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Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

(Exclusively for the use of the media. Not an official document)

CHAMBERS

The Hague, 27 March 2009

Judgement Summary For Dragan Jokić

Please find below the summary of the Judgement read out today by Judge Agius:

The Trial Chamber is sitting today to deliver its Judgement in the contempt case of Dragan Jokić. Jokić is charged with contempt of the Tribunal punishable under Rule 77 of the Rules.

For the purposes of this hearing, the Chamber will briefly summarize the procedural history of the case, the applicable law, certain submissions of the party, and the Chamber's findings. We would like to emphasize that this is but a summary and that the only authoritative account of the Chamber's findings is the written confidential Judgement, which fully describes the facts and the Chamber's reasoning. There is also a public version of the Judgement.

We shall now give you the procedural history of the case. At the request of the Prosecution, Jokić was issued a subpoena to appear before the Chamber to give oral testimony in the case of Prosecutor v. Popović *et al.* The decision stated that there were good grounds to believe that Jokić's testimony could be material to the facts at issue. The Chamber also ordered Jokić's testimony to be given in closed session, and that he could be represented by Defence Counsel.

On 31 October 2007, when asked to take the solemn declaration, Jokić submitted that he was unable to testify. Jokić was instructed to provide a confidential and *ex parte* filing explaining his refusal. On 1 November 2007, the Chamber, having read Jokić's filing, decided that it did not justify a refusal to testify. The Chamber then held that it had reason to believe that Jokić may be in contempt of the Tribunal and decided, pursuant to Rule 77(D)(ii) to prosecute the matter itself.

Oral hearings were held on 19 November 2007, 10 December 2007 and 15 December 2008. Jokić pleaded not guilty to the contempt charge. Additionally, he adduced seven exhibits, all of which were admitted, and led evidence from two witnesses, including a Defence Expert who submitted a report.

The Chamber instructed the Registrar to appoint a psychiatric expert to examine Jokić. Two opinions were requested from the Chamber Expert on the mental condition of Jokić prior to and after the service of the subpoena, and as to Jokić's fitness to stand trial and his state of mind when he refused to testify. Two expert reports were filed in response to these requests dated 16 June and 20 August 2008. Jokić was subsequently given an opportunity to cross examine the Chamber Expert.

Jokić filed a final trial brief on 13 November 2008 and a supplemental brief, after the cross examination of the expert, on 12 January 2009.

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We'll now move to the relevant law as applied in this case. While the Statute does not address contempt of court, the Appeals Chamber has held that the power to pursue contempt proceedings is within the inherent authority of the Tribunal and is reflected in Rule 77. Rule 77(A)(i) specifically provides that "the Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who being a witness before a Chamber, contumaciously refuses or fails to answer a question". From the analysis that can be found in the Judgement, the Chamber concluded that Rule 77(A)(i) imposes criminal liability where a witness knowingly and wilfully interferes with the Chamber's administration of justice, by persistently refusing or failing to answer a question without reasonable excuse while being a witness before the Chamber.

We'll now move to Jokić's submissions. On a preliminary procedural point, Jokić contends that the conduct of the proceedings in his contempt trial deprived him of his procedural rights under Rule 94 bis, as his right to a public hearing was violated by the order that the cross-examination of the Chamber Expert was to be held in closed session; a violation which was not remedied by the Chamber's subsequent decision to open the proceedings to the public. The Chamber has already addressed the issue in a Confidential Decision filed on 18 November 2008, and during the hearing of 15 December 2008. Therefore, it finds no reason to re-address it in this judgement.

On the substantive issues Jokić does not challenge the fact that after being served a subpoena, he appeared before the Chamber and declared that he did not feel fit to testify. Jokić submits that he did not act with the specific intent required to interfere with the administration of justice under Rule 77. Jokić avers that the evidence he adduced at trial demonstrates that "there were reasonable excuses for the fact that he did not testify before the Chamber". Moreover, Jokić questions the qualifications of the Chamber Expert by comparing his qualifications with the Defence Expert's. He further contends that the two Chamber Expert reports corroborate the conclusions of the Defence Expert, except with regard to the issue of the reliability of any information obtained from Jokić during testimony. With regard to the Second Chamber Expert Report, Jokić submits that the Chamber delegated its inherent and exclusive authority when it asked the Chamber Expert to address Jokić's state of mind at the time he refused to testify, and thereby violated the basic principles of its judicial function.

We shall now move to the Chamber's findings with regard to the Chamber Expert. The Chamber Expert is a psychiatrist, whose name is included in the Tribunal list of experts prepared pursuant to Rule 74 bis and has previously appeared as a court expert. He was assigned to this task, following the Chamber's approval, because of his professional expertise and experience. The Chamber has no doubt that the Chamber Expert is qualified to serve as an expert witness. The fact that the Defence Expert is also very experienced, does not undermine the qualifications of the Chamber Expert. The role of an expert witness in proceedings before the Tribunal is to provide Chambers with evidence based upon the expert's specialized knowledge. The Chamber is vested with the ultimate authority and responsibility to adjudicate on the disputed matters, assess the reliability of the evidence, including expert evidence, and to determine what weight should be accorded to it. Here, the appointment of the Chamber Expert assisted the Chamber's consideration and did not compromise the fairness of the process.

It is not disputed that on 31 October and 1 November 2007, Jokić repeatedly refused to testify in the case of Popović *et al.* He remained persistent in his refusal to testify even after it was explained to him that he could possibly be indicted for contempt.

We shall now consider whether Jokić had reasonable excuse not to testify. Witnesses summoned by subpoena are under a duty to testify. It is a basic principle of this judicial institution and goes to the heart of the notion of justice. It ensures that the evidence required for the proper administration of justice is available. Only a few exceptions are available. The decision on whether a proposed witness falls under these exceptions is to be

exercised solely by the relevant Chamber, and not by the witness. In so far as there may be concerns for the safety of witnesses or their families, other mechanisms have been developed to address these concerns and to protect witnesses whose testimony may put them or their families in danger. Concerns for the safety of witnesses or their relatives do not automatically override the duty to testify. Here, protective measures were granted when Jokić was subpoenaed. The Chamber is therefore not convinced that Jokić's security concerns provide a reasonable excuse for his refusal to testify.

Jokić further contends that he is afraid of falsely incriminating someone. His concern is supported to a certain extent by the Defence Expert. A different conclusion was reached by the Chamber Expert. While the Statute and Rules do not provide a standard on competency to testify before the Tribunal, applying the plain meaning of the word competency to testify requires that the proposed witness has a basic capacity to understand the questions put to him and give rational and truthful answers to those questions. The witness' credibility and the reliability of his answers can be questioned by the parties and must be assessed by the Chamber. A health condition does not automatically disqualify a witness from testifying. To undermine the capacity of a person to serve as a witness, such a condition must have a substantial effect on his credibility, which consequently empties his evidence from having any probative value. Applying this standard with reference to the evidence before it, the Chamber is not satisfied that Jokić lacked competency to testify.

The Chamber will now turn to examine whether by refusing to testify, Jokić knowingly and wilfully interfered with the Chamber's administration of justice. After a careful reading of the Chamber and Defence Expert Reports as well as hearing Jokić and observing his demeanour, the Chamber cannot accept the submission of the Defence Expert that Jokić did not make the decision not to testify. What emerges from the evidence is that Jokić's subpoena presented him with a choice. He made a conscious decision not to testify and understood the consequences of his behaviour. The possibility that he was motivated by other considerations is not relevant.

For the reasons summarised, which are articulated in full in the Decision, the Trial Chamber is convinced beyond reasonable doubt that you, Mr Jokić, by persistently refusing to testify without a reasonable excuse in the case of Prosecutor v. Popović *et al.*, knowingly and wilfully interfered with the Tribunal's administration of justice. You are thereby guilty of contempt of the Tribunal, pursuant to Rule 77(A)(i).

We will now turn to sentencing. For contempt, pursuant to Rule 77(G), the Chamber can impose a term of imprisonment of up to seven years, a fine not exceeding 100,000 euros, or both. In deciding the punishment to be imposed, the Chamber has taken into consideration both the gravity of the conduct involved and the need to deter such conduct in the future. The Chamber considers that Jokić committed a serious offence, which goes to the essence of the notion of justice. By his refusal to testify he has deprived the Chamber of relevant evidence and acted against the interests of justice. The Chamber, however, also takes into account the personal circumstances of Jokić as well as the fact that he has no past record of interfering with the administration of justice before this Tribunal. It considers these factors as mitigating circumstances.

The Trial Chamber sentences you, Mr. Dragan Jokić, to a single term of imprisonment of four months. This sentence shall be served consecutively to any other prison term you are currently serving.
