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for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

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

CHAMBERS

The Hague, 7 February 2012

Contempt Judgement Summary for Jelena Rašić

Please find below the summary of the Judgement read out today by Judge Morrison.

At a hearing on Tuesday 31 January 2012, this Trial Chamber accepted the plea agreement concluded between the Prosecution and Jelena Rašić in respect of five counts of contempt of the Tribunal set out in an amended indictment filed jointly by the parties on 24 January 2012.

The Trial Chamber found that Jelena Rašić's guilty plea was voluntary, informed and unequivocal, and held that there was a sufficient factual basis for the crimes for which she pleaded guilty. The Trial Chamber then convicted Jelena Rašić for contempt of the Tribunal and heard oral submissions by the parties regarding sentencing.

Today, the Trial Chamber sits to sentence Jelena Rašić. It has considered the parties' oral sentencing submissions as well as the written submissions filed by the Defence on 27 January 2012 and corrected on 30 January 2012. It has also considered two medical reports by Dr. Vera Petrović, dated 26 January and 1 February 2012, filed *ex parte* confidentially on 6 February 2012. The Chamber issues the following oral judgement, with written reasons to follow.

Rule 77(G) of the Rules of Procedure and Evidence stipulates that the maximum penalty that may be imposed upon a person found to be in contempt of the Tribunal shall be a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euro, or both.

The Prosecution has made submission in respect of sentencing and has addressed the arguments of the Defence in this respect. The Defence submits that Jelena Rašić's sentence should be three months imprisonment or, should the Chamber determine a higher sentence, that it be suspended.

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The crimes which Jelena Rašić has admitted to having committed are grave. Procurement of false evidence in any situation amounts to direct interference with the administration of justice. When perpetrated before an international criminal jurisdiction, such as the Tribunal, such interference has far-reaching consequences. This crime would, therefore, ordinarily result in a considerable term of imprisonment.

With respect to aggravating circumstances, the Chamber notes the position of trust in which Jelena Rašić found herself in at the time of her crimes. Members of Defence teams are obligated to act conscientiously with full respect of the law and applicable rules, something which certainly also holds true for any professional involved in the proceedings before the Tribunal. As officers of justice, they must at all times be aware of their duties and must never allow themselves to affect others, such as prospective witnesses, in a criminal manner. However, Jelena Rašić did just that.

The Chamber also notes her persistent and repetitive criminal conduct. This is evidenced by her bringing the statements to Mr. Tabakovic, Mr. X and Mr. Y for correction at a point when she knew that the statements were false.

With respect to mitigating circumstances, it is plain to us, and also a matter alluded to and accepted by the Prosecution, that Jelena Rašić was not, and could not, have been the original instigator of the broader criminal conduct of procuring false evidence. It is obvious that another or others connected to the *Lukić* case in some way were responsible for recruiting her as a relatively young and inexperienced person to commit these offences. In this respect, the Chamber has also considered the personal circumstances of the Accused, including that she was relatively young at the time of the crimes and that she was inexperienced in the role of investigator in which she was put by the *Milan Lukić* Defence.

The Chamber notes that it has not been argued that Jelena Rašić received any personal benefit from the crimes. It has considered the extensive and unambiguous expression of remorse of Jelena Rašić, as set out in the Defence's written submission, and her good character and lack of prior conviction.

The guilty plea itself also weighs in as mitigation. The fact that Jelena Rašić decided to plead guilty at what amounts to the last moment before trial was to commence does not change the Chamber's opinion on this point. However, the Chamber is of the view that it is not possible to consider in mitigation the fact that Jelena Rašić agreed to be interviewed by the Prosecution given that she did not participate truthfully. That said, the fact that she did not tell the truth on several points material to the Prosecution's investigation, thereby refraining from co-operating with the Prosecution, is not an aggravating factor and has not been so considered by the Chamber.

Jelena Rašić has at all times complied with orders issued by the Trial Chamber, including with respect to her provisional release. This is weighed in her favour, as is the fact that she surrendered voluntarily to officials of the Ministry of the Interior of the Republic of Serbia. Moreover, the Chamber has considered Jelena Rašić's good behaviour in detention, in particular against the backdrop of the special circumstances of her custody being the only female detainee of the Detention Unit.

The Chamber notes the parties' submissions regarding Jelena Rašić's health condition. The Defence argues that her condition is comparable to other serious health problems which Chambers have acknowledged as mitigating factors. It argues that the Chamber should consider in mitigation the effect that detention has on her psychological well-being.

The Prosecution submits that Jelena Rašić's condition does not appear to be a pre-existing clinical condition, but rather a reaction to the circumstances in which she finds herself as a result of her criminal behaviour. It agrees that this may be of some relevance but argues that it may not be a matter which should weigh heavily. In respect of the Defence argument that a longer sentence be suspended, the Prosecution submits that it is only in exceptional cases or rare cases that ill health should be considered in mitigation. In other situations, it is to be considered in the execution of the sentence.

The Trial Chamber holds the view that it is only in exceptional circumstances or "rare" cases where ill health should be considered in mitigation. Jelena Rašić's health condition in the present case does not fall within these parameters. The Trial Chamber will, therefore, consider her health condition in respect of the execution of the sentence.

We find that the seriousness of Jelena Rašić's crimes fully merit the imposition of a 12-month sentence of immediate imprisonment at the United Nations Detention Unit. However, we consider that it is appropriate in the current circumstances to suspend 8 months of it, including for reasons identified in mitigation.

We wish to emphasise the fact we have especially taken account of the particularly difficult circumstances that would be engendered by her being the only female detainee in the United Nations Detention Unit and the quasi-solitary confinement regime that would follow. Although the quasi-solitary nature of the confinement is neither unlawful in widely accepted jurisprudence nor designed to be punitive, it is the accused's perception of it and the practical impact upon her well-being that we have given precedence to. In this respect, we have considered Dr. Vera Petrović's reports concerning Jelena Rašić's health condition. We have also considered Jelena Rašić's comparably young age and that this is the first time she is sentenced to a prison sentence.

Thus, we sentence you to 12 months imprisonment. You will be given credit for the 78 days which you have so far been in detention. You will not have to serve the last 8 months of your sentence unless you are convicted for another crime punishable with imprisonment, including contempt of court, during two years counted from today.
