

**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

**Case No. IT-98-32/1-R77.2-A**

**Before:** Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Arlette Ramaroson  
Judge Andrézia Vaz  
Judge Khalida Rachid Khan

**Registrar:** Mr. John Hocking

**Date:** 27 March 2012

**THE PROSECUTOR**

**v.**

**JELENA RAŠIĆ**

*Public*

---

**Corrigendum to Jelena Rašić's Appeal Brief**

---

**The Office of the Prosecutor:**

Mr. Paul Rogers

**Counsel for the Accused:**

Ms. Mira Tapušković

1. On 26 March 2012, the Defence for Jelena Rašić filed its Appeal Brief. Said Brief contained a confidential annex that was intended for the Response to the Prosecution's Appeal Brief, filed on the same day. The Defence hereby re-files the Appeal Brief—with no annexes—in the attached Annex.

**Respectfully submitted,**



Mira Tapusković

Word Count: 126

Submitted on this 27 March 2012  
At The Hague, Netherlands

# ANNEX

**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

**Case No. IT-98-32/1-R77.2-A**

**Before:** Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Arlette Ramaroson  
Judge Andrézia Vaz  
Judge Khalida Rachid Khan

**Registrar:** Mr. John Hocking

**Date:** 26 March 2012

**THE PROSECUTOR**

**v.**

**JELENA RAŠIĆ**

*Public*

---

**JELENA RAŠIĆ'S APPEAL BRIEF**

---

**The Office of the Prosecutor:**

Mr. Paul Rogers

**Counsel for the Accused:**

Ms. Mira Tapušković

1. Pursuant to Rule 111, Article 24 of the ICTY Statute, and paragraph 5 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the International Tribunal, the Defence hereby appeals the Written Reasons for Oral Sentencing Judgement in the *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R.77.2-A, pronounced on 7 February 2012 (“Written Reasons”).

**GROUND OF APPEAL: THE TRIAL CHAMBER ERRED IN FACT AND LAW IN IMPOSING A 12-MONTH SENTENCE**

**Sub-ground 1: The Trial Chamber erred, at paragraphs 31 and 36 of the Judgement, in imposing a 12-month sentence, which was not reasonably in proportion with sentences passed in similar circumstances for similar offences and therefore excessive.**

2. The one-year sentence imposed on Ms. Rašić was excessive. “A sentence is capricious or excessive if it is out of reasonable proportion with a line of sentences passed in similar circumstances for the same offences.”<sup>1</sup> Given the overwhelming mitigating circumstances in Ms. Rašić’s case and the jurisprudence of the Tribunal for similar offences, the one-year sentence was not an individualised penalty that fit the individual circumstances of the accused and the gravity of the crime.<sup>2</sup>

***The Appellant’s Mens Rea did not Justify the Sentence***

3. Ms. Rašić pled guilty to, and was convicted of interfering with the Tribunal’s administration of justice by bribing witnesses. There is only one case that has come before the Tribunal in which bribery was proved. Zuhdija Tabakovic, convicted of three counts of contempt of the Tribunal, was sentenced to three months’ imprisonment.

4. The facts of Tabaković’s case are not only substantially similar to the facts in Rašić<sup>3</sup>—they formed the very basis of the indictment in the Rašić case, which the Trial

<sup>1</sup> *Prosecutor v. Momir Nikolic*, Case No.: IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006 para 39 (“M. Nikolic Sentencing Judgment”), (quoting *Prosecutor v. Jelesic*, Case No. IT-95-10-A, Appeal Judgement, 5 July 2001, para. 96); see also *Prosecutor v. Furundzija*, Case No. IT-95-17/1-A, Judgment, 21 July 2000 para 250.

<sup>2</sup> *Prosecutor v. Dragan Nikolic*, Case No. IT-94-92-A (“D. Nikolic”), Judgment, 04 February 2005, para 9.

<sup>3</sup> Compare *Prosecutor v. Tabakovic*, Case No. IT-98-32/1-R.77.1 (“Tabakovic”), Notice of Filing Public Redacted Plea Agreement, Tab 2, Factual Basis for Plea Agreement, *passim*, with *Prosecutor v. Rašić*, Case No. IT-98-32/1-R.77.2 (“Rašić”), Joint Motion for Consideration of Plea Agreement, 24 January 2012, Confidential, Tab 1: Amended Indictment (“Amended Indictment”), *passim*. The Trial Chamber IT-98-32/1-R77.2-A

Chamber accepted in its entirety as the factual basis for the Plea Agreement. Also in both cases, the Trial Chamber used remarkably similar language in indicating that the crimes warranted a significant term of imprisonment.<sup>4</sup> Ms. Rašić, however, received a sentence of imprisonment *four times* that of Tabaković.

5. The sentence was excessive because the Trial Chamber gave insufficient weight<sup>5</sup> to the Appellant's *mens rea* in Counts 1 and 2 of the Indictment.<sup>6</sup> When Ms. Rašić first encountered Mr. Tabaković, "she was not aware that Tabakovic was unfamiliar with the events described in the statement."<sup>7</sup> Considering the occasional volatility of witness protection and the unwillingness of many witnesses to testify before the Tribunal, she naively rationalized that the payments were an incentive to tell the truth, and not an inducement to lie.<sup>8</sup> This lack of knowledge detracted from her intent to interfere with the administration of justice, however the Trial Chamber failed to give weight to it in mitigation.

6. The Trial Chamber completely disregarded<sup>9</sup> the relative gradations of the Appellant's *mens rea* in the relative counts of the Indictment, and review on appeal is thus warranted. Rašić initially thought the payments humanitarian in nature—Mr. Tabakovic was struggling financially at the time, and needed to support his family.<sup>10</sup> The Appeals Chamber has previously accepted that payment to a witness, though unwise, does not necessarily evidence intent to influence the testimony of a witness, but can rather be intended as a "humanitarian gesture."<sup>11</sup> Indeed, in the *Vujin* case, such payments did not even amount to criminal wrongdoing. It is not unreasonable then, that Ms. Rašić had the same mentality when she paid Tabaković. Her compliance with orders to pay Tabaković was misguided, maybe even stupid, but her lack of knowledge as to the falsity

---

unanimously granted the joint motion to accept the amended indictment as the factual basis. T: 31 January 2012, p.36 line 15-p.39 line 16

<sup>4</sup> *Tabakovic*, Sentencing Judgment, 18 March 2010, para 12. In the Written Reasons, at paragraph 17, the Trial Chamber states: "The crime would, therefore, ordinarily result in a considerable term of imprisonment."

<sup>5</sup> *Prosecutor v. Bralo*, Case No. IT-95-17-A ("Bralo"), Judgement on Sentencing Appeal, 2 April 2007, para 9.

<sup>6</sup> Amended Indictment, paras 2-8.

<sup>7</sup> Prosecution Opening Statement, T: 31 January 2012 page 42

<sup>8</sup> See *Rasic*, Defence Mitigation Submission, Confidential, 27 January 2012, para 9

<sup>9</sup> *Prosecutor v. Kvočka*, Case No. IT-98-30/1-A, Judgment, para 23; see also *Prosecutor v. Strugar*, Case No. IT-01-42-A, Judgment, 17 July 2008, para 24.

<sup>10</sup> *Tabakovic*, Sentencing Judgment para 13.

<sup>11</sup> *Prosecutor v. Vujin*, Case No. IT-94-1-A-R77 ("Vujin"), 31 January 2000, paras 156-158.

IT-98-32/1-R77.2-A

26 March 2012

Public

of those statements substantially mitigates the extent of her wrongdoing with respect to the first and second counts.

7. Later, when she met Mr. X and Mr. Y, she became aware of a substantial possibility<sup>12</sup> that the statements she had collected were false. Tabakovic, by contrast, had actual knowledge of their falsity. The lower gradation of knowledge in the Indictment should have mitigated the length of the sentence. In *Vujin*, the Accused was culpable for submitting evidence that he *actually knew* to be false.<sup>13</sup> Even in the scenario where the Accused had the most culpable level of *mens rea*, Vujin was subject to a large fine, and no imprisonment. The Trial Chamber ought to have weighed in mitigation the lower degree of *mens rea* in counts 3 and 4 as to the falsity of the statements.

8. Even with respect to Count 5, when Rašić conceded knowledge of the falsity of the statements,<sup>14</sup> the Trial Chamber applied disparate standards than those applied in the *Tabaković* case. Like Rašić, Tabakovic too engaged in “persistent and repetitive criminal conduct”<sup>15</sup> in signing the statements twice—however, unlike Rašić, Tabakovic was fully aware of the falsity of the statements from the beginning.<sup>16</sup>

### ***The Sentence Did Not Account for Other Substantial Mitigating Circumstances***

9. The jurisprudence supports the Defence’s position that the Chamber erred in the weighing process with respect to other mitigating circumstances as well.<sup>17</sup> In the *Momir Nikolić* case, the Appeals Chamber found that the Trial Chamber weighed the circumstances properly in giving Nikolić a greater term of imprisonment than Obrenovic, who had been charged with similar offences; this was because the aggravating circumstances in the *Momir Nikolić* case far outnumbered those in *Obrenovic*.<sup>18</sup>

10. By contrast, the Trial Chamber overlooked the relative weight of the mitigating factors presented in this case and in its relevant precedent. In the *Tabaković* case, the

<sup>12</sup> Amended Indictment, paras 9-15.

<sup>13</sup> *Vujin* para 134, 138

<sup>14</sup> Amended Indictment paras 16-19.

<sup>15</sup> Written Reasons para 18.

<sup>16</sup> Moreover, the evidence strongly suggested that Tabaković also forged the signatures of Mssrs. X and Y, who both insisted that they had only signed a single document on 23 October 2008. OTP Opening statement, pp.49-50, lines 25-5.

<sup>17</sup> *D Nikolic*, Appeal Judgment, para 9.

<sup>18</sup> *M. Nikolic* Sentencing Judgement, para 44

only mitigating circumstances argued were his cooperation with the Prosecution, his guilty pleas, and his financial and family situation.<sup>19</sup> Other forms of mitigation accepted in the Rašić case—such as a lack of prior conviction, prior good character, age and level of experience, *inter alia*—were not set out in *Tabakovic*. Indeed, Mr. Tabakovic had a prior conviction.<sup>20</sup> Moreover, it was not “to his credit” that Tabaković repeatedly sought financial advantage in exchange for his cooperation.

11. In the case of Ms. Rašić on the other hand, the Trial Chamber accepted some of the same factors in mitigation as were accepted in *Tabakovic*, including pleading guilty, in addition to no less than nine additional factors. The Chamber even granted some weight to her cooperation with the Prosecution, albeit little.<sup>21</sup> Also, unlike Tabakovic, the Chamber found that Ms. Rašić sought no personal benefit from the crimes.<sup>22</sup> This multitude of mitigating factors weighed heavily in favor of the Appellant, and far outnumbered both the aggravating circumstances in her own case, and the mitigating circumstances argued in the *Tabakovic* case. As the offences were the same and were committed in substantially similar circumstances,<sup>23</sup> the *Tabakovic* sentence should have better guided the Trial Chamber in imposing its sentence. Thus the Trial Chamber gave insufficient weight to relevant considerations when it pronounced a sentence four times greater than its only precedent.<sup>24</sup>

12. Having imposed a sentence of one-year whilst disregarding substantial mitigating factors, the Trial Chamber committed an error of fact and law amounting to a miscarriage of justice.

**Sub-ground 2: The Trial Chamber exercised its discretion in error at paragraphs 17 and 18, in giving undue weight to extraneous considerations that neither party set forth in arguments, thus occasioning a miscarriage of justice.**

13. The Trial Chamber abused its discretion when it found aggravating circumstances that were outside the scope of arguments put forth by the parties and which

<sup>19</sup> *Tabakovic*, Public Redacted Plea Agreement, 15 March 2010, para 3; *Tabakovic* Sentencing Judgment, 18 March 2010, paras 12-13.

<sup>20</sup> *Tabakovic* Sentencing Judgment para 13.

<sup>21</sup> Written Reasons para 25.

<sup>22</sup> Written Reasons para 19.

<sup>23</sup> *D. Nikolic* Appeal Judgment, para 19

<sup>24</sup> *Bralo* Sentencing Judgment, para 9.



were not supported by evidence. The Chamber held that “as officers of justice, [Members of Defence teams] must at all times be aware of their duties and must never allow themselves to affect others...in a criminal manner.”<sup>25</sup> This declaration, though not untrue as a general rule, was inconsistent with the Trial Chamber’s own factual findings as regards Ms. Rašić, was not argued by either party, and was not supported in evidence. It was therefore an abuse of discretion to consider this finding as an aggravating circumstance.

14. The Trial Chamber unduly conflated Ms. Rašić’s role in intimating that she was an “officer of justice.” As established on a balance of probabilities in her Mitigation Submission, and accepted by the Trial Chamber, Ms. Rašić’s age, role, and level of experience could not rise to a level of “officer.”<sup>26</sup> “Officer” is a title generally reserved for those with sufficient training and education, such as a licensed attorney. Rašić entirely lacked relevant experience before starting on the *Lukić* team—indeed, she had not even graduated from university for her first few months in the position.<sup>27</sup>

15. Additionally, as argued *supra*, she initially lacked the requisite *mens rea* to exploit her “position of trust” or to “affect others in a *criminal* manner,” as she initially lacked actual knowledge that the statements were false. Nevertheless, the Trial Chamber determined that these details constituted an aggravating circumstance. Even as such, the Chamber failed to note that this factor could only affect her culpability as regards Count 5 of the Indictment. Moreover, the Trial Chamber’s acceptance that “she was relatively young at the time of the crimes and...she was inexperienced in the role of investigator in which she was put...even though she was employed as a case manager”<sup>28</sup> undermines its own reasoning that she was an “officer” in a “position of trust.”

16. Similarly, the sentence failed to “reflect the relative significance of the role of the Appellant in the broader context”<sup>29</sup> and “the form and degree of [her] participation.”<sup>30</sup> In *Tadić*, the Appeals Chamber reduced the sentence because the Appellant’s “level in the

<sup>25</sup> Written Reasons para 18.

<sup>26</sup> Written Reasons para 19.

<sup>27</sup> *Rašić*, Defence Mitigation Submission, paras 15-16.

<sup>28</sup> Written Reasons, para 19.

<sup>29</sup> *Prosecutor v. Tadić*, Case No. IT-94-1-A, (“Tadic”) Judgement on Sentencing Appeal, 26 January 2000, paras 55-56.

<sup>30</sup> *Prosecutor v. Galić*, Case No. IT-98-29-A, Judgment, 30 November 2006, para 406; *see also Prosecutor v. Perisic* Case No. IT-04-81-T, Judgment, 06 September 2011, para 1799.

command structure when compared to that of his superiors, i.e. commanders, or the very architects...was low.”<sup>31</sup> Here, the Trial Chamber accepted that Rašić “was not, and could not have been the original instigator of the broader criminal conduct...it is obvious that another or others connected to the *Lukic and Lukic* case in some way were responsible for recruiting her to commit these offences.”<sup>32</sup> Nevertheless, the sentence suggests that her rank and role were given insufficient weight in mitigation.

17. Finally, the Chamber found that Rašić’s “persistent and repetitive criminal conduct”<sup>33</sup> in procuring the statements twice constituted an aggravating circumstance. It bears noting that Mr. Tabaković also engaged in persistent and repetitive criminal conduct in signing the statements twice, but the Trial Chamber in his case did not consider such actions as aggravating circumstances.<sup>34</sup>

### **Conclusion**

18. Therefore, to better reflect the individual circumstances of the convicted person, the Defence respectfully requests that the Appeals Chamber REDUCE the one-year sentence imposed by the Trial Chamber.

**Respectfully submitted,**



Mira Tapusković

Word Count: 2138

Submitted on this 26 March 2012

At The Hague, Netherlands

---

<sup>31</sup> *Tadić*, Judgement on Sentencing Appeal, para 56.

<sup>32</sup> Written Reasons para 19

<sup>33</sup> Written Reasons para 18.

<sup>34</sup> *Tabaković*, Sentencing Judgment paras 12-13.