former JNA officer’s sentence for Vukovar crimes provokes mixed reaction.
An ex-Yugoslav People’s army, JNA, officer was sentenced to another 12 years in jail this week after Hague appeals judges overturned his acquittal for the murder of almost 200 prisoners of war at a farm outside Vukovar in 1991.

Veselin Sljivancanin – who has almost completed a five-year prison sentence for war crimes committed in Croatia – cut a forlorn figure this week as the appeals chamber at the Hague tribunal more than tripled his original jail term to 17 years.

In Serbia, the verdict provoked another round of criticism leveled at the Hague tribunal, while observers and war veterans in Croatia said this was more appropriate than the original judgement handed down a year and a half ago.

The appeals chamber – which comprised five judges – ruled by a majority of three judges to two that Sljivancanin was guilty of aiding and abetting the murder of 194 Croat and non-Serb prisoners of war at a hangar in Ovcara on November 20 and 21, 1991.

They ruled that he had been in a position to know that prisoners of war transported from the Vukovar hospital – after this eastern Croatian town fell to Serb forces – to Ovcara were at risk of being killed by paramilitaries and yet had failed to intervene.

Delivering the verdict, Judge Theodor Meron said that Sljivancanin had been informed on November 20 by his commander and co-defendant Mile Mrksic that JNA protection afforded the prisoners of war had been withdrawn and he was therefore aware that local Serb forces at Ovcara would likely kill them.

“The only reasonable inference is that upon learning of the order to withdraw the troops, Mr Sljivancanin realised that the killing of the prisoners of war at Ovcara had become a likely occurrence,” said Meron.

“Mr Sljivancanin must have also realised that, given his responsibility for the prisoners of war, if he failed to take action to ensure the continued protection of prisoners of war, he would be assisting the [Serb forces] and paramilitaries to carry out the murders.”

Sljivancanin and his co-defendant, Mrksic, were convicted in September 2007 and sentenced to five and 20 years in prison, respectively. Sljivancanin was found guilty of aiding and abetting the torture of prisoners of war at Ovcara and Mrksic, a former JNA colonel, was convicted of responsibility for their murder, as well as torture and cruel treatment.

The third accused, Miroslav Radic was acquitted of all charges, after judges found there was no evidence he was aware of the killings taking place at Ovcara. Prosecutors did not appeal his acquittal.
Delivering its verdict in September 2007, the trial chamber acquitted Sljivancanin of murder, arguing that once his superior, Mrksic, had ordered the withdrawal of the JNA military police at Ovcara, Sljivancanin, “ceased to be responsible for the security of the prisoners of war, and his command authority in respect of the military police that had provided security came to an end”.

However, this week, tribunal judges granted an appeal by prosecutors and convicted Sljivancanin of murder, ruling that “[he] was under a duty to protect the prisoners of war held at Ovcara and that this responsibility included the obligation not to allow the transfer of custody of the prisoners of war to anyone without first satisfying himself that they would not be harmed”.

Appeals judges upheld the trial chamber’s conviction of Mrksic on three counts of violations of the laws or customs of war, including the murder, torture and cruel treatment of the 194 Croat and other non-Serb prisoners.

He, like Sljivancanin, had sought his acquittal on appeal, but judges reaffirmed his crimes, as well as the 20-year prison sentence handed down by the trial chamber.

According to the majority of the appeals judges, Sljivancanin had a duty to protect the prisoners of war held at Ovcara even after Mrksic had ordered the withdrawal of JNA military police who were protecting the prisoners.

They ruled that Sljivancanin could have informed the military police deployed at Ovcara that Mrksic’s order for them to withdraw was illegal.

Even though such action would have gone against the orders of his superior, Sljivancanin should have made such a move because Mrksic’s order to withdraw the military police was an illegal one, argued the judges.

He could also have tried to persuade Mrksic not to withdraw the protection or even sought assistance from higher up the chain of command in Belgrade, said Meron.

“The appeals chamber considers that in certain circumstances an officer may be required, within the limits of his capacity to act, to go beyond his [prescribed] authority to counteract an illegal order,” said Judge Meron.

Appeals judges also ruled that the five-year sentence handed to Sljivancanin on the basis of his conviction for aiding and abetting torture was too lenient.

“These crimes were characterised by extreme cruelty and brutality towards the prisoners of war, some of whom may have been previously injured as they had been taken from the Vukovar hospital,” said Judge Meron, noting the dire consequences of the torture upon the victims and their families.

Following the appeals judgement, Sljivancanin’s lawyer, Stephane Bourgon, did not hide his dissatisfaction.
“I feel like a boxer who has been knocked out. The only problem is I have been knocked out by the referee,” said Bourgon.

Bourgon was particularly concerned that, as the murder conviction was handed down by the appeals chamber, the highest court available to his client, Sljivancanin now has no recourse to have this new conviction reviewed in accordance with internationally-recognised legal standards.

“We are very disappointed and surprised to see that the appeals chamber could overturn a finding made by the trial chamber in very clear language…and to increase the sentence when they know that the [tribunal] statute does not offer any other possibility to appeal this new conviction…after their decision,” he said.

In Serbia, observers were also disappointed with the appeals judgement.

“I think it is completely inappropriate for an appeals chamber to more than triple the sentence handed down by the trial chamber,” said Serbian defence minister Dragan Sutanovac.

“People in this country already have very negative feelings towards the Hague tribunal, and this verdict will only damage its reputation even more.”

Aleksandar Vucic from the Serbian Progressive Party, SNS, said the appeals judgment in the case against Sljivancanin and Mrksic proves that the tribunal is “a political institution”.

“It is clear that this verdict was reached under political pressure and it confirms that the tribunal is biased when it comes to the events in the former Yugoslavia in the Nineties,” he said.

But not everyone in Serbia shared this opinion.

Director of the Belgrade-based Humanitarian Law Fund Natasa Kandic said the appeals judgement in this case is more than justified.

“After the [original] verdict, the public in Croatia and victims' families could not understand how it was possible that Sljivancanin got away with such a mild sentence, even though he was a JNA officer for security and seen as a person who shared responsibility for what happened at Ovcara,” she said.

“The appeals judgement and the sentence which was changed from 5 to 17 years in prison will bring peace to all those who lost their family members at Ovcara, and their trust in the Hague tribunal will be restored.”

In their reactions to the verdict, families of Vukovar victims echoed Kandic’s words.

“No sentence could ever be adequate for what happened at Ovcara, but I welcome this verdict because it show that there is justice,” said president of the Families of Detained and Missing Croatian Soldiers Association Ivan Psenica, whose son died defending Vukovar.
“Justice is slow, but it can be reached,” said a lawyer from Vukovar, Zoran Sangut, who was captured and imprisoned by Serb forces after the fall of this town in 1991.

“This just confirms what we said after the [original] verdict – that it is impossible to find someone guilty for taking part in such a horrible crime, and then sentence him to only five years.”

Director of the Documenta Centre for Facing the Past, Vesna Terselic, said the new verdict will undo the harm caused by the original one and will mean a great deal to the victims’ families.

“[It] is closer to justice for victims and I think it will contribute to our facing the past, both in Croatia and the rest of the region,” she said.

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