

IN THE APPEALS CHAMBER

Before:

Judge Fausto Pocar, Presiding
Judge Liu Daqun
Judge Mehmet Güney
Judge Asoka de Zoysa Gunawardana
Judge Theodor Meron

Registrar:

Mr. Hans Holthuis

Decision of:

7 March 2003

PROSECUTOR
v.
DRAGO JOSIPOVIC

DECISION ON MOTION FOR REVIEW

The Office of the Prosecutor:

Mr. Christopher Staker

Counsel for the Accused:

Mr. Ranko Radovic
Mr. Tomislav Pasaric

I. INTRODUCTION

1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991 ("Appeals Chamber" and "Tribunal") is seised of the "Request for Review of the Counsel of the Convicted Drago Josipovic" ("Motion for Review"), filed on 30 July 2002.¹
2. Josipovic was a resident of Ahmici village in the Lasva River valley in Bosnia and Herzegovina. He was a member the Croatian Defence Council (HVO) and a member of the Ahmici village guard. On the basis of the evidence of one witness, Witness EE, the Trial Chamber found that, on 16 April 1993, Josipovic participated in the attack on and burning of Musafér Pusic's house which resulted, *inter alia*, in the murder of Musafér Pusic.² He was found

- guilty of crimes against humanity in the form of murder, persecution and other inhumane acts contrary to articles 5(a), (h) and (i) of the Statute of the Tribunal ("Statute") respectively. He was sentenced to imprisonment for 15 years.³
3. Josipovic appealed and one of his arguments on appeal was that the evidence of Witness EE was so unreliable and inconsistent that no reasonable tribunal could have accepted it as a basis to convict. The thrust of this contention was that since the Trial Chamber found that Witness EE was mistaken in her identification of two other attackers, it was impossible to be satisfied beyond reasonable doubt that she was correct in her identification of Josipovic.⁴
 4. On 23 October 2001, the Appeals Chamber rejected this argument. As the Trial Chamber had done, it relied on the testimony of Witness EE in finding that Josipovic was involved in the attack on Musafir Puscul's house on 16 April 1993,⁵ and affirmed Josipovic's convictions. The Appeals Chamber also noted with respect to Witness EE that it was not unreasonable for a tribunal of fact to accept some but reject other parts of a witness' testimony.⁶ Josipovic's sentence, however, was revised down from 15 to 12 years' imprisonment.
 5. On 21 February 2002, Counsel for Josipovic ("Defence") filed a "Motion of the Counsel of Drago Josipovic" requesting that the portion of the case relating to Josipovic be reopened. On 9 July 2002, the Appeals Chamber rendered its decision dismissing this motion.⁷
 6. On 30 July 2002, the Defence filed before the Appeals Chamber the present Motion for Review pursuant to Article 26 of the Statute and Rule 119 of the Rules of Procedure and Evidence of the Tribunal ("Rules"). On 6 September 2002, the Prosecution filed its response to the Motion for Review ("Prosecution's Response")⁸ and on 19 September 2002, the Defence filed its reply ("Defence Reply") in which it requests, *inter alia*, that certain witnesses be heard.⁹ On 20 January 2003 the Defence filed a motion requesting an urgent decision with respect to its request that certain witnesses be heard ("Motion for Urgent Consideration").¹⁰

II. MOTION FOR REVIEW

7. The Defence seeks the review of the case on the basis of the discovery of new facts not known to it at trial and appeal, and which could have been decisive factors in reaching the decision to convict Josipovic. It submits two new facts: (1) the testimony of two new witnesses, Mirsad Osmanovic and Seiba Osmanovic; (2) the identity of a policeman, Slavko Topalovic, who allegedly resembles Josipovic and was present at the scene of the crime.
8. With regard to the first new fact, the Defence states that, in reaction to an article published in a newspaper in Sarajevo after the Appeal Judgement was rendered¹¹, Mirsad Osmanovic contacted the Defence to say that he saw the movements of Josipovic on the day of the attack on Ahmici.¹² The Defence has since obtained written statements from Mirsad Osmanovic and his wife Seiba Osmanovic to the effect that Josipovic was nowhere near the house of Musafir Puscul at the time of the attack.¹³
9. With regard to the second new fact, the Defence states that the person seen by Witness EE on 16 April 1993 was not Drago Josipovic but Slavko Topalovic who, according to the Defence, resembles Josipovic and was involved in the attack on Ahmici. In support of its contention, it submits photographs of

Drago Josipovic and Slavko Topalovic to show their resemblance. It also attaches the pay list for March 1993 of members of a unit of the Croatian Military Police, which the Defence asserts was the unit that attacked the house of Musafir Puscul, to show that Slavko Topalovic was a member of that unit and therefore involved in the attack.¹⁴ The Defence further asserts that there are stories in circulation in Vitez according to which it was Slavko Topalovic, not Drago Josipovic, who was in front of Musafir Puscul's house at the relevant time. However, the people from whom the Defence heard these stories apparently do not wish to testify.¹⁵

10. The Defence also makes other arguments, *inter alia* that establishing the family relationship between Witness EE and other key witnesses of this case (Witnesses KL, H, SA and B) would further support the argument for rejecting Witness EE's identification evidence. It adds that the statement of Witness AT in the *Kordic Case*¹⁶ is proof that Josipovic was at the critical time not near any of the attacked houses, especially not near the house of Witness EE.¹⁷ However, the Defence does not claim that these facts are "new facts".

III. APPLICABLE LAW

11. Review proceedings are governed by the following provisions of the Statute and Rules of the Tribunal.

Article 26 of the Statute provides that:

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal an application for review of the judgement.

Rule 119 dealing with request for review stipulates that:

Where a new fact has been discovered which was not known to the moving party at the time of the proceedings before a Trial Chamber or the Appeals Chamber, and could not have been discovered through the exercise of due diligence, the defence or, within one year after the final judgement has been pronounced, the Prosecutor, may make a motion to that Chamber for review of the judgement. If, at the time of the request for review, any of the Judges who constituted the original Chamber are no longer Judges of the Tribunal, the President shall appoint a Judge or Judges in their place.

Rule 120 deals with preliminary examination and states that:

If a majority of Judges of the Chamber constituted pursuant to Rule 119 agree that the new fact, if proved, could have been a decisive factor in reaching a decision, the Chamber shall review the judgement, and pronounce a further judgement after hearing the parties.

12. The combined effect of these provisions of the Statute and the Rules is that in order for the deciding body to proceed to the review of its decision, the moving party must satisfy the Judges that:
 1. there is a new fact;

2. the new fact was not known to the moving party at the time of the original proceedings ;
 3. the failure to discover the new fact was not due to a lack of due diligence on the part of the moving party; and
 4. the new fact could have been a decisive factor in reaching the original decision.¹⁸
13. In "wholly exceptional circumstances", where the impact of a new fact on the decision would be such that to ignore it would lead to a miscarriage of justice, the Chambers may review their decision even though the new fact was known to the moving party, or was discoverable by it through the exercise of due diligence.¹⁹ As stated in the *Tadic* Review:

the Appeals Chamber, whenever it is presented with a new fact that is of such strength that it would affect the verdict, may, in order to prevent a miscarriage of justice, step in and examine whether or not the new fact is a decisive factor, even though the second and third criteria under Rule 119 of the Rules may not be formally met.²⁰

The Defence does not appear to be arguing that the current application constitutes such a situation, however the Appeals Chamber will consider whether this is the case.

IV. DISCUSSION

A. Preliminary consideration

14. In the Motion for Review, Josipovic seeks a review of the entire case including the judgements of both the Trial Chamber and the Appeals Chamber, and the return of the case to the Trial Chamber for re-hearing.²¹ By contrast the Prosecution submits that since Rule 119 provides for review of final judgement, the Defence can only seek review of the Appeals Chamber's Judgement.²²
15. The jurisprudence of the Tribunal with respect to proceedings under Article 26 of the Statute and Rule 119 is clear. In the *Delic* Review²³ and the *Tadic* Review²⁴, the Appeals Chamber held that review is only available with respect to final judgement . Since the Appeals Chamber rendered the final judgement in the instant case, it will only consider whether the Appeal Judgement should be reviewed.

B. The first "new fact" presented by the Defence: the testimony of two new witnesses, Mirsad Osmancevic and Seiba Osmancevic.

1. Is the testimony of these witnesses a new fact not known to the moving party during the proceedings?

16. The Defence submits that the testimony of Mirsad and Seiba Osmancevic is a new fact because it did not know of and could not have discovered these witnesses until it was contacted by Mirsad Osmancevic.²⁵ The Prosecution contends on the contrary that Josipovic knew of these people since at least the time of the trial proceedings. The Prosecution notes that the Trial Chamber heard evidence from Defence witnesses that Josipovic had given his vest to Mirsad Osmancevic and had brought him to Anto Papic's house during the

attack of 16 April 1993. It also notes that the Defence relied on this same argument on appeal.²⁶

17. It is clear from the Trial Judgement that, in an attempt to prove that he had helped Muslims during the attack on Ahmici, Josipovic did indeed submit at trial that he had given his military vest to Mirsad Osmanovic and brought him and his wife to the house of Anto Papic for shelter.²⁷ On Appeal, Josipovic again referred to the assistance he had offered these witnesses.²⁸ Josipovic indeed concedes that he knew these witnesses at the time of the trial and appeal.²⁹ That he may not have known exactly what they saw on that day – in other words the precise content of the testimony he now seeks to present as a new fact – goes rather to his exercise of due diligence, and is dealt with below.
18. However, whether Josipovic knew of the testimony or not, it does not qualify as a new fact in the terms of Rule 119. The jurisprudence of the Tribunal has elaborated on the difference between a new fact in the sense of Rule 119, and additional evidence in the sense of Rule 115 of the Rules. In the *Delic* Review, the Appeals Chamber held that:

(t)he distinction is thus between a fact which was not in issue or considered in the original proceedings (a "new fact" within the meaning of Rule 119) and additional evidence of a fact which was in issue or considered in the original proceedings but which evidence was not available to be given in those proceedings ("additional evidence" within the meaning of Rule 115).³⁰

19. It is therefore the definition of the fact in issue at trial which will determine the availability of the review procedure. In the *Delic* Review, the "new fact" submitted also concerned the identity of the perpetrator of the crime attributed to Delic (the applicant); in other words, as in this case, the argument put forward on review was that it was not the applicant but another who committed the crime in question, and that the witnesses who identified him as the perpetrator were mistaken. The Appeals Chamber held that:

The fact in issue at the trial and in the appeal was whether it was the Applicant who beat (X), and a material fact relevant to that fact in issue was whether it was the Applicant who called (X) out to be beaten. That material fact was also in issue at the trial and in the appeal. Evidence to establish it was given by two witnesses, and that evidence was strongly contested by the Applicant at the trial. The statement of Witness W is additional evidence of that material fact, but it is not of itself a new fact.³¹

20. In the instant case, the applicant – Josipovic – is also challenging his identification as the perpetrator of the crime. The fact in issue at the trial and in the appeal was whether Josipovic was part of the group who attacked Musafir Puscul's house. Evidence to establish that fact was given at trial by Witness EE, and it was strongly contested by the Defence. As part of his challenge to EE's credibility at trial, Josipovic presented witnesses to testify that he was in the vicinity of Anto Papic's house at the time of the attack, and therefore could not have been part of the attacking group. Witness EE's evidence was again challenged on appeal. The statements of Mr. and Mrs. Osmanovic, which are very similar to the evidence presented by the Defence at trial, are therefore additional evidence of the fact in issue at trial and on appeal, but are not new facts in themselves.

2. Could Mirsad and Seiba Osmancevic have been discovered through the exercise of due diligence?

21. The requirements set out in Rules 119 and 120 are cumulative. Thus, since the statements of Mr. and Mrs. Osmancevic are not "new facts", the Appeals Chamber is not obliged to examine them further. Nonetheless, in order to address all the arguments made by the parties, the Appeals Chamber will consider whether the alleged new facts could have been discovered through the exercise of due diligence. The Defence concession that Josipovic knew that Mirsad Osmancevic was in Ahmici on the day of the attack, and indeed that he cited him in evidence before the Appeals Chamber, may be noted. The Defence goes on to claim, however, that "all what Mirsad Osmancevic had seen and had known, could not have been known to Drago Josipovic, because that knowledge was in the head of Mirsad Osmancevic, and he did not want to talk about it during the hearing and appellate procedure".³² It is unclear whether the Defence is claiming that it contacted Mirsad Osmancevic and he refused to testify, or whether it is merely explaining that Mirsad Osmancevic would have refused to testify even if the Defence had contacted him, which it did not. In the Motion for Review, the Defence claims that it was impossible for counsel of the accused to contact any Muslims during the appeal proceedings, so that it could not have met with Mirsad Osmancevic (a Muslim), suggesting that it did not attempt to speak with him. It also states that Mr. Osmancevic was suffering from post-traumatic stress disorder during the trial and appeals proceedings.
22. Because Josipovic knew, from at least the time of the trial, that Mirsad and Seiba Osmancevic had been present during the attack on Ahmici he could have called them to testify on his behalf. The Defence thus has failed to demonstrate that it could not have obtained statements from these two witnesses if it had exercised due diligence.

3. Could the testimony of Mirsad and Seiba Osmancevic have been a decisive factor in reaching the decision to convict Josipovic?

23. Again, given that the requirements set out in Rules 119 and 120 of the Rules for the review of judgements are cumulative, in the light of its previous findings, the Appeals Chamber is not required to examine further the submissions of the Defence on the testimony of Mirsad and Seiba Osmancevic. Nonetheless, in order to address all the arguments made by the parties the Appeals Chamber will turn to examine whether or not the alleged new facts could have been a decisive factor in reaching the decision to convict Josipovic. The Defence argues that the statements of Mr. and Mrs. Osmancevic would have been a decisive factor in the decision to convict Josipovic because they show that Witness EE was mistaken in her identification of him as the person who was present during the attack on Musafir Pusic's house. The Appeals Chamber notes that the new witness statements are not materially different to witness testimonies presented by the Defence at trial. It further recalls that arguments pertaining to the defence of mistaken identity were presented by the Defence at trial and were rejected after comprehensive analyses of the accuracy of Witness EE's identification of Josipovic. This argument was re-canvassed and considered by the Appeals

Chamber and additional evidence adduced to discredit Witness EE was rejected.³⁵ Witness EE's identification of Josipovic has stood up to considerable scrutiny.

24. The Prosecution asserts that it is highly improbable, in light of the non-conclusive and even incriminating nature of the statements of Mr. and Mrs. Osmancevic, that they could have been a decisive factor in the decision to convict Josipovic.³⁶ The Appeals Chamber notes that, as argued by the Prosecution, the statement of Mirsad Osmancevic does corroborate the testimony of Witness EE to the extent that Josipovic was seen at about 5:00 am on 16 April 1993, wearing a military camouflage vest and carrying something in his hand which Mr. Osmancevic could not identify (Witness EE stated that Josipovic was carrying a gun in his hand).
25. In view of the foregoing, the Appeals Chamber finds that the statements of Mr. and Mrs. Osmancevic do not cast a reasonable doubt on Witness EE's identification of Josipovic such that they could have been decisive in the finding that it was Josipovic who participated in the attack.
26. The Defence in its reply requests that certain witnesses be heard to corroborate the content of the statements from Mirsad Osmancevic and his wife Seiba Osmancevic and in the Motion for Urgent Consideration requests that this be done expeditiously. In view of the Appeals Chamber's findings that the statements of Mirsad Osmancevic and his wife Seiba Osmancevic failed to satisfy the requirements of Rules 119 and 120, this request does not need to be addressed.

C. The second "new fact" presented by the Defence: the identity of a policeman, Slavko Topalovic who allegedly resembles Drago Josipovic and was present at the scene of the crime.

1. Is the identity of Slavko Topalovic a new fact not known to the moving party during the proceedings?

27. The Defence contends that the identity of Slavko Topalovic and his whereabouts at the time of the attack on Ahmici is a new fact which was not before the Chamber during either trial or appeal proceedings and not known to the Defence. The Defence did not know there was a person very much like Drago Josipovic near the house of Musafet Puscul at the relevant time until after the Appeal Judgement was rendered.
28. The Appeals Chamber accepts that the identity and whereabouts of Slavko Topalovic may not have been known to the Defence at the time of either the trial or the appeal. However, there is some confusion over the nature of the "new fact" which the Defence seeks to present. Annexed to the Motion for Review are a copy of an application for a change of identity card for Slavko Topalovic, with photograph affixed, and a copy of the equivalent document for Josipovic, also with photograph attached. There is also a copy of what appears to be a salary record for the "1st Operative Unit IV Combat MP" (explained by the Defence as the first operative company of the fourth combat unit of the Military Police) dated 4 March 1993, on which the name Slavko Topalovic appears. The documents submitted to go to proof of the facts that Slavko Topalovic resembles Josipovic and that he was a member of the mentioned unit of the Military Police. These were certainly not litigated at trial, and are

therefore new facts. However, in the Motion for Review the Defence appears to claim as its "new fact" i) that Slavko Topalovic resembles Josipovic, ii) that he was a member of the unit that participated in the attack on the house of Musafer Puscul, and iii) that he did indeed participate in that attack on 16 April 1993. The second and third of those claims have not been substantiated.

29. There is no evidence to show that the first operative company of the fourth combat unit of the Military Police was the unit which attacked Ahmici. The Trial Chamber Judgement states only that "the attack was carried out by military units of the HVO and members of the Jokers".³⁹ Even if that were the unit which carried out the attack, its membership in April 1993 can hardly be safely established on the basis of a salary record for the previous month. And even if it could be established that Slavko Topalovic were a member of the unit in April 1993, that does not show that he was present with the unit in Ahmici on April 16th, or that he was involved in the attack on the house of Musafer Puscul.
30. The "new fact" sought to be presented to the Appeals Chamber (which may or may not be established when the supporting evidence is examined with regard to the decisive impact of the new fact, below) is therefore that there is a man named Slavko Topalovic who resembles Josipovic, and that he was a member of the first operative company of the fourth combat unit of the Military Police on 4 March 1993.

2. Could Slavko Topalovic have been discovered through the exercise of due diligence?

31. The Appeals Chamber notes that, in support of its contention that Slavko Topalovic, not Josipovic, was involved in the attack on Musafer Puscul's house, the Defence mentions that this features in stories told by persons in Vitez. In the view of the Appeals Chamber, the Defence could have come across these stories in the course of its investigations during trial and appeal if it had exercised due diligence. The Defence has thus failed to show that Slavko Topalovic could not have been discovered earlier through the exercise of due diligence.

3. Could the identity of Slavko Topalovic have been a decisive factor in reaching the decision to convict Josipovic?

32. Given that the requirements set out in Rules 119 and 120 of the Rules for the review of judgements are cumulative, having found that the second of the criteria set out in Rule 119 (due diligence) has not been met, the Appeals Chamber notes that it is not necessary to examine whether the alleged new fact meets the remaining criteria. Nonetheless, in order to address all the arguments made by the parties, the Appeals Chamber will turn to examine whether or not the new fact could have been a decisive factor in reaching the decision to convict Josipovic. The Defence asserts that the identity of Slavko Topalovic could have been a decisive factor in reaching the decision to convict Josipovic because it shows that Witness EE had mistaken the former for Josipovic. The Appeals Chamber has already noted that the Motion for Review is accompanied by evidence to show that Slavko Topalovic and Josipovic looked alike, and that Slavko Topalovic was a member of the first operative company

of the fourth combat unit of the Military Police in March 1993. It should be noted that it is virtually impossible to make any judgement about the similarity between Josipovic and Slavko Topalovic from the material submitted, as the copied photographs are of a very poor quality, and clearly no judgement can be made about the authenticity of the original documents. The Defence explains that it made copies from files held in the police station in Vitez but is unable to obtain the originals; it suggests that "[t]he Court could obtain it with appropriate writ".⁴⁰ This suggestion is made in the Defence Reply, but no application is made to the Appeals Chamber to obtain such an order.

33. However, even if the original files could be brought before the court and their authenticity established, any similarities which might appear between the two small passport-style photographs would not carry enough weight to persuade the Appeals Chamber that the identity of Mr. Topalovic could have been a decisive factor in the decision to convict Josipovic, especially in view of the lack of evidence to show that Mr. Topalovic was present in Ahmici on 16 April 1993, or that he participated in the attack on the house of Musafir Puscul.
34. The salary record submitted, with which the Defence seeks to establish this last circumstance, does not do so, as discussed above. The most it could establish, if its authenticity were verified, is that Mr. Topalovic was a member of that particular unit of the Military Police in March 1993. The participation of that unit in the attack on Ahmici the following month has not been proven (nor has any evidence been adduced to do so), and neither has Mr. Topalovic's membership of the unit at that time. No weight whatsoever can be attributed to "stories that were told in Vitez, from persons who do not want to be witnesses and who know the fact [that Slavko Topalovic was at the critical time in front of Musafir Puscul's house] based on the town stories".⁴¹
35. The Defence suggests that the statement given by Witness AT in the *Kordic* case to the Prosecution, of which it has received a version with names redacted,⁴² corroborates its version of events. The Defence does not have access to an unredacted version of the statement, and it cannot therefore confirm whether Slavko Topalovic's name is mentioned, but it states nonetheless that "[t]he counsel (sic) is certain that the name of that policeman is among the names given by the [W]itness AT, and that he said that he was the person who was in front of the house" of Musafir Puscul.⁴³
36. There are two weaknesses in this argument, whether or not Witness AT's statement does name Mr. Topalovic. Firstly, the Appeals Chamber has already held on appeal that the close relationship between Witness AT and Josipovic renders Witness AT's testimony unreliable in determining Josipovic's participation in the attack.⁴⁴ Secondly, the Defence fails to explain why, in view of this close relationship, it failed to obtain such a statement from AT at the time of either the trial or the appeal. Even if Witness AT's statement did contain the information claimed by the Defence, then, it would clearly fail both the "due diligence" and the "decisive effect" requirement for review of the conviction. It suffers from the same defects as corroborative evidence, and in view of this and of the Defence's express concession that the statement is no longer important to the case now that it has the statement of Mirsad Osmancevic,⁴⁵ the Appeals Chamber need not address whether protective measures should be lifted and the content of the statement of AT considered.

37. The Prosecution has also pointed out that, throughout his case, Josipovic has adopted photographs of different individuals to support his defence of mistaken identity. At trial, Josipovic advanced the argument that another *doppelgänger*, Slavko Rajkovic, committed the crimes instead of him.⁴⁶ A similar argument was advanced in his closing argument with respect to another individual.⁴⁷ The fact that Josipovic has already claimed that two different people committed the crimes instead of him does undermine the credibility of this argument somewhat.
38. The Appeals Chamber finds that the Defence has manifestly failed to show with the evidence submitted as to the identity and whereabouts of Slavko Topalovic that this could have been a decisive factor in reaching the decision to convict Josipovic .
39. Furthermore, the Prosecution requests the Appeals Chamber to consider whether Rule 46(c) (frivolous motion or motion in abuse of process) should be applied in relation to the Motion for Review. The Appeals Chamber does not find such sanction appropriate in this case.

V. DISPOSITION

40. For the foregoing reasons, the Appeals Chamber dismisses:

- I. The Motion for Review, and
- II. The Motion for Urgent Consideration.

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

Judge Fausto Pocar
Presiding

Dated this 7 March 2003
At The Hague
The Netherlands.

[Seal of the Tribunal]

1 - Request for Review of the Counsel of the Convicted Drago Josipovic.
2 - Judgement, 14 January 2000 ("Trial Judgement"), paras 503 and 859.
3 - *Ibid*, p. 324.
4 - Appeal Judgement, 23 October 2001 ("Appeal Judgement"), para 327.
5 - *Ibid*, para 361.
6 - *Ibid*, para 333.
7 - Decision on the Motion of the Counsel of Drago Josipovic.
8 - Prosecution's Response to Request for Review. On 12 September 2002 the Prosecution filed a Corrigendum to Prosecution's Response to Request for Review of the Counsel of the Convicted Drago Josipovic. The corrigendum makes only typographical corrections to the Prosecution's Response to Request for Review. References to the Prosecution's Response are to the corrected version.
9 - Motion of the Counsel with which he answers to the Prosecution's response to the Counsel's

request for the revision of the case.

10 - Motion for Urgent Consideration, 20 January 2003.

11 - Annexed to the Motion for Review.

12 - Motion for Review, para X.

13 - Protocols, 19 June 2002 in Vitez, annexed to the Motion for Review.

14 - Motion for Review, para X.

15 - *Ibid*, para XI.

16 - *Prosecutor v. Kordic and Cerkez*, IT-95-14/2-T.

17 - Motion for Review, para IV.

18 - See the decisions following decisions of the Appeals Chamber: *Prosecutor v Delic*, IT-96-21-R-R119, "Decision on Motion for Review", 25 April 2002 ("Delic Review"), para 8; *Prosecutor v Jelusic*, IT-95-10-R, "Decision on Motion for Review", 2 May 2002 ("Jelusic Review"), pp. 2-3; *Prosecutor v Josipovic*, IT-95-16-R, "Decision on the Motion of the Counsel of Drago Josipovic" ("Kupreskic Review"), 9 July 2002, pp. 2-3; *Prosecutor v Tadic*, IT-94-1-R, "Decision on Motion for Review", 30 July 2002 ("Tadic Review"), para 20; and of the ICTR Appeals Chamber: *Prosecutor v Barayagwiza*, ICTR-97-19-AR72, "Decision on Prosecutor's Request for Review or Reconsideration", 31 March 2000 ("Barayagwiza Review"), para 41.

19 - Barayagwiza Review, para 15.

20 - Tadic Review, para 27.

21 - Motion for Review, para xiii, p.18.

22 - Prosecution's Response, para 5.

23 - Para 5.

24 - Paras 22 & 23.

25 - Motion for Review, para XI.

26 - Prosecution's Response, para 27.

27 - Trial Judgement, paras 491 & 493.

28 - Appeal Brief, pp. 35 *et seq.*

29 - Defence Reply, para IV.

30 - Delic Review, para 11.

31 - *Ibid*, para 13.

32 - Defence Reply, para 4.

33 - Para 15.

34 - The statement of Mirsad Osmancevic corroborates the testimony of Witness EE to the extent that Josipovic was seen after 5:00 am on 16 April 1993 wearing a military camouflage vest and carrying "something" in his hand. This "something" as identified by Witness EE was a gun.

35 - Appeal Judgement, paras 305-361.

36 - Prosecution's Response, para 33.

39 - Trial Judgement para 334.

40 - Defence Reply, p. 5.

41 - Motion for Review, para XI.

42 - Order of the President for Disclosure of the Redacted Version of the Interviews and the Transcript of the Testimony of a Protected Witness, 10 April 2001.

43 - Motion for Review, para 10.

44 - Appeal Judgement, para 346.

45 - "After Mirsad Osmancevic had called, considering the factual basis for the revision of that case, those non crossed versions are of no importance to the counsel." Motion for Review, para 10.

46 - Trial Judgement, para 494.

47 - Prosecution's Response, fn. 61.