



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-95-9-R77
Date: 30 June 2000
Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge David Hunt
Judge Mohamed Bennouna

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Judgement of: 30 June 2000

PROSECUTOR
v.
BLAGOJE SIMIĆ
MILAN SIMIĆ
MIROSLAV TADIĆ
STEVAN TODOROVIĆ
SIMO ZARIĆ

JUDGEMENT
IN THE MATTER OF CONTEMPT ALLEGATIONS AGAINST
AN ACCUSED AND HIS COUNSEL

Mr. Peter Haynes, for Mr. Branislav Avramović and Milan Simić

Concerned Parties:

Mr. Dirk Ryneveld, Ms. Nancy Patterson, Ms. Suzanne Hayden and Mr. Dan Saxon, for the Office of the Prosecutor
Messrs. Igor Pantelić and Novak Lukić, for Miroslav Tadić
Mr. Deyan Ranko Brashich, for Stevan Todorović
Messrs. Borislav Pisarević and Aleksander Lazarević, for Simo Zarić

I. INTRODUCTION

This Trial 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 ("International Tribunal"), having delivered its oral judgement in these proceedings under Rule 77 of the Rules of Procedure and Evidence ("Rules") on 29 March 2000 at 8:50 a.m.,

HEREBY GIVES ITS REASONS FOR THE JUDGEMENT.

II. PROCEDURAL BACKGROUND

1. On 7 July 1999, this Trial Chamber called upon Milan Simić and Branislav Avramović, in accordance with Rule 77 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), to respond to allegations that they had “knowingly and wilfully interfered with the International Tribunal’s administration of justice.”

2. Milan Simić is an accused in the related proceedings on the indictment (“merits proceedings”), who had been granted provisional release by the International Tribunal in March 1998 on health grounds. Branislav Avramović had been involved in the case throughout and had been assigned counsel, paid for by the International Tribunal, since October 1998. The allegations against Milan Simić and Branislav Avramović (“Respondents”) arise in connection with alleged harassment and bribery of a potential defence witness known as “Witness Agnes”.¹ It is alleged that, from July 1998 to May 1999, Milan Simić and Branislav Avramović conducted a programme of harassment and intimidation, supported by bribery, in an effort to persuade Witness Agnes to testify on behalf of Milan Simić. Witness Agnes eventually contacted the Office of the Prosecutor of the International Tribunal (“Prosecution”) in May 1999.

3. The allegations first came to the attention of the Trial Chamber in May 1999, when the Prosecution filed a motion seeking an extension of time in which to file a list of agreed facts ordered by the Trial Chamber in advance of the opening of the trial in the merits proceedings set for 22 June 1999. On 25 May 1999, the Prosecution sought an *ex parte* hearing on allegations of bribery by the defence, including not only Milan Simić and Branislav Avramović but also Igor Pantelić, counsel for another accused, for the intimidation of a potential witness and suborning perjury of that witness. Attached to the request were three statements from Witness Agnes, together with certain other material. In light of the gravity of the allegations, the Trial Chamber scheduled a closed session *ex parte* hearing for 8 June 1999 on the motion to hear the Prosecution as to the procedure to be followed for permitting the Defence to be notified of and respond to the allegations. The Respondents and Igor Pantelić were notified of the allegations after the hearing that same day. An *inter partes* hearing was scheduled for the next day, 9 June 1999.

¹ The Respondents are aware of the true identity of the witness but that information has not been disclosed to the other accused in the merits proceedings and appropriate procedures were adopted during the witness’s testimony to ensure that he was protected from view by those other accused.

4. Following the hearing on 9 June 1999, the Trial Chamber issued an Order vacating the date set for trial, suspending all proceedings on the merits until further order and revoking the provisional release of Milan Simić, who had returned voluntarily to the United Nations Detention Unit in The Hague for the commencement of the trial.

5. Submissions in response to the allegations of contempt were received from Milan Simić, Branislav Avramović and Igor Pantelić, following which the Trial Chamber issued an Order on 7 July 1999,² finding that it did not have good reason to believe that Igor Pantelić may be in contempt of the International Tribunal, but finding that it did have good reason so to believe in respect of Milan Simić and Branislav Avramović.

6. The Order called upon these two persons to appear at a date to be fixed to respond to allegations, with regard to Milan Simić, being an accused person, that³

- (A) between July and September 1998, he knowingly and wilfully interfered with the International Tribunal's administration of justice, by –
 - (a) making threats by telephone to Mr. "Agnes", a potential witness, and
 - (b) being in a black motor vehicle driven to the house of Mr. "Agnes" between 2 and 3 a.m., and on one occasion firing a shot in the air.
- (B) between January and May 1999, he offered a bribe to and interfered with Mr. "Agnes", with the intention that Mr. "Agnes" should give false evidence in favour of himself, telling Mr. "Agnes" that Mr. "Agnes" would be given money by him or by another person on his behalf for his needs, and an apartment and employment after he had given evidence in the trial; and

with regard to Branislav Avramović, being counsel for Milan Simić, that⁴

- (A) between July and September 1998, he knowingly and wilfully interfered with the International Tribunal's administration of justice, by –
 - (a) telling Mr. "Agnes", a potential witness, that –
 - (1) he should testify only in favour of his client, Milan Simić, and

² Although the Order was first issued as a confidential document, it was released to the public by order of 29 September 1999.

³ Milan Simić was alleged to have committed these acts individually or by acting in concert with other persons or by aiding and abetting in their commission.

⁴ Branislav Avramović was alleged to have committed these acts individually or by acting in concert with other persons or by aiding and abetting in their commission.

- (2) Mr. "Agnes" had to say, falsely, that Milan Simić was not present at the school alleged by the Prosecution to have been a detention camp and in which prisoners were beaten;
 - (b) falsely recording the version given by Mr. "Agnes" so as to exculpate his client, Milan Simić;
 - (c) coaching Mr. "Agnes" to tell that false version, rehearsing it with a tape recorder;
 - (d) making threats by telephone to Mr. "Agnes"; and
 - (e) being in a black motor vehicle driven to the house of Mr. "Agnes" between 2 and 3 a.m., and on one occasion firing a shot in the air.
- (B) between January and May 1999, he offered a bribe to and interfered with Mr. "Agnes", with the intention that Mr. "Agnes" should give false evidence in favour of his client, Milan Simić, by –
- (a) telling Mr. "Agnes" in January that –
 - (1) he would be rehearsed further in the false version throughout the month of May, five days a week; and
 - (2) he would be given money for his needs by Milan Simić, and an apartment after he had given evidence in the trial;
 - (b) telling Mr. "Agnes" in February that he was to say, falsely, that Milan Simić was not at the school alleged by the Prosecution to have been a detention camp and in which prisoners were beaten;
 - (c) showing Mr. "Agnes" in March a list with about 160 names on it, and telling him that the rehearsal (in May) would include looking through the list and falsely marking off the names of those who had been at the school;
 - (d) telling Mr. "Agnes" in April that he would be given employment after he had given evidence in the trial; and
 - (e) telling Mr. "Agnes" in May that he would see the next day about the money to be paid to Mr. "Agnes".

7. The Order also granted the Prosecution and each accused in the merits proceedings (other than Milan Simić) liberty to appear at any hearing on the allegations of contempt ("contempt proceedings") as concerned parties and requested the Prosecution to assist the Trial Chamber in assembling and presenting the evidence concerning the allegations. Certain protective measures for potential witnesses were also put in place and time-limits imposed for identification of witnesses and service of documents.

8. At the commencement of the contempt proceedings, the Registrar of the International Tribunal withdrew the assignment of Branislav Avramović as counsel to Milan Simić and assigned his co-counsel, Mr. Eugene O’Sullivan, to act in his place. Following representations from Mr. O’Sullivan to the Registrar, Mr. Peter Haynes was later assigned as counsel to Milan Simić for the contempt proceedings. Subsequently, Branislav Avramović also appointed Mr. Haynes to act for him in the contempt proceedings. This was approved by the Trial Chamber after obtaining a statement from Mr. Haynes confirming that he had considered the Code of Professional Conduct for Defence Counsel appearing before the International Tribunal and that he saw no prospect of any conflict of interest arising out of his representation of both Respondents, together with signed statements from both Respondents confirming their full and informed consent to the joint representation.

9. Written submissions were received from both Respondents⁵ and from the various concerned parties, together with a number of witness statements, including two further statements taken from Witness Agnes in the intervening period. A total of eight witness statements were submitted by the Prosecution in support of the allegations and six statements were submitted on behalf of the two Respondents, along with certain items of documentary evidence. The hearing on the allegations of contempt was set for four days on 29 and 30 September and 5 and 6 October 1999.

10. On 8 September 1999, the Prosecution filed a request for limited access to the files of the Registry of the International Tribunal, asserting that there may be material in the billing records pertaining to Branislav Avramović that might be of assistance to the Trial Chamber in its determination of the contempt allegations. The Registrar of the International Tribunal requested and was granted leave to make a submission to the Trial Chamber on this point, which written submission was filed on 24 September 1999, together with a corrigendum filed on 30 September 1999. In that submission the Registrar asserted the inviolability of the archives of the Registry of the International Tribunal and raised a claim of privilege in respect of the status of the United Nations personnel in the Office of Legal Assistance and Detention Matters (“OLAD”) and the information in their possession. The Prosecution request was subsequently withdrawn after an alternative proposal was put forward by the Respondents. A revised application was made after the Trial Chamber requested the Prosecution to explain with more precision the purpose of examining

⁵ In a filing of 21 July 1999, counsel for Branislav Avramović raised a number of legal challenges to the procedure being followed in the contempt proceedings and as to the nature of Rule 77 itself. These challenges were later withdrawn. T. 899.

the defence counsel billing records in the context of these proceedings and to identify the particular billing records that might be the subject of such an exercise.

11. On 6 October 1999,⁶ the Trial Chamber orally granted limited access to the Senior Legal Officer of the Trial Chamber to the Registry files for the purpose of examining the billing records of Branislav Avramović. The Senior Legal Officer was instructed to review the billing records for the period from mid-July 1998 to 10 May 1999 and prepare a confidential report to the Trial Chamber, with copies to both Milan Simić and Branislav Avramović, indicating whether any such records appeared to relate to the events forming the basis of the allegations of contempt. The Senior Legal Officer submitted the report on 4 November 1999.

12. On 28 September 1999, one day prior to the hearing, the Prosecution filed a request seeking extensive protective measures in respect of the testimony of Witness Agnes, requesting that either a screen be erected in the courtroom so that the other defendants, including their counsel, would not be able to see Witness Agnes, or that the other defendants and their counsel listen only, and not view, the testimony on closed-circuit television outside the courtroom, or that Witness Agnes testify from outside the courtroom, using closed-circuit television, with his image visible only to the Judges, the Respondents and their counsel and the Prosecution. At the commencement of the contempt proceedings, the Trial Chamber authorised the use of screening for Witness Agnes.

13. The proceedings commenced on 29 September 1999, when the allegations of contempt were read out and both Respondents confirmed their prior written submissions to the Trial Chamber denying the allegations. The evidence of Witness Agnes was heard in closed session on 29 and 30 September 1999 and was due to continue on 5 October 1999, but Witness Agnes failed to appear on that day. Two other witnesses for the case against the Respondents were heard in open session on that day. On 6 October 1999, a representative of the Victims and Witnesses Section of the International Tribunal informed the Trial Chamber of the practical difficulties that had lead to Witness Agnes's non-appearance on the previous day and that representative accepted sole blame for the non-appearance. Witness Agnes returned to continue his testimony that day, after which the proceedings were adjourned to 1 November 1999.

14. On 8 October 1999, the Prosecution sought and, with no objection from the Respondents, was granted leave, on grounds of the health and well-being of Witness Agnes, to have limited contact with the witness during the intervening period, on the basis that such contact was to be limited to social and non-case related matters, and that his testimony would not be discussed in any fashion.

15. The contempt proceedings resumed on 1 November 1999, although no evidence was taken on that day. Witness Agnes resumed his testimony on 2 and on 4 November 1999 and the first witness⁷ for the Respondents' case was heard on 4 November before the proceedings were again adjourned to 29 November 1999. The proceedings continued for a further four days, until 2 December 1999, during which time a further three witnesses were heard for the Respondents and both Respondents gave evidence themselves.

16. During closing submissions, all of the witness statements produced to the Trial Chamber were formally admitted into evidence, along with other documents. The Trial Chamber then adjourned to deliberate on the matter.

⁶ A written Order confirming these arrangements followed on 1 November 1999.

⁷ The witness was permitted to testify in closed session to protect the interests of justice, on the ground that he had previously been counsel for Milan Simić and his testimony was expected to refer to matters covered by lawyer-client privilege.

III. EVIDENCE RELATING TO THE EVENTS IN ISSUE

17. The evidence presented at the hearings in this matter ranged across a broad spectrum of times and events. Those matters not directly related to the allegations of contempt will only be dealt with to the extent that they bear upon the credibility of a witness or provide useful background to the allegations themselves.

18. The central figure in this case is Witness Agnes, the individual whose statements form the basis of the contempt allegations. It is solely upon his evidence that the case against the Respondents will succeed or fail.

A. The Case Against the Respondents

1. Statements of Witness Agnes

19. Witness Agnes has provided five statements to the Prosecution in connection with these proceedings, of which the first three originally formed the basis for the allegations of contempt.

20. The Respondents have made much of the fact that five separate statements⁸ of Witness Agnes have been submitted to the International Tribunal, alleging that he has changed his story to suit emerging circumstances and that Witness Agnes departs from the statements in his testimony to the Trial Chamber.

21. The first statement was made on 10 May 1999 to the Prosecution investigator Tore Soldal, at the end of five days of discussion and questioning. The second statement was also made on 10 May 1999, and deals with the recorded telephone conversation made on that day. The third statement was made on 25 May 1999, after Witness Agnes had been brought to The Hague.

22. The fourth and fifth statements followed a little later: the fourth statement is dated 7 June 1999 and details, for the first time, the allegation of a meeting in person with Milan Simić. The fifth statement was filed on 21 July 1999, and is said to have been made on that date, although the cover sheet erroneously states that it was prepared on 20 June. The Trial Chamber accepts the explanation of the Prosecution as to the taking of this statement and is satisfied that it was, in fact, made on 21 July 1999, and that the date on the cover sheet is the result of a clerical error. Witness

⁸ The statements are in evidence as Prosecution Exhibits 2 – 6.

Agnes recited in the statement that he provided the information in that statement to the Prosecution in late June but asked them not to write it down at that time, as a number of people who had formerly been detained at the primary school⁹ in Bosanski Šamac still live in the town and he had concerns for their security.

(a) The first statement

23. The first statement contains the original allegation of interference upon which these proceedings are founded: the initial, unannounced, visit by Branislav Avramović, Mr. Vuković¹⁰ and “the lawyer from Doboј”¹¹ in July or August 1998; Witness Agnes’s refusal to talk to them; the subsequent unexplained telephone calls and night visits, culminating in the shot in the air. On the first occasion after these events when Witness Agnes saw Branislav Avramović and “the lawyer from Doboј”, said to be about three days after the shooting incident, Witness Agnes agreed to provide a statement on behalf of Milan Simić. Witness Agnes contends in this first statement that, once he agreed to provide a statement on behalf of Milan Simić, these incidents stopped. Witness Agnes was told that he was supposed to testify only in favour of Milan Simić, and in connection with one particular night at the primary school in Bosanski Šamac. The lawyers prepared a hand-written statement and then made a tape-recording of the evidence, telling him in advance what to say. Witness Agnes asserts in the statement that it was at this meeting that he was told by the lawyers to contact their office every fifteen days or so and was given the relevant telephone numbers.

24. According to this first statement, there was only one more meeting in 1998, when Branislav Avramović arrived unannounced with another lawyer called “Igor”. Witness Agnes acknowledges that this was just a brief meeting, as Branislav Avramović was on his way to a meeting with Milan Simić in Bosanski Šamac and just wanted “to see how [Witness Agnes] was doing”. No questions were asked on this occasion, and “Igor” remained in the car.

25. The next meeting was in January 1999, when Branislav Avramović appeared together with a man unknown to Witness Agnes. At this meeting Branislav Avramović told Witness Agnes that they would have to rehearse his testimony in Bosanski Šamac for a month before going to The Hague. Witness Agnes was asked to draw a diagram of the position of the various prisoners held at

⁹ The detention facility in Bosanski Šamac where Witness Agnes was detained in 1992 was variously referred to in the contempt proceedings as either the “elementary school” or the “primary school.” This Judgement will use the term “primary school”.

¹⁰ Drago Vuković acted as lead counsel for Milan Simić in the merits proceedings from March to October 1998.

the primary school in Bosanski Šamac and to pinpoint the position of Perica Mišić and one of the Bičić brothers. It was at this time that the first offer of money and an apartment is said to have been extended by Branislav Avramović, who is alleged to have said that Milan Simić would give Witness Agnes DM10,000 once the rehearsal of his testimony started, and to have offered Witness Agnes an apartment in either Serbia or the Republika Srpska after he had testified.

26. Branislav Avramović is said to have visited Witness Agnes again in February 1999, on his way to a meeting with his client, Milan Simić, in Bosanski Šamac. The meeting took place at the Mimoza motel and Branislav Avramović is said to have reminded Witness Agnes what to say about Milan Simić in court, that he was not present at the primary school in Bosanski Šamac and that he was not guilty.

27. A final meeting is said to have taken place just prior to the first NATO air strike on Serbia, with Branislav Avramović stopping at Witness Agnes's house to tell him that the rehearsal was to take place in Bosanski Šamac in May 1999. Branislav Avramović also asked Witness Agnes to look at a list of about 160 names, some of whom had been detained in Bosanski Šamac and some of whom had not. He said that during the rehearsal Witness Agnes would be taught to identify those who had been detained from the list.

28. In his first statement, Witness Agnes states that the lawyers gave him Milan Simić's telephone number in case of an emergency, and advised him not to discuss anything relating to the case with Milan Simić on the telephone. Witness Agnes stated that he called Milan Simić on four occasions, and that one time Milan Simić had asked if Branislav Avramović had mentioned the "option". Witness Agnes stated that he took this to mean the money, and that he told Milan Simić that he was afraid to take either the money or the apartment because it seemed to him that he was being forced to testify in The Hague. Milan Simić cautioned Witness Agnes not to speak about The Hague on the telephone and proposed that he should contact the lawyers if he agreed to the "option".

29. Finally, Witness Agnes referred briefly in this statement to his reasons for leaving Serbia. From Serbia, he went to Bijeljina, just across the border, and then to Brčko where he stayed with a friend until contacting the international authorities. Witness Agnes explained that he left his bag

¹¹ The reference is most likely to Mr. Nesković, who was a partner in Branislav Avramović's law firm and who testified that he accompanied Branislav Avramović to the house of Witness Agnes's uncle and aunt on one occasion.

behind at his friend's house because he thought it would look suspicious to have luggage with him if he were stopped by the local police.

(b) The second statement

30. The second statement from Witness Agnes deals solely with certain telephone conversations between Witness Agnes and both Mr. Pantelić and Branislav Avramović, which were recorded by an investigator from the Prosecution, Tore Soldal. These are discussed in greater detail below.

(c) The later statements

31. The third statement does not add substantially to the first, but increases the number of telephone contacts Witness Agnes had with Milan Simić from the original four calls, to five to ten calls over a period of time.

32. It is in the later statements that Witness Agnes varies his version of events, for the reasons he sought to explain. In the fourth statement, given in early June 1999, after the Trial Chamber had issued its first order in these proceedings, Witness Agnes asserted for the first time that he met with Milan Simić in person. According to Witness Agnes, Branislav Avramović told him to go to Bosanski Šamac to meet with Milan Simić, and he felt he had no option but to comply. According to this statement, there was only one meeting with Milan Simić at the beginning of April 1999. The meeting was also attended by Branislav Avramović and by another lawyer from Bosanski Šamac. At this meeting Witness Agnes was shown a list of names of people who may have been detained at the primary school in Bosanski Šamac. Although Witness Agnes states that he was alone with Milan Simić for part of the time, it is not alleged in the statement that Milan Simić made any improper offers to Witness Agnes at this time, merely that Milan Simić told him that the meeting must remain a secret as it could be "fatal" for Milan Simić if anyone in The Hague learned of it. Witness Agnes did assert that the offer of money, an apartment and, for the first time, employment, was raised by the lawyers after Milan Simić had left. Witness Agnes said that he had not provided these details earlier as he had feared possible revenge by Milan Simić or his lawyers on Witness Agnes and his family.

33. It is in the final statement, the fifth statement made in late July 1999, after the commencement of these contempt proceedings and after the filing of initial responses from Branislav Avramović and Milan Simić, that Witness Agnes's story changes most. Again, Witness Agnes said that he withheld the information because he feared for the security of innocent people,

whom he declined to identify, still living in the former Yugoslavia. In this statement, Witness Agnes says that he first met Milan Simić in September 1998 and that, in the presence of Branislav Avramović, Mr. Vuković and Milan Simić's "kum" or best man, Milan Simić offered him money prior to testifying, together with an apartment and a job after he had testified. There were other meetings with Milan Simić after this. For the first time, Witness Agnes referred to the involvement in these events of a woman from Bosanski Šamac called Jasna Marosević; telephone calls he made to a person called Mirsad Sahanić (who had been detained with him in Bosanski Šamac); and the pressure put on him by the defence lawyers to persuade Mirsad Sahanić to testify in favour of Milan Simić.

2. Witness Agnes's oral testimony

(a) The outbreak of hostilities in Bosanski Šamac

34. Evidence was led by the Prosecution on this issue in order to support the allegations of interference with Witness Agnes as a potential witness for the defence in the merits proceedings. The Prosecution argued that Witness Agnes was a potentially useful witness for Milan Simić's defence on account of his being held, soon after the outbreak of hostilities, in detention in the primary school in Bosanski Šamac, where Milan Simić is alleged to have committed certain acts which form the basis of the charges against him in the merits proceedings; thus, it was necessary to place Witness Agnes at those events.

35. Witness Agnes testified that, during the few months prior to the outbreak of hostilities in April 1992, he spent some time in Bosanski Šamac,¹² where he met both Jasna Marosević and Mirsad Sahanić.¹³ On the night of 16 April 1992, Witness Agnes testified that he was staying at a hotel in Bosanski Šamac.¹⁴

36. He gave the following evidence relating to his arrest and detention in Bosanski Šamac. On the morning of 17 April 1992, he and Mirsad Sahanić, among others, were arrested near the hotel by a paramilitary formation called the Grey Wolves and forced to run to the police station in Bosanski Šamac.¹⁵ Witness Agnes said that he was not wearing military uniform at the time of his arrest, nor was he armed.¹⁶

¹² T. 159:1.

¹³ T. 28:3 and T. 28:5. This was corroborated by the evidence of those witnesses. T. 175:6 – 22 and T.542:20.

¹⁴ T. 163:17.

¹⁵ T. 29:5 – 10. This evidence was corroborated by the testimony of Mirsad Sahanić. See T.179 – 184.

37. Witness Agnes and Mirsad Sahanić were initially detained at the territorial defence building in Bosanski Šamac, but were subsequently transferred to Brčko, and then to Bijeljina. They were eventually detained at the primary school in Bosanski Šamac for a period of some three or four months.¹⁷ In 1993, after a further transfer to Pelagićevo, where he was assigned to dig trenches, among other things,¹⁸ Witness Agnes joined the army of the Republika Srpska, also known as the VRS.¹⁹ In cross-examination, Witness Agnes testified that he joined the VRS under pressure, saying: “[t]here were two ways out, either to die or to put uniforms on . . .”.²⁰

38. In cross-examination, Witness Agnes was asked about an incident that occurred during his service in the army of the Republika Srpska where he had accidentally shot a girl in Pelagićevo,²¹ and had subsequently been arrested and imprisoned for six or seven months.²² In relation to Witness Agnes’s imprisonment and subsequent release, the Respondents noted that, while in his first statement Witness Agnes had stated that “[s]ometimes [sic] in August I got information that my uncle . . . paid up some people to get me out of that situation”, in cross-examination he denied that his uncle had bribed an official to secure his release from jail.²³

39. On 25 December 1994, Witness Agnes was able to cross the border from the Republika Srpska into Serbia, where he lived with his aunt and uncle and worked in his uncle’s firm.²⁴ In Serbia, Witness Agnes assumed a new personal identity for security reasons.²⁵ He testified that, between the time he left the Republic of Bosnia and Herzegovina in 1994 and the summer of 1998, he only visited Bosanski Šamac in passing.²⁶

(b) The first contact between Witness Agnes and defence counsel for Milan Simić

40. Witness Agnes gave evidence that in July 1988, he was living at his aunt and uncle’s house in Serbia,²⁷ where he met the defence lawyers for Milan Simić in the merits proceedings for the first time. He testified that towards the end of July 1998, Branislav Avramović, Mr. Vuković, and an

¹⁶ T. 117:19.

¹⁷ T. 29:18 – 30:6. Witness Agnes and Mirsad Sahanić were together through much of this, except for a few days when Mirsad Sahanić was in Ugljevik. T.186:13.

¹⁸ T. 31:19.

¹⁹ T. 31:24.

²⁰ T. 142:3.

²¹ T. 287 – 289. This incident was disclosed by Witness Agnes in his first statement to the Prosecution.

²² T. 292:12 and T. 294:17.

²³ T. 144:18 and T. 383:10.

²⁴ T. 32:12 and T. 32:25.

²⁵ T. 297:13.

²⁶ T. 33:7.

²⁷ T. 33:11.

individual referred to as “the lawyer from Doboj”,²⁸ arrived unannounced at his aunt and uncle’s house,²⁹ and inquired whether he had been detained at the primary school in Bosanski Šamac, and if he knew Milan Simić.³⁰ They further inquired as to whether he would be willing to testify in Milan Simić’s favour in the merits proceedings at the International Tribunal.³¹ Witness Agnes gave evidence that he did not agree to testify for Milan Simić at this time, and the defence lawyers left after about twenty minutes.³² Witness Agnes stated that his uncle was present during this conversation with the defence lawyers.³³

(c) Allegations relating to the threatening phone calls to Witness Agnes and pressure to testify in favour of Milan Simić

41. The Respondents are charged, in part, with individual responsibility (by having acted themselves, and in concert with others or by aiding and abetting) for making threats, by telephone, to Witness Agnes, a potential witness, as well as “being in a black motor vehicle driven to the house of Witness Agnes between 2 and 3 a.m., and on one occasion firing a shot in the air”. The following evidence was led in support of these charges.

42. Witness Agnes testified that, shortly after his first contact with the defence lawyers, he started to receive anonymous phone calls, threatening him and his family with violence if he refused to testify,³⁴ although he conceded in cross examination that the name of the man on whose behalf he was to testify was never mentioned in the telephone calls.³⁵ At around the same time, Witness Agnes said that unidentified vehicles started to appear in the driveway of his uncle’s house, and that strangers would get out and walk around the courtyard.³⁶ He testified that, on one occasion, shots were fired into the air near the house.³⁷ These events caused Witness Agnes’s aunt to suffer a nervous breakdown.³⁸ Witness Agnes stated that he had reported these incidents to the local police, but they were, apparently, unable to assist.³⁹

²⁸ See *supra* note 10.

²⁹ T. 33:22 and T. 34:23.

³⁰ T. 33:25.

³¹ T. 34:4.

³² T. 34:6 and T. 35:25.

³³ T. 35:10.

³⁴ T. 36:17.

³⁵ T. 387:3.

³⁶ T. 37:25.

³⁷ T. 38:13.

³⁸ T. 39:3.

³⁹ T. 39:13.

43. Witness Agnes gave evidence that, on account of the immense pressure that he and his family experienced over this period, he finally agreed to testify.⁴⁰ He testified that, although neither Milan Simić nor Branislav Avramović had ever threatened him or his family directly, the fact that the threatening phone calls and the presence of unknown cars in his driveway ceased when he agreed to testify suggested that they were involved in some way.⁴¹

(d) Allegations of suborning perjury and bribery

44. The core allegations against these Respondents comprise attempts to bribe Witness Agnes (as a potential witness) to give false evidence before this International Tribunal in favour of Milan Simić. Witness Agnes testified that, the Respondents' offer of financial reward in exchange for false testimony was extended to him on several occasions. The Trial Chamber now turns to examine the evidence in support of these charges.

45. Witness Agnes gave evidence that, shortly after he had agreed to testify, Branislav Avramović and Mr. Vuković arrived at his uncle's house in Serbia.⁴² The defence lawyers told Witness Agnes that Milan Simić, their client, was not guilty, that he had not mistreated people at the primary school in Bosanski Šamac, and that Witness Agnes should testify before the International Tribunal to this effect.⁴³ The meeting with the defence lawyers lasted for about half an hour.⁴⁴ Shortly thereafter, he received a phone call asking him to go to Bosanski Šamac to meet with Milan Simić.⁴⁵

46. Witness Agnes testified that, sometime in August or possibly September 1998,⁴⁶ he met with Branislav Avramović, Mr. Vuković and Milan Simić in Bosanski Šamac, first at the Jetset café, and then at Milan Simić's office in the Nova Forma building.⁴⁷ He recalled that the individual who had acted as best man at Milan Simić's wedding (his "kum")⁴⁸ was also present at the meeting, and that Jasna Marosević was standing in the hallway, although she was not present during the conversation.⁴⁹ Witness Agnes stated that, at that meeting, he was once again told that he should testify before the International Tribunal in favour of Milan Simić.⁵⁰ More specifically, he was told

⁴⁰ T. 40:3.

⁴¹ T. 63:10 and T. 63:22.

⁴² T. 40 – 41.

⁴³ T. 40:21.

⁴⁴ T. 41:7.

⁴⁵ T. 42:1

⁴⁶ T. 42:25 and T. 43:15

⁴⁷ T. 42:14 and T. 43:14.

⁴⁸ T. 44:18.

⁴⁹ T. 44:13 and T. 47:16.

⁵⁰ T. 45:15.

to say that Milan Simić had never visited the primary school in Bosanski Šamac, that he had not mistreated anyone there, and that he had not taken the Bičić brothers and Perica Misić outside and mistreated them.⁵¹ Instead, Witness Agnes was asked to testify that, on one occasion, Milan Simić went with these persons to the assembly building to drink and eat on friendly terms.⁵² Witness Agnes testified that he knew these things, about which he was expected to give evidence, to be untrue.⁵³ He was, in his own words, “expected to deny all the things that happened”.⁵⁴

47. Witness Agnes gave evidence that at the meeting, he was offered a job, an apartment and approximately DM10,000 by both Branislav Avramović and Milan Simić in exchange for his co-operation in providing the required testimony.⁵⁵ He was led to understand that, after he had testified at the International Tribunal, the Respondents would provide him with a job and a flat in either the Republika Srpska or Serbia.⁵⁶ He did not accept the offer at this stage, but informed the Respondents that he would consider it.⁵⁷ This meeting is mentioned in Witness Agnes’s fifth and final statement, but it is not recounted in any of his prior statements.

48. Witness Agnes referred to a further meeting in Bosanski Šamac, where Milan Simić provided him with the contact telephone number for Mirsad Sahanić, who was a friend of Witness Agnes and who had been detained with him in the primary school in Bosanski Šamac.⁵⁸ Witness Agnes testified that he was told by the Respondents to contact Mirsad Sahanić and to attempt to persuade him to testify in favour of Milan Simić.⁵⁹ Witness Agnes gave evidence that he initiated telephone contact with Mirsad Sahanić soon after receiving his number. Their first conversation was limited to discussing personal issues, and while Witness Agnes spoke to Mr. Sahanić several times after that first call, they never discussed Milan Simić’s case.⁶⁰

49. Witness Agnes further testified that, in September 1998, he was instructed by Branislav Avramović to contact his law offices in Belgrade once every fifteen days.⁶¹ Branislav Avramović had provided him with the relevant telephone numbers.⁶² When he called, he would either speak

⁵¹ T. 46:3.

⁵² T. 46:3.

⁵³ T. 46:16.

⁵⁴ T. 46:12.

⁵⁵ T. 48:24 and T. 47:24.

⁵⁶ T. 113:5.

⁵⁷ T. 48:5.

⁵⁸ T. 50:24.

⁵⁹ T. 51:3.

⁶⁰ T. 70 – 72.

⁶¹ T. 53:3.

⁶² T. 55:3.

with Branislav Avramović or “Igor”,⁶³ or, in the event that neither of them was available, he would leave a message with the secretary.⁶⁴ Witness Agnes believed that the purpose of the regular calls was to ensure that he did not attempt to flee.⁶⁵ He testified that Milan Simić gave him his telephone number in Bosanski Šamac,⁶⁶ and that he would sometimes call Milan Simić, usually at the request of Branislav Avramović,⁶⁷ although they never talked about the case on the telephone.⁶⁸ It was Branislav Avramović and Milan Simić who proposed that Witness Agnes should be referred to by his nickname “Daki” during telephone communications between them.⁶⁹

50. On another occasion, Branislav Avramović and the individual referred to as the “lawyer from Doboj”⁷⁰ visited Witness Agnes at his uncle’s house in Serbia and took a formal statement from him regarding events at the primary school in Bosanski Šamac in 1992.⁷¹ Witness Agnes gave evidence that, while he told the defence lawyers his truthful version of the events, they selectively recorded the information that was most favourable to Milan Simić.⁷² Witness Agnes gave evidence that he was, nonetheless, obliged to sign the statement without having an opportunity to read it through,⁷³ and that he was never provided with a copy.⁷⁴ He said he had signed the statement because, had he not, his life “would have been worthless”.⁷⁵ In cross-examination, Witness Agnes testified that he had been told by Branislav Avramović that the statement would be used in proceedings before the International Tribunal.⁷⁶ Although this recital matches the events recounted in Witness Agnes’s first statement, Witness Agnes could not be clear, when testifying, as to the exact timing of the meeting. The recital does match the account in his first statement that this meeting took place shortly after the cessation of the night phone calls and visits in August or September 1998.

51. Witness Agnes testified that, in the course of that same meeting, Branislav Avramović had also produced a tape-recording of the most favourable portions of Witness Agnes’s statement.⁷⁷

⁶³ This refers to Mr. Pantelić.

⁶⁴ T. 54:16.

⁶⁵ T. 55:24.

⁶⁶ T. 56:17.

⁶⁷ T. 57:6 and T. 57:22.

⁶⁸ T. 58:9 and T. 114:5.

⁶⁹ T. 114:10.

⁷⁰ See *supra* note 10.

⁷¹ T. 59:9 – 18. On cross-examination, Witness Agnes could not recall the precise date of this meeting, but estimated that it took place sometime in September 1998, as, at the meeting, Witness Agnes was told that Stevan Todorović had just been arrested. T. 420:12.

⁷² T. 60:13.

⁷³ T. 60:19.

⁷⁴ T. 66:8.

⁷⁵ T. 61:12.

⁷⁶ T. 433:12.

⁷⁷ T. 64:

Again, Witness Agnes was not provided with a copy, nor was he permitted to hear the tape-recording.⁷⁸ He gave evidence that, during this meeting, Branislav Avramović had explained to him that a programme of examination would commence in May, which would allow Witness Agnes to rehearse the testimony he would give at Milan Simić's trial.⁷⁹ Witness Agnes further testified that Branislav Avramović had told him that, in response to specific questions about Milan Simić's role in the mistreatment of detainees, he should answer that the Bičić brothers and Perica Misić were not mistreated at the primary school, but that they were taken out to drink and eat.⁸⁰ Witness Agnes stated that he knew this was not true.⁸¹ At this same meeting, the individual referred to as "the lawyer from Doboj"⁸² asked Witness Agnes some questions relating to Stevan Todorović, one of Milan Simić's co-accused in the merits proceedings.⁸³

52. Witness Agnes further recalled that a subsequent meeting between himself and Branislav Avramović took place in late 1998 at the Mimoza motel,⁸⁴ where he was shown a list of names and was asked to identify those detained in the primary school in Bosanski Šamac in 1992.⁸⁵ This testimony is inconsistent with his first statement, which places the meeting at the Mimoza Motel in February 1999. Witness Agnes testified that, after each meeting, Branislav Avramović told him he should not discuss the meetings with anyone.⁸⁶

53. Witness Agnes gave evidence that, thereafter, sometime in the first half of October 1998, another meeting took place in Bosanski Šamac. Witness Agnes met Jasna Marosević, Milan Simić, and Branislav Avramović in the Lotos café, and they proceeded to Milan Simić's office, known as the Spomen Dom.⁸⁷ Witness Agnes recalled that he spoke briefly with Mirsad Sahanić by telephone from the office, and that Jasna Marosević spoke to him at greater length.⁸⁸

54. During December 1998, according to his evidence, Witness Agnes's primary task was to try to encourage Mirsad Sahanić to visit Bosnia and Herzegovina,⁸⁹ but he was reluctant to do so.⁹⁰

⁷⁸ T. 66:12.

⁷⁹ T. 67:24.

⁸⁰ T. 68:8.

⁸¹ T. 68:18.

⁸² See *supra* note 10.

⁸³ T. 62:5.

⁸⁴ T. 75:25.

⁸⁵ T. 76:3.

⁸⁶ T. 109:21.

⁸⁷ T. 87:9.

⁸⁸ T. 87:23.

⁸⁹ T. 93:2.

⁹⁰ T. 94:20.

55. Witness Agnes gave evidence that many more meetings took place between himself and counsel for Milan Simić, each one dealing with the same themes: attempting to convince Witness Agnes that Milan Simić was innocent and encouraging Witness Agnes to persuade Mirsad Sahanić to testify in favour of Milan Simić.⁹¹

56. The last time Witness Agnes had face-to-face contact with Branislav Avramović and Milan Simić was at a meeting which took place at Mr. Pisarević's house in Bosanski Šamac in February 1999.⁹² He was again given a list of names, and was asked to identify those who had been detained in the primary school in Bosanski Šamac. He was asked to draw a diagram, indicating the placement of each of the detainees in the detention centre in Bosanski Šamac.⁹³ Witness Agnes gave evidence that, when he told the defence lawyers that he remembered shooting at the primary school, "I was strictly told then that if I go to The Hague, that I should not mention that there was any shooting, and if there was mistreatment and if somebody did come to mistreat and to beat up people, to always say that it was the Grey Wolves".⁹⁴ This version of events given by Witness Agnes in his testimony corresponds most closely with his fifth statement, although there are still inconsistencies, but it does not match the version set forth in his earlier statements.

57. Witness Agnes testified that, on several occasions, Branislav Avramović had described the International Tribunal's witness protection programme in an effort to convince Witness Agnes to testify.⁹⁵

3. The testimony of Mirsad Sahanić

58. Mirsad Sahanić was one of only two other witnesses to testify in the case against the Respondents. He gave evidence about the telephone calls he received from Witness Agnes and Jasna Marosević in late 1998 and early 1999.

59. Mirsad Sahanić's evidence that he had unexpectedly received a telephone call from Witness Agnes, sometime in late 1988, in the early hours of the morning,⁹⁶ essentially corroborates Witness Agnes's account. Mirsad Sahanić confirmed that, before that call, he had not spoken to Witness Agnes since November 1992.⁹⁷

⁹¹ T. 91:24 and 92:16.

⁹² T. 102:7 and T. 96:6.

⁹³ T. 96:19.

⁹⁴ T. 97:5 – 9. The "Grey Wolves" were a Serb paramilitary group. T. 97:12.

⁹⁵ T. 117:8.

⁹⁶ T. 195.

⁹⁷ T. 196:10.

60. Mr. Sahanić also gave evidence that, one or two months after this first call, he received a second telephone call from Witness Agnes⁹⁸ during which he spoke to Jasna Marosević, who asked Mirsad to come visit her in Bosnia and Herzegovina.⁹⁹

61. Mr. Sahanić recalled that, soon thereafter, he received a telephone call in the middle of the night.¹⁰⁰ The caller asked him “Why aren’t you calling Bosnia? You know who is there”.¹⁰¹ The caller did not identify himself, but swore at Mirsad and told him to “Go back to sleep”.¹⁰² Mr. Sahanić testified that, while he was unable to identify the voice, he was ninety percent certain that it did not belong to Witness Agnes.¹⁰³

62. Mr. Sahanić gave the following evidence in relation to his contacts with Jasna Marosević. He spoke with Ms. Marosević on numerous occasions over the next month, and it was always she who originated the calls.¹⁰⁴ Each time, Ms. Marosević would encourage him to commit to a firm date to return to Bosnia and Herzegovina.¹⁰⁵ Although the conversations lasted for a long time, Ms. Marosević never expressed concern about the expense.¹⁰⁶ When Mirsad asked Ms. Marosević about her job, she was very secretive, and she would only reveal that “she travelled a lot”.¹⁰⁷ He recalled that, when he had expressed his concerns about returning to Bosnia and Herzegovina after all that had happened, Jasna was able to provide him with firm guarantees that he would be perfectly safe if he returned.¹⁰⁸ She had said that “she had some people who were important, who were in high positions . . .”.¹⁰⁹ The last time he spoke with Jasna Marosević was in May 1999.¹¹⁰

4. Witness Agnes’s first contact with the International Tribunal

63. On 25 March 1999, the NATO bombing campaign commenced in Serbia, and Witness Agnes testified that he took advantage of the situation to leave Serbia¹¹¹ for Banja Luka in Bosnia

⁹⁸ T. 197.

⁹⁹ T. 199:11.

¹⁰⁰ T. 208:13.

¹⁰¹ T. 208:24 – 25.

¹⁰² T. 209:1.

¹⁰³ T. 209:7.

¹⁰⁴ T. 210:10, T. 217:16 and T. 202:10.

¹⁰⁵ T. 203:1.

¹⁰⁶ T. 203:15.

¹⁰⁷ T. 204:5.

¹⁰⁸ T. 201:1.

¹⁰⁹ T. 204:15 – 16.

¹¹⁰ T. 208:1.

¹¹¹ T. 103:11.

and Herzegovina.¹¹² Whilst in Banja Luka, Witness Agnes continued to have telephone contact with either Branislav Avramović or Milan Simić once every fifteen days.¹¹³

64. According to his evidence, on about 4 May 1999, Witness Agnes went to the United Nations in Brčko and requested their assistance. He was directed to the nearby SFOR base, where he stayed for three days until Tore Soldal, a Prosecution investigator, arrived.¹¹⁴

5. Tore Soldal's testimony

65. Mr. Soldal was the first representative from the Prosecution to meet with Witness Agnes after his decision to seek assistance. Mr. Soldal took a formal statement from Witness Agnes at the SFOR base, which was the product of discussion and voluntary disclosure, coupled with questions from Mr. Soldal over a period of four days.¹¹⁵ After making this first statement, Witness Agnes and Mr. Soldal travelled together to Sarajevo, where Witness Agnes signed his first statement before he knew anything about the future.¹¹⁶ In Sarajevo, Mr. Soldal asked Witness Agnes whether he would be willing to call Branislav Avramović and ask him about the money.¹¹⁷ Witness Agnes agreed to have such a conversation recorded.¹¹⁸

66. Thereafter, Witness Agnes placed two telephone calls, one to Mr. Pantelić and subsequently to Branislav Avramović; both were recorded by Tore Soldal.¹¹⁹ Witness Agnes's second statement relates solely to the recorded telephone conversations.

6. The recorded telephone conversations between Witness Agnes and the defence lawyers

67. Mr. Soldal testified that the purpose of the telephone call to the defence lawyers was twofold; firstly, it provided an opportunity for the Prosecution to check Witness Agnes's story and, secondly, if it turned out that Branislav Avramović knew Witness Agnes, the transcript of the conversation might serve as corroborative evidence in the contempt proceedings.¹²⁰

¹¹² T. 103:19.

¹¹³ T. 104:11.

¹¹⁴ T. 104:23.

¹¹⁵ T. 239:10 and T. 240:8.

¹¹⁶ T. 105:12, T. 124:17 and T. 225:14.

¹¹⁷ T. 228:8.

¹¹⁸ T. 228:14.

¹¹⁹ T. 228 – 9.

¹²⁰ T. 229:12.

68. An English transcript of the telephone conversation, which was translated by the official translation unit of the International Tribunal¹²¹ from the original Bosnian-Croatian-Serbian language, was entered into evidence as Exhibit P 1a. Witness Agnes is referred to therein as “Daki”, Branislav Avramović is designated “Bane” and “Igor” refers to Mr. Pantelić. The relevant portions of the transcript are set forth below.

Daki: ... Hey, Igor, listen! When does that programme with Bane start?

Igor: Towards the end of the year.

Daki: I was at your place with him and now he is saying something about May, mid-.....

Igor: That doesn't matter. That doesn't matter. It is not that urgent yet.

Daki: Hey, listen, er, I definitely need the money, did you hear me?

Bane: What?

Daki: Do you understand me? You know, this situation, this, I have nowhere to go. Apartment, this and that.

Bane: I shall send you /unintelligible/

Daki: We'll sort it out.

Bane: /unintelligible/

Daki: Tomorrow afternoon?

Bane: /unintelligible/

Daki: Aha.

Bane: /unintelligible/

Daki: Alright, if it should be, er, you call me, that is, I shall call you, you know, when you come.

Bane: Get in touch there with her, our...

Daki: Alright, then, er. So, there is no problem about the money?

Bane: We'll be in touch through her.

Daki: Alright. Goodbye.

¹²¹ The Conference and Language Services Section (“CLSS”).

69. Subsequently, the Respondents submitted an in-house translation of the telephone conversation for consideration, which was entered as Exhibit D 1b. A revised translation, prepared by the CLSS after comparing the two transcripts, was entered as Exhibit 1c. Several lines that appeared in the original translation are recorded as unintelligible in the final version. Significantly, whereas Exhibit P 1a has Branislav Avramović responding to Witness Agnes's request for money by saying "I shall send you...", in the final version, this response is now recorded as unintelligible.

70. In cross-examination, Witness Agnes testified that the reason he did not mention a specific sum of money during the conversation with the defence lawyers was because "[w]hen I spoke to the gentlemen by phone, they wouldn't allow me to mention the sum, nor to mention The Hague . . .".¹²² The Respondents' answer to this evidence will be considered below.

B. The Respondents' Case

71. While Branislav Avramović, the first Respondent, acknowledged having limited contact with Witness Agnes, he denied attempting to bribe Witness Agnes or suborn perjury, as set forth in the allegations. Milan Simić, the second Respondent, testified that he had never seen Witness Agnes before he appeared as a witness in the contempt proceedings.¹²³ The Respondents allege that Witness Agnes's motive for bringing the allegations of contempt against them was to obtain relocation to another country. In this regard, the Respondents contend that Witness Agnes had been looking for an opportunity to leave the former Yugoslavia for some time; his life in Serbia was no longer tenable, since he had a false identity, he was wanted in Republika Srpska on murder charges and he could not return to his home in Bihać, as he was not welcome there.

1. Testimony of Jasna Marosević

72. Ms. Marosević testified as a witness in the Respondent's case. She had known Witness Agnes and Mirsad Sahanić for a few months before the outbreak of the conflict in Bosanski Šamac and had resumed contact with Witness Agnes after the conflict in July or August 1998.¹²⁴ Her evidence was significant in that she provided the critical initial link between the defence lawyers for Milan Simić in the merits proceedings, in particular, Drago Vuković, and Witness Agnes.

¹²² T. 393:10 – 12.

¹²³ T. 804.

¹²⁴ T. 549.

73. Ms. Marosević described herself as a good friend of Milan Simić.¹²⁵ She gave evidence that, when she told Witness Agnes that Milan Simić had been accused of war crimes, he responded by saying that, as far as he knew, Milan Simić “hadn’t done anything bad . . .”.¹²⁶ It was then that she had asked Witness Agnes whether he would be willing to speak with Milan Simić’s defence lawyers.¹²⁷ She testified that, of her own initiative, she had asked Milan Simić for the telephone number of his defence lawyers, in the event that she should discover any helpful leads.¹²⁸ She gave evidence that she called Drago Vuković, who at that time was acting as lead counsel for Milan Simić in the merits proceedings, in mid-August 1998, and that Mr. Vuković came to the café in Bosanski Šamac that same day, where she introduced him to Witness Agnes.¹²⁹ On Ms. Marosević’s account, Witness Agnes voluntarily agreed to meet the defence lawyers.¹³⁰

2. The first meeting between Witness Agnes and Drago Vuković

74. Mr. Drago Vuković, who acted as lead counsel for Milan Simić in the merits proceedings from March to October 1998,¹³¹ gave evidence that he was the first defence lawyer to have contact with Witness Agnes. He testified that, in mid-August 1998, Ms. Jasna Marosević contacted him by telephone asking him to come to Bosanski Šamac to meet with Witness Agnes.¹³² Mr. Vuković left for Bosanski Šamac that afternoon and met Witness Agnes and Jasna Marosević in the Jetset café.¹³³ The two men went immediately to the offices provided by Milan Simić, where Mr. Vuković arranged all his meetings in Bosanski Šamac related to the merits proceedings.¹³⁴

75. The meeting lasted about two and a half hours, during which time, Mr. Vuković stated, he enquired into events at the primary school in Bosanski Šamac, where Witness Agnes had been detained in 1992, and gleaned some details of Witness Agnes’s history.¹³⁵ Mr. Vuković testified that Witness Agnes told him that he had never seen Milan Simić during the period of his detention at the primary school and that he did not believe Milan Simić could have committed the crimes of which he was accused, since he knew Mr. Simić to be a mild-tempered man.¹³⁶ In cross-examination, Mr. Vuković testified that Witness Agnes had told him that he had based this

¹²⁵ T. 593.

¹²⁶ T. 551.

¹²⁷ T. 551.

¹²⁸ T. 552.

¹²⁹ T. 554 – 5.

¹³⁰ T. 553.

¹³¹ T. 483:15.

¹³² T. 484:22.

¹³³ T. 485:7.

¹³⁴ T. 485:13.

¹³⁵ T. 487:6.

¹³⁶ T. 487:22.

conclusion on the impressions he had gained of Milan Simić in Bosanski Šamac in the years after the conflict.¹³⁷ Mr. Vuković further testified that Witness Agnes had told him that, after his detention, he had joined the army of the Republika Srpska, that he had been accused of killing a girl and that he now lived in Serbia under an assumed name.¹³⁸

76. After the meeting, Mr. Vuković recalled giving Witness Agnes his office telephone number to enable him to maintain contact.¹³⁹ He testified that, although his general impression of Witness Agnes after the meeting was that he would not be a credible witness,¹⁴⁰ he thought Witness Agnes could be useful as he was in contact with several individuals who had been detained with him in Bosanski Samać who might serve as witnesses for the defence case in the merits proceedings.¹⁴¹ Although Mr. Vuković said he had taken notes during the meeting, he had, apparently, destroyed them.¹⁴²

3. Second meeting between Branislav Avramović, Witness Agnes and Drago Vuković on 22 September 1998

77. Mr. Vuković testified that he next met with Witness Agnes in a small town in Serbia some seventy kilometres from Belgrade.¹⁴³ The purpose of the second meeting was to introduce Witness Agnes to Branislav Avramović, who was to replace Drago Vuković as lead counsel for Milan Simić.¹⁴⁴ His testimony was that he introduced Branislav Avramović to every potential witness or significant person for Milan Simić's defence, in the same way as he introduced him to Witness Agnes.¹⁴⁵ Mr. Vuković testified that the last time he saw Witness Agnes was at this meeting.¹⁴⁶

78. Branislav Avramović gave evidence that he first learned of Witness Agnes during a conversation with Mr. Vuković, who relayed his considerable doubts about Witness Agnes's character.¹⁴⁷ At the end of the meeting on 22 September 1998, Witness Agnes and Branislav Avramović arranged to meet again in about a week's time. The reason Branislav Avramović gave for arranging a further meeting with Witness Agnes was his desire to talk with him on certain issues

¹³⁷ T. 512:16

¹³⁸ T. 488:23.

¹³⁹ T. 490:7.

¹⁴⁰ T. 490 -1.

¹⁴¹ T. 490:7.

¹⁴² T. 510:7 – 511:11.

¹⁴³ T. 493:1.

¹⁴⁴ T. 493:6

¹⁴⁵ T. 494:19.

¹⁴⁶ T. 496:8.

¹⁴⁷ T. 655:22 and 656:16.

that had not been covered by Mr. Vuković, to see if he had any additional information;¹⁴⁸ in particular, Branislav Avramović wanted to discuss with Witness Agnes the new persecution count against his client.¹⁴⁹ Witness Agnes provided him with the address of his uncle's house in Serbia and said they could meet there.¹⁵⁰ This meeting with Witness Agnes is reflected in the contemporaneous billing records as reviewed by the Senior Legal Officer of the Trial Chamber. Witness Agnes did not recall this meeting, either in his statements or in his testimony.

4. Third meeting between Branislav Avramović, Goran Nesković and Witness Agnes in Serbia on 28 September 1998

79. Branislav Avramović gave evidence that, on 28 September 1998, he and Goran Nesković, a partner at his law firm, went to the house belonging to Witness Agnes's uncle in Serbia.¹⁵¹ Mr. Nesković, who testified in the Respondent's case, confirmed that he had accompanied Branislav Avramović on this trip, and that Branislav Avramović had told him that he was going to meet with a witness.¹⁵² The lawyers initially engaged in a general discussion with Witness Agnes and his uncle on the terrace of the house.¹⁵³ Branislav Avramović recalled suggesting that he and Witness Agnes should go inside to talk, as he had brought some documents to discuss.¹⁵⁴ He asked Witness Agnes about the persecution charges that had recently been added to the indictment against Milan Simić in the merits proceedings, and further requested his assistance in identifying individuals who had been detained in the primary school in Bosanski Šamac.¹⁵⁵ Witness Agnes had mentioned several names at that time, including that of Mirsad Sahanić,¹⁵⁶ and he had offered to contact those individuals to see if they would assist in the defence case.¹⁵⁷ Branislav Avramović testified that "I told him that for me, as Defence counsel, this would be very helpful, but that I would leave it up to him to decide whether he wanted to do that or not."¹⁵⁸

80. Branislav Avramović testified that it was only after this meeting, during which he was able to evaluate the information Witness Agnes could provide, he had decided to use Witness Agnes in the future solely as a source of information for the defence, and not as a witness.¹⁵⁹ Branislav

¹⁴⁸ T. 662.

¹⁴⁹ T. 719.

¹⁵⁰ T. 662:5.

¹⁵¹ T. 664:23.

¹⁵² T. 523:23.

¹⁵³ T. 666:12 and T. 524:7.

¹⁵⁴ T. 667:6.

¹⁵⁵ T. 668.

¹⁵⁶ T. 669.

¹⁵⁷ T. 669:10.

¹⁵⁸ T. 669:16 – 18.

¹⁵⁹ T. 672.

Avramović testified that Witness Agnes's statement that he had never seen Milan Simić in the primary school was not significant to the defence case, since Milan Simić, in his first statement to the International Tribunal, had acknowledged going to the primary school in Bosanski Šamac on one occasion.¹⁶⁰ Branislav Avramović stated that after this meeting "the agreement was that [Witness Agnes] should call me up if he had any information linked to any contacts that he mentioned he would be making. And we did not make any arrangements at that time. There was absolutely no reason to do that".¹⁶¹

81. Branislav Avramović gave evidence that, although he took notes of the substantive information conveyed to him by Witness Agnes during this meeting,¹⁶² those notes were later destroyed.¹⁶³ Branislav Avramović denied having taken a tape-recorder with him to this meeting.¹⁶⁴

82. Goran Nesković gave evidence that Branislav Avramović and Witness Agnes were inside the house for about thirty minutes before he joined them for the last ten minutes of the conversation.¹⁶⁵ They appeared to be discussing events in Bosanski Šamac.¹⁶⁶ Mr. Nesković was eager to get back to Belgrade and the two defence lawyers left shortly thereafter.¹⁶⁷ This meeting is reflected in the contemporaneous billing records as reviewed by the Senior Legal Officer of the Trial Chamber.

5. Subsequent meetings between the lawyers and Witness Agnes

83. Branislav Avramović testified that he next had contact with Witness Agnes when he received a telephone call from him, sometime in November 1998, asking Branislav Avramović to stop at his uncle's house in Serbia the next time he was travelling to Bosanski Šamac.¹⁶⁸ A few days later, as requested, Branislav Avramović arrived at the house.¹⁶⁹ Branislav Avramović recalled that they went to the Mimoza motel in the village, where Witness Agnes asked him about the witness protection programme in The Hague.¹⁷⁰ Witness Agnes told him that the individuals he had offered to contact on behalf of the defence would want to know what protection would be

¹⁶⁰ T. 671:24 and T. 674:3.

¹⁶¹ T. 678.

¹⁶² T. 670:14 – 23.

¹⁶³ T. 723 – 724.

¹⁶⁴ T. 671:4.

¹⁶⁵ T. 525:6.

¹⁶⁶ T. 525.

¹⁶⁷ T. 669:19.

¹⁶⁸ T. 678:13.

¹⁶⁹ T. 679:9.

¹⁷⁰ T. 679:15.

available to them.¹⁷¹ Branislav Avramović explained very briefly his understanding of how the system worked, and then he left.¹⁷²

84. Branislav Avramović gave evidence that Witness Agnes called him again in December 1998, with information that Mirsad Sahanić was coming to Tuzla over the New Year and that he would try and contact him.¹⁷³ Branislav Avramović received another phone call from Witness Agnes in January 1999 telling him that he had not succeeded in contacting Mirsad Sahanić.¹⁷⁴

85. The next contact occurred around the end of March 1999, when Witness Agnes called to say that he was in Banja Luka staying with his relatives, and that he wished to see Branislav Avramović.¹⁷⁵ Witness Agnes left a telephone number where he could be reached, but Branislav Avramović, although he made several attempts to contact him, was unable to do so.¹⁷⁶ Thereafter, Witness Agnes contacted him by telephone and they arranged to meet at the Lotos café in Bosanski Šamac.¹⁷⁷

6. The final meeting between the lawyers and Witness Agnes

86. Branislav Avramović gave evidence that, towards the end of March 1999, he, Spasoje Pisarević, Witness Agnes and Jasna Marosević met in the Lotos café in Bosanski Šamac, as arranged.¹⁷⁸ The three men had a brief conversation in the café, and then left together.¹⁷⁹ Witness Agnes had inquired as to whether Branislav Avramović could be of assistance in finding him a job or some money, as he had no livelihood in the Republika Srpska.¹⁸⁰ Branislav Avramović stated: “[h]e complained that he didn’t have a job, that he didn’t have an income, that he didn’t have any way to live, and that quite simply, he did not have any money to live on, and that if possible, could I help him in that respect?”.¹⁸¹ Branislav Avramović suggested that, if Witness Agnes made contact with any potential witnesses, then he might be able to provide him with *per diem* but, as he had no contacts in Republika Srpska, he did not feel that he could assist in finding Witness Agnes a job

¹⁷¹ T. 680.

¹⁷² T. 680:6.

¹⁷³ T. 680:11.

¹⁷⁴ T. 680:24.

¹⁷⁵ T. 682:5.

¹⁷⁶ T. 682:21.

¹⁷⁷ T. 683:9.

¹⁷⁸ T. 683:16.

¹⁷⁹ T. 684:1. This was confirmed by the testimony of Jasna Marosević, at T. 564 and the statement of Spasoje Pisarević dated 7 July 1999.

¹⁸⁰ T. 685:2.

¹⁸¹ T. 685.

there.¹⁸² Branislav Avramović testified that this was the last personal contact he had with Witness Agnes.¹⁸³

87. The statement provided by Spasoje Pisarević about this meeting fully corroborates Branislav Avramović's account.

7. The recorded telephone conversations

88. Both Igor Pantelić, who testified as a witness in the Respondent's case, and Branislav Avramović were asked questions about the recorded telephone conversations.

89. Mr. Pantelić, who, according to the transcript of his conversation with Witness Agnes, advised him that the "programme" would start later in the year, testified that he had not understood what Witness Agnes was referring to when he said "the programme".¹⁸⁴ He gave evidence that he thought Witness Agnes might be referring to a witness protection programme and, as he knew the case had been delayed, he gave information to that effect.¹⁸⁵ However, when the Trial Chamber pointed out that Witness Agnes had very clearly referred to "that programme with Bane," Mr. Pantelić conceded that the witness protection programme is run by the International Tribunal, not by Branislav Avramović.¹⁸⁶

90. Branislav Avramović denied any knowledge of a "programme" with Witness Agnes that may have been starting in mid-May. He testified that "[t]here was no programme agreed between him and me linked to any kind of trial or any methodology of work, if that is what you are asking me. That is something I never discussed with him, never".¹⁸⁷ As to the meaning of his brief conversation with Witness Agnes, much of which was rendered unintelligible due to the poor quality of the recording, Branislav Avramović stated that his understanding at the time was that he and Witness Agnes would meet in Bosanski Šamac, through Jasna "so as to talk about what I assumed he wanted to discuss, and that is his existential problem, because that is what he had told me at the meeting in April".¹⁸⁸ Branislav Avramović firmly denied that he had ever discussed giving Witness Agnes money: "[i]t was never the topic of our conversations, nor did he ever ask for

¹⁸² T. 685.

¹⁸³ T. 686:17.

¹⁸⁴ T. 791:18.

¹⁸⁵ T. 793:10.

¹⁸⁶ T. 799:17.

¹⁸⁷ T. 767.

¹⁸⁸ T. 770.

it, nor did I ever offer him anything of the kind, nor was that ever the subject of our conversations".¹⁸⁹

¹⁸⁹ T. 689.

IV. ANALYSIS AND FINDINGS

91. The Tribunal's jurisdiction to deal with contempt was recently considered in detail by the Appeals Chamber in the *Tadić* case.¹⁹⁰ It was held that the power to deal with contempt was within the inherent jurisdiction of the Tribunal, deriving from its judicial function, in order to ensure that its exercise of the jurisdiction which is expressly given to it by its Statute is not frustrated and that its basic judicial functions are safeguarded.¹⁹¹ The inherent power is to hold in contempt those who knowingly and wilfully interfere with the Tribunal's administration of justice.¹⁹² It includes intimidation of, interference with, or an offer of a bribe to, a potential witness before the Tribunal, or any attempt to intimidate or to interfere with such a witness.¹⁹³ That inherent power exists independently of the terms of Rule 77, and the amendments made to that Rule from time to time do not limit that inherent power.¹⁹⁴

92. The Trial Chamber is satisfied that Witness Agnes was, at the relevant times, a potential witness before the Tribunal in the merits proceedings. In the end it was not argued, nor could it be, that the allegations made by Witness Agnes against the two Respondents, if established, would not constitute contempt of the Tribunal in the sense of knowingly and wilfully interfering with its administration of justice. The only argument has been whether the truth of the allegations made by Witness Agnes has been established beyond reasonable doubt. The evidence of Witness Agnes is the sole evidence in the proceedings in support of those allegations, and there was in the end no corroboration of the allegations which he made.¹⁹⁵ The issue to be determined was therefore whether the allegations of Witness Agnes should be believed.

93. The first contact which Witness Agnes made with anyone connected to the Tribunal was some five weeks after he had fled from Serbia into Bosnia and Herzegovina when the NATO bombing of Serbia commenced in March 1999. He sought the assistance of United Nations officials at Brčko, who referred him to the nearby SFOR base. He stayed at that base for three days until interviewed by an investigator from the Prosecution.

¹⁹⁰ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A-R77, Judgment on Allegations of Contempt Against Prior Counsel, Milan Vujin, 31 Jan 2000.

¹⁹¹ *Ibid.* paras. 13, 18.

¹⁹² *Ibid.* para. 26(a).

¹⁹³ *Ibid.* paras. 23, 26(b).

¹⁹⁴ *Ibid.* paras. 27-28.

¹⁹⁵ The original transcript of the telephone conversation between Witness Agnes and Branislav Avramović, Exhibit P 1a, did provide some corroboration, but in the final version the relevant passage was described as "unintelligible".

94. Counsel for the Respondents asked Witness Agnes in cross-examination whether he had planned, even before speaking to any lawyers, to try to get out of the former Yugoslavia using the Tribunal as a means of being relocated. Witness Agnes denied any such plan but acknowledged that he had wanted to leave the region, to put what occurred during the war behind him, and that to this end he had contacted embassies of certain foreign countries. It was not directly put to Witness Agnes that he knew before speaking to the United Nations officials at Brčko that the Tribunal would institute measures to ensure his re-location to a safe country if he were to become involved in an inquiry into the allegations he had made. Indeed, from his point of view, Witness Agnes may well have thought that, as a result of making these allegations, he would inevitably be exposed to retaliation.

95. In those circumstances, the act of Witness Agnes in making the allegations, by itself, would normally have given the allegations he initially made at least some inherent credibility. There was nothing put forward by Mr. Avramović which removed that inherent credibility, or which gave rise to a reasonable doubt as to their truth. He explained his numerous meetings with Witness Agnes upon the basis that Witness Agnes was a useful source of information for him in preparing the defence of his client, Milan Simić.¹⁹⁶ That explanation was wholly inconsistent with the picture which Mr. Avramović and his witnesses sought to paint of Witness Agnes as an unreliable and discreditable person whom he had discarded as a potential witness at a very early stage.¹⁹⁷ The Trial Chamber does not consider that there is any reasonable possibility that this explanation was true.

96. Whatever inherent credibility the initial allegations may have had, however, it was subsequently destroyed by Witness Agnes himself. The minor differences in the story given in his third statement were perhaps understandable, but thereafter, in the fourth and fifth statements, the elaboration and diversification of the story which he told could no longer be excused by the explanation that he had initially feared possible revenge upon himself, his family, and other persons (whom he declined to identify). Whilst no doubt there were by that time arrangements already in hand for his re-location, there were no protective measures in place in relation to his family at the time when the fourth and fifth statements were made. The fact that Witness Agnes was prepared to expand his story considerably once he realised that he would himself be re-located necessarily gives rise to substantial doubts as to the truth of the allegations which he initially made.

¹⁹⁶ T. 672, 752.

97. Little was put to Witness Agnes in cross-examination which affected his credit. A lot of time was spent in relation to the contents of a blue bag which had belonged to him and which he had left behind in Serbia when he fled. Although the conflict between his evidence and the evidence of the Respondents' witnesses as to those contents gave rise to questions concerning his credit, the alleged contents of that bag themselves had no bearing at all upon the facts of the case, and no significant bearing upon his credit as a witness. He was nevertheless not an impressive witness in his demeanour.

98. One particular incident during the course of his evidence significantly revealed the true attitude which Witness Agnes had towards the proceedings. On the fourth day of his evidence, Witness Agnes refused to enter the courtroom to continue his testimony until certain protective measures had been instituted for members of his family as a result of threats he alleged they were receiving.¹⁹⁸ He resumed his evidence the next day only reluctantly.¹⁹⁹ Whilst the Trial Chamber is sensitive to the predicament which Witness Agnes believed that he and his family were in, his attempt to hold the Tribunal to ransom reflected poorly upon his credit.

99. In the end, although the uncorroborated evidence of Witness Agnes raised grave suspicions in relation to the conduct of Mr. Avramović, it did no more. Not even the gravest of suspicions can establish proof beyond reasonable doubt, and far more substantial evidence would be required before Mr. Avramović could be found guilty. And, as a result of Witness Agnes's destruction of his own credit, the case against Milan Simić was completely unsubstantiated.

100. Based upon the evidence presented, the Trial Chamber was not satisfied beyond reasonable doubt that the allegations of contempt made by Witness Agnes against the two Respondents were true.

¹⁹⁷ T. 677, 751-753.

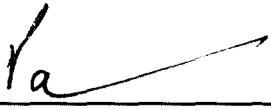
¹⁹⁸ T 312-329 (Closed Session).

¹⁹⁹ T. 335.

V. DISPOSITION

101. It was for the foregoing reasons that the Trial Chamber unanimously gave **JUDGEMENT**
- (1) that the allegations of contempt against Branislav Avramović have not been proven beyond a reasonable doubt,
 - (2) that the allegations of contempt against Milan Simić have not been proven beyond a reasonable doubt,
- and that accordingly neither Respondent is in contempt of this Tribunal.

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



Patrick Robinson
Presiding

Dated this thirtieth day of June 2000
At The Hague
The Netherlands

[Seal of the Tribunal]