

Credibility of Slijivancanin Witness Debated

Author: [Rachel Irwin](#)

Lawyers for former Yugoslav officer want appeals judgement reviewed in light of new evidence.

After an unprecedented decision to review the appeals judgement of former Yugoslav army, JNA, officer Veselin Slijivancanin, a hearing was held this week to debate the credibility of the witness who came forward with a "new fact" about the case.

Slijivancanin's lawyers requested that the appeals judgement be reviewed after Miodrag Panic, the former chief-of-staff of Slijivancanin's unit, contacted them following the May 2009 appeals judgement.

In that judgement, appeal judges overturned Slijivancanin's acquittal for aiding and abetting the murder of Croat and other non-Serb prisoners being held at an Ovcarica farm following the fall of the Croatian town of Vukovar to Serb forces in November 1991.

Slijivancanin's original prison sentence of five years - for aiding and abetting the torture of the prisoners - was more than tripled to 17 years.

Appeals judges ruled that Slijivancanin had been informed by his commander and co-accused, Mile Mrksic, that JNA protection for the prisoners at Ovcarica had been withdrawn and that Slijivancanin was consequently aware that there was a risk of local Serb forces killing the prisoners.

Mrksic, a former JNA colonel, was convicted of responsibility for the prisoners' murder, as well as their torture and cruel treatment.

According to the appeals chamber's 2009 judgement, its finding that Slijivancanin was responsible for aiding and abetting the prisoners' murder was based on the conclusion "that Mrksic must have told Slijivancanin that he had withdrawn the JNA protection from the prisoners of war held at Ovcarica"

"The only reasonable inference is that upon learning of the order to withdraw the troops, Mr Slijivancanin realised that the killing of the prisoners of war at Ovcarica had become a likely occurrence," said Judge Theodor Meron when he delivered the appeals chamber's verdict.

However, at a pre-review hearing held in June 2010, Panic told the court that he was present during a conversation between Slijivancanin and Mrksic on the evening of November 20, 1991, which was after Mrksic would have issued the order for the JNA troops to withdraw from the farm.

Panic said that during that conversation, Mrksic had not told Slijivancanin about the order to withdraw.

"Had Mrksic told Slijivancanin that the security detail had been withdrawn, I would have been first to react," Panic told Stephane Bourgon, one of Slijivancanin's defence lawyers, at the hearing.

"I would have said, 'What has come up?' And I'm certain that Slijivancanin would have done the same thing," he continued.

Panic, who testified during the trial as a defence witness, said that he had not mentioned these details during his previous testimony because neither the defence nor the prosecution asked him about it. Trial judges had already confirmed in their judgement that Panic was present during Mrksic's conversation with Slijivancanin.

On July 14, appeals judges decided to review their judgement based on the "new fact" that emerged from Panic's testimony at the June hearing.

At the review hearing this week, prosecuting lawyer Helen Brady said that "Panic cannot be believed on this matter".

She said that because Mrksic's order to withdraw the JNA troops from Ovcarica was "patently illegal", if Panic admitted to knowing about it, he would implicate himself in a crime.

"He can never admit to [knowing about the order] because it would mean he did nothing to stop it," Brady said.

Furthermore, she stated that it was "simply not believable that Mrksic kept his chief of staff (Panic) out of loop on this order", especially in light of JNA military doctrine.

She cited the expert testimony of military analyst Reynaud Theunens, who was brought by the prosecution

to testify this week on the plausibility of Panic's claims, given how the JNA worked at the time.

Judge Meron noted Theunens' remark that it would have been "highly unusual" for Mrksic to issue the withdrawal order without notifying Panic.

"Is it impossible or highly unlikely?" asked the judge.

"Your honours, since it includes human beings, nothing is impossible," Theunens replied. "Theoretically Mrksic could have done it, but the question is why? It would have created difficult relations in the staff because everyone would wonder, why [didn't] you inform us?"

"You cannot issue the order in isolation," Theunens continued. "The effects are visible on the ground."

However, when it was Bourgon's turn to cross-examine Theunens, he asked if "there is anything in the [JNA] doctrine that says when a commander going to commit a crime, he has to inform his chief of staff".

"That question is nonsensical from a military point of view," Theunens answered. "The order is not in isolation. [A commander] issues an order to have an action executed."

"Do you agree that Mrksic knew he was committing the crime?" Bourgon asked.

"I go along with the trial chamber judgement," Theunens answered.

Bourgon noted that at the pre-review hearing in June, Panic said that he would have "immediately reacted" if he had heard Mrksic tell Sljivancanin about the withdrawal order.

"I am suggesting the possibility that Mrksic knew very well that Panic would oppose this order and that's why he didn't tell him," Bourgon said.

"I'm sorry, but it doesn't work like that," Theunens responded. "Panic is the chief-of-staff - he would be informed that [the JNA troops] were not there [at Ovcar] anymore. I can't imagine that Mrksic thinks he can hide an order and Panic won't have a look."

"So you're saying Panic is a liar?" Bourgon asked.

"I've never commented on a witness and would never do so," Theunens said.

In his closing remarks, Bourgon said that Panic came forward to "prevent an injustice".

"What matters here is evidence, not whether the [military] doctrine is applied," Bourgon added.

The appeals judges will now review their judgement to determine if Sljivancanin's murder conviction and increased prison sentence will stand.

Rachel Irwin is an IWPR reporter in The Hague.

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