



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

Case No.: IT-05-87-R77.1

Date: 22 February 2007

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Order of: 22 February 2007

PROSECUTOR

v.

BOŽIDAR PROTIĆ

EX PARTE AND CONFIDENTIAL

WARRANT OF ARREST AND ORDER FOR SURRENDER OF BOŽIDAR PROTIĆ

Office of the Prosecutor

Mr. Thomas Hannis

Mr. Chester Stamp

**Government of the Kingdom of The
Netherlands**

Attn: The Ministry of Foreign Affairs

Accused

Božidar Protić

Government of the Republic of Serbia

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

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 (“Tribunal”) is seised of the Prosecution’s “*Ex Parte* and Confidential Application for Arrest Warrant for Witness Božidar Protić and Order for his Transfer to the Tribunal”, filed 8 February 2007 (“Application”).

Background

1. On 19 January 2007, the Trial Chamber issued a “*Confidential Subpoena Ad Testificandum*” (“Subpoena”), in which it ordered Protić, pursuant to Rule 54 of the Tribunal’s Rules of Procedure and Evidence (“Rules”), to appear before this Trial Chamber to testify in the case of *Prosecutor v. Milutinović et al.* or to submit, no later than 5 February 2007, a medical certificate by a suitably-qualified medical practitioner demonstrating that he suffers from a mental illness that would prevent him from giving evidence.¹ The Subpoena also notified Protić that failure to comply with the subpoena “may subject [him] to arrest and/or constitute contempt of the tribunal, punishable by a term of imprisonment not exceeding seven years, a fine not exceeding 100,000 euros, or both.”

2. On 19 January 2007, the Trial Chamber also issued a “*Confidential Order to the Government of the Republic of Serbia*”, in which it ordered the Government of the Republic of Serbia *inter alia* to serve the Subpoena on Protić “as soon as possible”, and within 48 hours of service or unsuccessful attempted service of the Subpoena, to file a confidential and *inter partes* written report with the Tribunal providing the details of the service or unsuccessful attempted service.

Protić’s refusal to accept the Subpoena

3. In its Application, the Prosecution submits that “Protić has clearly indicated that he is not only unwilling to travel to The Hague, but he is also unwilling to accept the summons and threatens to go into hiding”,² and relies on the following:

- a. On 26 January 2007, an investigator from the Office of the Prosecutor contacted Protić by telephone, during which conversation Protić said that he had not received a subpoena from the Trial Chamber and that he in any event did not intend to come to The Hague.³

¹ The Subpoena was issued pursuant to *Confidential Decision on Prosecution Motion for Issuance of Subpoena*, 19 January 2007.

² Application, para. 9.

- b. On 1 February 2007, the ICTY Field Office in Belgrade provided to the Office of the Prosecutor in The Hague a Report and Official Note on the serving of the Subpoena to Protić, which states that at 3:30 p.m. on 31 January 2007, a Belgrade District Court employee attempted to serve the Subpoena on Protić at his residence in Belgrade, but a female who refused to identify herself opened the door and said that Protić was not at home. The employee left his telephone number for Protić to call him. Protić then called the employee at around 8:00 p.m. and said that he did not wish to see any more messengers and that he would not receive the summons.⁴
- c. On 1 February 2007, an investigator from the Office of the Prosecutor contacted Protić by telephone, and Protić stated that a representative of the Special War Crimes Court in Belgrade had been to his residence to deliver a subpoena to him the previous day, but he had refused to receive it. Protić further informed the investigator that he does not intend to travel to The Hague, saying that he will now disappear and keep his telephone switched off so that he will no longer be contactable.⁵

4. On 7 February 2007, the Government of the Republic of Serbia, in response to the Chamber's 19 January 2007 "Order to the Government of Serbia",⁶ filed a confidential report concerning the service of the subpoenae *inter alia* to Božidar Protić stating as follows:

On 31 January 2007, the War Crimes Chamber of the Belgrade District Court attempted to serve the subpoena on witness Božidar Protić, but he refused to accept it. The War Crimes Chamber made an official record of the unsuccessful attempt and one copy of that record has been communicated to the Office of the ICTY in Belgrade.⁷

5. The Trial Chamber is also in receipt of the official report, or Memorandum of Service, which reports that "[t]he witness refused to take the summons"; "[h]e is not willing to appear before the Court [sic.] and give testimony"; "[h]e did not specify the reasons" for his refusal to appear; and "[h]e did not say" whether he is willing to testify in another way, or with protective measures.⁸

³ Application, para. 6

⁴ Application, para. 7.

⁵ Application, para. 8.

⁶ Confidential Order to the Government of the Republic of Serbia, 19 January 2007.

⁷ Confidential Republic of Serbia's Report Concerning the Service of the Subpoena to the Witnesses Božidar Protić, [and others], 7 February 2007, para. 3.

Relief sought

6. The Prosecution moves the Trial Chamber to issue a warrant for Protić's arrest, and to issue an order that he be transferred into the custody of the Tribunal.⁹ The Prosecution further requests the Trial Chamber to issue an order to the Government of the Republic of Serbia to execute the arrest warrant once it is issued, and to take the steps necessary to transfer Protić to the Tribunal once the arrest warrant is successfully executed.¹⁰

Warrant of arrest and order for surrender

7. Pursuant to Rule 77(D) of the Tribunal's Rules of Procedure and Evidence, where a Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber may issue an order in lieu of an indictment and either direct *amicus curiae* to prosecute the matter or prosecute the matter itself.

8. On 22 February 2007, the Trial Chamber issued its "Order in lieu of Indictment on Contempt Concerning Božidar Protić" in which it considered that there are sufficient grounds to proceed against Protić for contempt and that Protić accordingly be prosecuted for contempt of the Tribunal. The Trial Chamber is mindful of the advanced stage of the Prosecution's case, rendering Protić's arrest and transfer to The Hague a matter of great urgency.

Disposition

9. The Trial Chamber, pursuant to Rules 54, 55, 56, 57, 58, 59, and 59*bis* of the Rules and Articles 21 and 29 of the Statute, hereby **ISSUES** an arrest warrant and **DIRECTS AND AUTHORIZES** the competent authorities in the Republic of Serbia to whom this warrant is transmitted to search for, arrest, detain, and surrender promptly to the Tribunal:

BOŽIDAR PROTIĆ, born 6 February 1953 at Bor, Serbia, residing at Obalskih Radinka Street 4/11, Belgrade, Serbia, whose prosecution is being pursued for:

⁸ Confidential Republic of Serbia's Report Concerning the Service of the Subpoena to the Witnesses Božidar Protić, [and others], 7 February 2007; "Memorandum of Service" regarding Mr. Božidar Protić.

⁹ Application, para. 10. The Trial Chamber notes that the Prosecution's request was contingent on Protić's failure to appear at the Tribunal on 19 February 2007, the date on which the Subpoena directed him to attend the Tribunal.

¹⁰ Application, paras. 11–12.

knowingly and wilfully interfering with the administration of justice by refusing to receive the Trial Chamber's Subpoena of 19 January 2007; and/or having been informed on 31 January 2007 of the contents of the Subpoena and of his obligation to appear before the Trial Chamber, failing to appear before the Trial Chamber as ordered, or to show good cause why he could not comply with the Subpoena;

REQUESTS the competent authorities of the Republic of Serbia to advise Božidar Protić, at the time of his arrest and in a language that he understands, of his rights set forth in Article 21 of the Statute and, *mutatis mutandis*, in Rules 42 and 43 of the Rules, which are annexed hereto in English and B/C/S, and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence;

REQUESTS the Registrar of the Tribunal to negotiate with the relevant authorities of the Republic of Serbia and the Kingdom of The Netherlands to arrange for the transfer of Božidar Protić to the seat of the Tribunal;

REQUESTS the competent authorities of the Republic of Serbia to execute this warrant promptly pursuant to Rule 56 of the Rules, and promptly to notify the Registrar of the Tribunal of the arrest of Božidar Protić pursuant to Rule 57 of the Rules, and to arrange with the Registrar of the Tribunal and the Kingdom of The Netherlands for his transfer to the seat of the Tribunal;

REQUESTS the competent authorities of the Republic of Serbia to escort Božidar Protić to an airport in the Republic of Serbia, to escort him on the airplane to an airport in the Kingdom of The Netherlands, and to hand him over to the authorities of the Kingdom of The Netherlands pursuant to further agreement with the Registrar of the Tribunal and the authorities of the Kingdom of The Netherlands;

REQUESTS the authorities of the Kingdom of The Netherlands to take Božidar Protić into custody at such airport and escort him to the seat of the Tribunal pursuant to further agreement with the Registrar of the Tribunal and the authorities The Netherlands;

REQUESTS the authorities of the Republic of Serbia immediately to report to the Registrar of the Tribunal if they are unable to execute this warrant of arrest and to indicate the reasons for such non-execution, pursuant to Rule 59(A) of the Rules.

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



Judge Iain Bonomy
Presiding

Dated this 22nd day of February 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

ANNEX

STATUTE OF THE TRIBUNAL

**Article 21
Rights of the accused**

1. All persons shall be equal before the International Tribunal.
2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
 - (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) to be tried without undue delay;
 - (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;
 - (g) not to be compelled to testify against himself or to confess guilt.

RULES OF PROCEDURE AND EVIDENCE OF THE TRIBUNAL

Rule 42

Rights of Suspects during Investigation

- (A) A suspect who is to be questioned by the Prosecutor shall have the following rights, of which the Prosecutor shall inform the suspect prior to questioning, in a language the suspect understands:
- (i) the right to be assisted by counsel of the suspect's choice or to be assigned legal assistance without payment if the suspect does not have sufficient means to pay for it;
 - (ii) the right to have the free assistance of an interpreter if the suspect cannot understand or speak the language to be used for questioning; and
 - (iii) the right to remain silent, and to be cautioned that any statement the suspect makes shall be recorded and may be used in evidence.
- (B) Questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived the right to counsel. In case of waiver, if the suspect subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the suspect has obtained or has been assigned counsel.

Rule 43

Recording Questioning of Suspects

Whenever the Prosecutor questions a suspect, the questioning shall be audiorecorded or video-recorded, in accordance with the following procedure:

- (i) the suspect shall be informed in a language the suspect understands that the questioning is being audio-recorded or video-recorded;
- (ii) in the event of a break in the course of the questioning, the fact and the time of the break shall be recorded before audio-recording or videorecording ends and the time of resumption of the questioning shall also be recorded;
- (iii) at the conclusion of the questioning the suspect shall be offered the opportunity to clarify anything the suspect has said, and to add anything the suspect may wish, and the time of conclusion shall be recorded;
- (iv) a copy of the recorded tape will be supplied to the suspect or, if multiple recording apparatus was used, one of the original recorded tapes;
- (v) after a copy has been made, if necessary, of the recorded tape, the original recorded tape or one of the original tapes shall be sealed in the presence of the suspect under the signature of the Prosecutor and the suspect; and
- (vi) the tape shall be transcribed if the suspect becomes an accused.

ANEKS
STATUT
MEĐUNARODNOG KRIVIČNOG SUDA ZA BIVŠU JUGOSLAVIJU

Član 21
Prava optuženog

1. Sve su osobe ravnopravne pred Međunarodnim sudom.
2. Prilikom rješavanja po optužbama protiv njega optuženi ima pravo na pravično i javno suđenje, uz ograde predviđene članom 22 Statuta.
3. Optuženi se smatra nevinim dok mu se ne dokaže krivica u skladu s odredbama ovog Statuta.
4. Prilikom rješavanja po svim optužbama na osnovu ovog Statuta, optuženom se, uz puno poštovanje načela ravnopravnosti, garantuju sljedeća minimalna prava:
 - (a) da bude pravovremeno i detaljno obaviješten, na jeziku koji razumije, o prirodi i razlozima optužbi protiv njega;
 - (b) da ima odgovarajuće vrijeme i uslove za pripremu obrane i komunikaciju s pravnim zastupnikom po vlastitom izboru;
 - (c) da mu se sudi bez nepotrebnog odgađanja;
 - (d) da mu se sudi u njegovom prisustvu i da se brani lično ili putem pravnog zastupnika po vlastitom izboru; da se, ako nema pravnog zastupnika, obavijesti o tom pravu; te da mu se, kad god to zahtijevaju interesi pravde, dodijeli pravni zastupnik, a da pritom ne snosi troškove odbrane ako za to nema dovoljno sredstava;
 - (e) da ispita ili da se u njegovo ime ispituju svjedoci koji ga terete, kao i da se svjedoci odbrane dovedu i ispituju pod istim uslovima kao i svjedoci koji ga terete;
 - (f) da ima besplatnu pomoć prevodioca ako ne razumije ili ne govori jezik koji se koristi na Međunarodnom sudu;
 - (g) da ne bude primoran svjedočiti protiv sebe ni priznati krivicu.

**PRAVILNIK O POSTUPKU I DOKAZIMA
MEĐUNARODNOG KRIVIČNOG SUDA ZA BIVŠU JUGOSLAVIJU**

Pravilo 42

Prava osumnjičenog za vrijeme istrage

- (A) Osumnjičeni kojeg tužilac bude ispitivao ima sljedeća prava, o kojima tužilac mora da ga obavijesti prije ispitivanja na jeziku koji osumnjičeni govori i razumije:
- (i) pravo na branioca po vlastitom izboru ili na besplatnu pravnu pomoć koja će mu biti dodijeljena ako nema materijalnih sredstava da je sam plati;
 - (ii) pravo na besplatnu pomoć prevodioca ako ne razumije niti govori jezik na kojem se vrši ispitivanje;
 - (iii) pravo da ne daje nikakve izjave i pravo da bude upozoren da će svaka izjava koju bude dao biti zabilježena i da može biti korištena kao dokaz.
- (B) Ispitivanje osumnjičenog ne vodi se bez prisustva branioca, osim ako se osumnjičeni nije dobrovoljno odrekao svog prava na branioca. Ako se osumnjičeni odrekao tog prava, a kasnije ipak izrazi želju da ima branioca, ispitivanje se odmah prekida i nastavlja se tek kada osumnjičeni angažuje branioca ili mu se on dodijeli.

Pravilo 43

Snimanje ispitivanja osumnjičenog

Kad god tužilac ispituje osumnjičenog, to se ispitivanje snima na audio ili video traku, u skladu sa sljedećom procedurom:

- (i) osumnjičeni će na jeziku koji govori i razumije biti obaviješten da se ispitivanje snima na audio ili video traku;
- (ii) u slučaju prekida u ispitivanju, ta činjenica, kao i vrijeme kad je do prekida došlo, zabilježit će se prije prekida snimanja na audio ili video traku, a zabilježit će se i vrijeme kada je ispitivanje nastavljeno;
- (iii) po završetku ispitivanja, osumnjičenom će se dati prilika da razjasni sve što je rekao i da doda šta god želi da doda i zabilježiće se vrijeme kad je ispitivanje završeno;
- (iv) kopija snimljene trake ili, ako je korišteno više uređaja za snimanje, jedna od originalnih snimljenih traka dostavit će se osumnjičenom;
- (v) nakon što je, ako je to potrebno, napravljena jedna kopija trake, originalna snimljena traka ili jedna od originalnih traka biće zapečaćena u prisustvu osumnjičenog, uz potpis tužioca i osumnjičenog; i
- (vi) ako osumnjičeni postane optuženi, izradiće se transkript trake.