



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-03-67-R77.5
Date: 1 August 2016
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 1 August 2016

IN THE CASE AGAINST

**PETAR JOJIĆ
JOVO OSTOJIĆ
VJERICA RADETA**

PUBLIC

**DECISION IN RELATION TO THE COOPERATION OF THE
GOVERNMENT OF THE REPUBLIC OF SERBIA WITH THE
TRIBUNAL**

Amicus Curiae Prosecutor
Ms Diana Ellis, QC

The Government of the Republic of Serbia
Per: The Embassy of the Republic of Serbia
to the Kingdom of the Netherlands

I. PROCEDURAL HISTORY

1. On 5 December 2014, an Order in Lieu of Indictment was issued, charging Petar Jojić, Jovo Ostojić, and Vjerica Radeta (collectively “Accused”) with contempt of the Tribunal for having threatened, intimidated, offered bribes to, or otherwise interfered with two witnesses in the cases of *Prosecutor v. Vojislav Šešelj* (case numbers IT-03-67-T and IT-03-67-R77.3).¹ On 19 January 2015, warrants of arrest and orders for surrender were issued for the Accused (“Arrest Warrants”).² On 13 January 2016, due to the failure of the Republic of Serbia (“Serbia”) to execute the Arrest Warrants, the Chamber ordered Serbia to submit monthly reports outlining its efforts regarding the execution of the Arrest Warrants.³ On 10 February 2016, the Chamber ordered that these reports be submitted every two weeks.⁴

2. On 18 May 2016, the Judge for Preliminary Proceedings of the High Court in Belgrade (“Pre-trial Judge”), Milan Dilparić, ruled that one of the cumulative conditions for the arrest and transfer of the Accused under Article 29 of the Law on Cooperation of Serbia and Montenegro with 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 (“Law on Cooperation”) was not fulfilled.⁵ The Pre-trial Judge held that according to the Law on Cooperation, only those accused of the Tribunal’s core crimes, i.e. not including contempt, can be arrested and transferred.⁶ On the same day, the High Court in Belgrade confirmed the ruling of the Pre-trial Judge.⁷

II. APPLICABLE LAW

3. Article 29 of the Statute of the International Criminal Tribunal for The Former Yugoslavia (“Statute”) states:

1. States shall co-operate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

¹ Further Decision on Order in Lieu of Indictment, 5 December 2014 (Confidential and *ex parte*), Annex B. A public redacted version of the Order was filed on 1 December 2015.

² Warrant of Arrest and Order for Surrender of Petar Jojić, 19 January 2015 (Confidential and *ex parte*); Warrant of Arrest and Order for Surrender of Jovo Ostojić, 19 January 2015 (Confidential and *ex parte*); Warrant of Arrest and Order for Surrender of Vjerica Radeta, 19 January 2015 (Confidential and *ex parte*). Public redacted versions of the Arrest Warrants were filed on 1 December 2015.

³ Order for Monthly Reporting on Execution of Arrest Warrants, 13 January 2016.

⁴ T. 60.

⁵ Ruling of the Judge for Preliminary Proceedings of the War Crimes Chamber of the High Court in Belgrade, 18 May 2016.

⁶ *Ibid.*

⁷ Ruling of the War Crimes Chamber of the High Court in Belgrade, 18 May 2016.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:
 - (a) the identification and location of persons;
 - (b) the taking of testimony and the production of evidence;
 - (c) the service of documents;
 - (d) the arrest or detention of persons;
 - (e) the surrender or the transfer of the accused to the International Tribunal.

III. DISCUSSION

4. On 18 May 2016, Serbia informed the Chamber of the Pre-trial Judge's and the High Court's decisions without making submissions as to how these decisions impact the current situation, and more particularly its obligation to cooperate with the Tribunal.⁸ However, the Chamber understands the position of Serbia to be that it has exhausted all legal avenues to execute the Arrest Warrants, and, as the courts have decided that the Accused cannot be transferred to the Tribunal, there is nothing that Serbia can do in relation to the execution of the Arrest Warrants. At the core of this matter lies the question whether states are obliged to cooperate with the Tribunal in contempt cases or only in cases involving alleged violations of international humanitarian law. In this respect, the Chamber will analyse below the scope of Article 29 of the Statute, which regulates states' obligations with the Tribunal.

5. First, the Chamber notes that the text of Article 29 (1) of the Statute only mentions cooperation in relation to serious violations of international humanitarian law. However, the text of Article 29 (2) indicates that states are required to cooperate with the Tribunal in relation to 'any request for assistance'.⁹ The text of Article 29 alone is therefore not unambiguous in relation to whether states are obliged to cooperate with the Tribunal in contempt matters.

6. Secondly, the Chamber recalls that although the crime of contempt is not a crime set out in the Statute, the Tribunal's jurisprudence firmly establishes that the jurisdiction of the Tribunal extends to the crime of contempt of court.¹⁰ The Appeals Chamber clarified that contempt proceedings are the necessary means "to ensure that [...] [the Tribunal's] exercise of the jurisdiction which is expressly given to it by its Statute is not frustrated and that its basic judicial

⁸ Report on Serbia's Efforts Pursuant to the Arrest Warrants and Orders for Surrender of the Accused, 18 May 2016.

⁹ Emphasis added.

¹⁰ *Prosecutor v. Milan Vujin*, Case No. IT-94-1-A-R77, Judgement, 31 January 2000 ("*Vujin Judgement*"), paras 13-18, 26; *Prosecutor v. Anto Nobile*, Case No. IT-95-14/1-AR77, Appeal Judgement, 30 May 2001, para. 36; *Prosecutor v. Ivica Marijačić and Marika Rebić*, Case No. IT-95-14-R77.2, Appeal Judgement, 27 September 2006, paras 23-24; *Prosecutor v. Ivica Marijačić and Marika Rebić*, Case No. IT-95-14-R77.2, Judgement, 10 March 2006, para. 13. The Trial Chamber further notes that neither the Pre-trial Judge nor the High Court challenged the Tribunal's jurisdiction over the crime of contempt.

functions are safeguarded”.¹¹ In other words, being able to successfully prosecute allegations of contempt of court is an essential element of the Tribunal’s ability to effectively adjudicate allegations of serious violations of international humanitarian law. Therefore, a lack of cooperation on matters related to allegations of contempt has a direct effect on the Tribunal’s ability to fulfil its mandate. Accordingly, the Chamber finds that the nature of the crime of contempt strongly weighs in favour of an interpretation of Article 29 of the Statute that would not exclude cooperation in contempt matters.

7. Thirdly, the Chamber notes that the Statute of the United Nations Mechanism for International Criminal Tribunals (“MICT”), the institution established by the United Nations Security Council (“Security Council”) to carry out, *inter alia*, the essential functions of the Tribunal after the completion of the Tribunal’s mandate, incorporates within its jurisdiction the crime of contempt and specifies that the obligation of states to cooperate extends to matters pertaining to the investigation and prosecution of the crime of contempt.¹² This codification demonstrates the intention of the Security Council to ensure that contempt of court is not excluded from states’ obligations to cooperate. Mindful that the MICT statute is by no means binding on Serbia in relation to the present case and constitutes the normative framework of a distinct judicial institution, the provisions of the MICT statute, which draw, *inter alia*, from the Statute and jurisprudence of the Tribunal, can be helpful when considering whether the Security Council intended to exclude cooperation in contempt matters from state obligations. The Chamber considers that the Security Council’s codification of the crime of contempt in the statute of the MICT, as the Tribunal’s successor institution, is an indication that Article 29 of the Statute was not meant to exclude cooperation in contempt matters.

8. Having considered the above, the Chamber finds that Article 29 of the Statute, which is binding on all United Nations member states as an annex to a Chapter VII Security Council resolution, creates an obligation on states to cooperate with the Tribunal in contempt matters. Serbia

¹¹ *Vujin* Judgement, para. 13.

¹² Article 1 of the MICT Statute states: [...] 4. The Mechanism shall have the power to prosecute, in accordance with the provisions of the present Statute. (a) any person who knowingly and wilfully interferes or has interfered with the administration of justice by the Mechanism or the Tribunals, and to hold such person in contempt; or (b) a witness who knowingly and wilfully gives or has given false testimony before the Mechanism or the Tribunals. Before proceeding to try such persons, the Mechanism shall consider referring the case to the authorities of a State in accordance with Article 6 of the present Statute, taking into account the interests of justice and expediency. [...]. Article 28 of the MICT Statute reads: 1. States shall co-operate with the Mechanism in the investigation and prosecution of persons covered by Article 1 of the Statute. 2. States shall comply without undue delay with any request for assistance or an order issued by a Single Judge or Trial Chamber in relation to cases involving persons covered by Article 1 of this Statute, including, but not limited to: (a) the identification and location of persons; (b) the taking of testimony and the production of evidence; (c) the service of documents; (d) the arrest or detention of persons; (e) the surrender or the transfer of the accused to the International Tribunal. 3. [...].

cannot point to its domestic law to justify non-compliance with its international obligations.¹³ If Serbia's domestic law is not in line with its international obligations, it needs to urgently ensure that its law is amended to guarantee conformity with these obligations.¹⁴

9. The Chamber notes that throughout the proceedings, Serbia did not argue that it has no obligation to cooperate with the Tribunal, and even acknowledged, by way of reference to the government's undertakings in response to orders issued by the Chamber, that its obligation to cooperate extends to contempt matters.¹⁵ Moreover, the decisions of the Pre-trial Judge and the High Court are at odds with years of cooperation between Serbia and the Tribunal, including on matters such as the arrest and transfer of accused in contempt cases.¹⁶

10. With regard to Serbia's reporting obligations, the Chamber recalls Serbia's obligation to submit bi-weekly reports on the steps undertaken to ensure that its obligations are met.

¹³ Ruling of the Judge for Preliminary Proceedings of the War Crimes Chamber of the High Court in Belgrade, 18 May 2016, pp. 6-7.

¹⁴ The Chamber refers, by way of example, to the United States of America which, urged by the Tribunal, undertook actions to remove legal obstacles to fulfil its obligation under Article 29 of the Statute in respect to contempt cases, see Agreement on Surrender of Persons between the Government of the United States of America and the Tribunal, Article 1, amended on 5 July 2011.

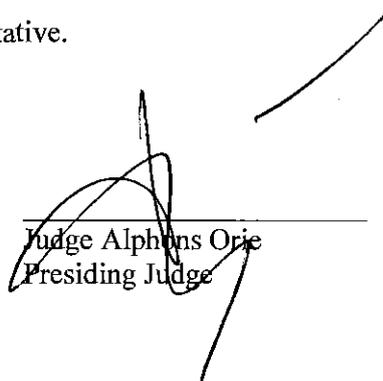
¹⁵ T. 54-57.

¹⁶ *In the Matter of Ljubiša Petković*, Case No. IT-03-67-R77.1, Order for Detention on Remand, 28 May 2008 and Redacted Version of Judgement Pronounced on 11 September 2008, 11 September 2008, paras 17-18; *In the Contempt Case of Dragomir Pećanac*, Case No. IT-05-88/2, Order for Detention on Remand, 9 October 2011. The Chamber further notes that the Pre-trial Judge himself, Milan Dilparić, in the cases of Ljubiša Petković and Dragomir Pećanac, confirmed the applicability of Articles 21, 23, and 29 of the Law on Cooperation, see *Décision du Tribunal de Grande Instance de Belgrade, Chambre des crimes de guerre*, 27 May 2008; Ruling of the War Crimes Chamber of the High Court in Belgrade, 27 September 2011.

IV. DISPOSITION

11. For the foregoing reasons, pursuant to Rule 54 of the Tribunal's Rules of Procedure and Evidence, the Chamber **ORDERS** Serbia to comply with its obligations under Article 29 of the Statute.

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



Judge Alphons Orie
Presiding Judge

Dated this First day of August 2016
At The Hague
The Netherlands

[Seal of the Tribunal]