

**UNITED  
NATIONS**



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-98-32/1-R77.2  
Date: 6 March 2012  
Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Howard Morrison, Presiding  
Judge Michèle Picard  
Judge Prisca Matimba Nyambe

**Registrar:** Mr. John Hocking

**Judgement of:** 6 March 2012

**PROSECUTOR**

v.

**JELENA RAŠIĆ**

***PUBLIC***

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**WRITTEN REASONS FOR  
ORAL SENTENCING JUDGEMENT**

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**Office of the Prosecutor**

Mr. Paul Rogers  
Mr. Kyle Wood

**Counsel for the Accused**

Ms. Mira Tapušković

## I. INTRODUCTION AND BACKGROUND

1. Herein, the Trial Chamber sets out the written reasons for the Oral Sentencing Judgement delivered on 7 February 2012 (“sentencing hearing”), whereby the Trial Chamber sentenced Jelena Rašić to twelve months’ imprisonment.<sup>1</sup> It noted that credit would be given for the 78 days she had until then spent in detention.<sup>2</sup> The Trial Chamber also suspended the last eight months of the sentence, explaining that Jelena Rašić would only have to serve this time if she were to be convicted for another crime punishable with imprisonment, including contempt of court, during two years from the date of the hearing.<sup>3</sup>

2. In the indictment filed on 9 July 2010, the Prosecution charged Jelena Rašić with five counts of contempt of the Tribunal pursuant to Rule 77 of the Rules and Procedure and Evidence (“Rules”) for knowingly and willfully interfering with the Tribunal’s administration of justice.<sup>4</sup>

3. On 20 September 2010, Jelena Rašić was transferred to the United Nations Detention Unit (“UNDU”) having been served with the indictment by police of the Republic of Serbia on 14 September 2010.<sup>5</sup> At the initial appearance on 22 September 2010, Jelena Rašić pleaded not guilty to the charges of the indictment.<sup>6</sup>

4. On 12 November 2010, the Trial Chamber granted Jelena Rašić provisional release.<sup>7</sup> On 30 September 2011, the Trial Chamber ordered that the pre-trial conference take place on 9 January 2012 to be followed by the presentation of evidence.<sup>8</sup> However, on 18 November 2011, the Trial Chamber re-scheduled the pre-trial conference for 23 January 2012 to be followed by commencement of trial. The Chamber also ordered Jelena Rašić to return to the UNDU by 20 January 2012, thus terminating the provisional release.<sup>9</sup>

5. On 20 January 2012, Judge Howard Morrison met in chambers with the Prosecution, the Defence of Jelena Rašić (“Defence”) and a representative of the Registrar at which meeting the

<sup>1</sup> Sentencing hearing, 7 Feb 2012, T. 68-74 at 73.

<sup>2</sup> *Ibid.* See further *infra* para. 32.

<sup>3</sup> *Ibid.*

<sup>4</sup> Submission of indictment and supporting material against Jelena Rašić, confidential and *ex parte*, 9 Jul 2010. Made public by order on 22 September 2010, Initial appearance, T. 4.

<sup>5</sup> Decision on the assignment of duty counsel, public, 21 Sep 2010, p. 1.

<sup>6</sup> Initial appearance, 22 Sep 2010, T. 7.

<sup>7</sup> Decision granting provisional release pending trial, confidential, 12 Nov 2010. See also Urgent motion for provisional release, confidential, 26 Oct 2010, and Prosecution response to urgent motion for provisional release, confidential, 27 Oct 2010. The conditions of the provisional release were subsequently amended, Oral decision, Status conference, 9 Jun 2011, T. 23. See also Written reasons for oral decision granting Defence motion for modification of the terms of Jelena Rašić’s provisional release, confidential, 28 Jun 2011.

<sup>8</sup> Scheduling order for commencement of trial and order terminating provisional release, public, 30 Sep 2011.

parties requested postponement of the trial due to ongoing negotiations concerning a plea agreement between Jelena Rašić and the Prosecution. On the same day, the Trial Chamber granted the request and postponed the start of trial *sine die*.<sup>10</sup>

6. On 24 January 2012, the Prosecution and the Defence of Jelena Rašić jointly filed a confidential motion moving the Trial Chamber to:

- 1) amend the indictment in accordance with an amended indictment included as annex,
- 2) accept Jelena Rašić's plea of guilty to counts 1 to 5 of the amended indictment, and
- 3) enter a finding of guilt against Jelena Rašić on each of the counts.<sup>11</sup>

On 27 January 2012, the Defence filed a submission concerning mitigating circumstances ("Mitigation Submission").<sup>12</sup>

7. At a hearing on 31 January 2012, the Trial Chamber accepted the amended indictment and lifted the confidentiality of the Joint Motion.<sup>13</sup> The Trial Chamber noted Jelena Rašić's wish to change her plea from not guilty to guilty on each of the five counts of the amended indictment and then questioned her pursuant to Rule 62 *bis* of the Rules. Having considered Jelena Rašić's answers, the parties' oral submissions and the Joint Motion, including the factual basis set out in the amended indictment and the detailed declarations of both Jelena Rašić and her Counsel, the Trial Chamber found that the guilty pleas were made voluntarily, informed and not equivocal and that there was a sufficient factual basis establishing the crimes.<sup>14</sup> For these reasons, the Trial Chamber entered findings of guilt in respect of each of the counts.<sup>15</sup> The Trial Chamber then heard submissions of the parties concerning sentencing.

8. On 3 February 2012, the Trial Chamber ordered the Registrar to file on the record two medical reports by Dr. Vera Petrović concerning Jelena Rašić's mental condition.<sup>16</sup> At the sentencing hearing, the Prosecution made an oral request for access to the two medical reports,

<sup>9</sup> Amended scheduling order and order terminating provisional release, public, 18 Nov 2011. See also Scheduling order for commencement of trial and order terminating provisional release, 30 Sep 2011. Pursuant to Rule 65 *bis* (C)(ii) Jelena Rašić waived her right to be present at the status conferences held during the provisional release.

<sup>10</sup> Order postponing trial, public, 20 Jan 2012.

<sup>11</sup> Joint motion for consideration of plea agreement, confidential, 24 Jan 2012 ("Joint Motion"), p. 1.

<sup>12</sup> Defence mitigation submission, confidential, 27 Jan 2012.

<sup>13</sup> Hearing, 31 Jan 2012, T. 39-40.

<sup>14</sup> *Id.*, T. 36-37, 61.

<sup>15</sup> *Id.*, T. 41.

<sup>16</sup> Order to the Registrar, confidential and *ex parte*, 3 Feb 2012; Registrar's submission of medical reports, confidential and *ex parte*, 6 Feb 2012.

which request the Defence opposed (“Prosecution’s Oral Request”).<sup>17</sup> The Trial Chamber stated that it would rule upon this request in the written reasons for the Oral Sentencing Judgement.<sup>18</sup>

9. In the following, the Trial Chamber sets out detailed reasons for the sentence imposed upon Jelena Rašić.

## II. FACTUAL BASIS

10. Jelena Rašić has admitted to bribing Zuhdija Tabaković on or about 18 October 2008 in Sarajevo, Bosnia and Herzegovina by showing him a pre-prepared witness statement for use in the *Lukić and Lukić* trial and asking him if he would confirm, sign and verify the statement in exchange for 1,000 Euro in cash even though he had no knowledge of any of the events described in the statement. She has also admitted to promising him more money if he were to come to The Hague and testify in accordance with the statement on behalf of Milan Lukić. On 20 October 2008, Jelena Rašić again met with Zuhdija Tabaković at the Novi Grad municipality building in Sarajevo where he signed several copies of the statement, which were then certified by a municipality official. Jelena Rašić has admitted to giving Zuhdija Tabaković an envelope containing 1,000 Euro. On or about the same day, Jelena Rašić also provided Zuhdija Tabaković with a map purportedly drawn by Milan Lukić to aid Zuhdija Tabaković’s testimony when recalling the matters described in the statement.<sup>19</sup>

11. Jelena Rašić has also admitted to inciting Zuhdija Tabaković on or about 18 October 2008 to offer bribes to other potential witnesses. At a meeting with Zuhdija Tabaković she produced to him the substance of two pre-prepared statements to be used in the *Lukić and Lukić* case. The details of the makers of the statements were left blank. She asked Zuhdija Tabaković to find other men born in Višegrad, Bosnia and Herzegovina, who had been in the Army of Bosnia and Herzegovina. Jelena Rašić told Zuhdija Tabaković that those men would be paid money for signing the statements and that they would receive more money once they testified in the *Lukić and Lukić* case consistent with the statements. Zuhdija Tabaković then agreed to find other men born in Višegrad who would sign the statements.<sup>20</sup>

12. Jelena Rašić has also admitted to procuring false statements from two men, who, as a result of protective measures in place, will be referred to as Mr. X and Mr. Y.<sup>21</sup> Between 17 and

<sup>17</sup> Sentencing hearing, 7 Feb 2012, T. 73.

<sup>18</sup> *Ibid.* See *infra*, paras 33-34.

<sup>19</sup> Amended indictment, Count 1, paras 2-6.

<sup>20</sup> *Id.*, Count 2, paras 7-8.

<sup>21</sup> Decision on the Prosecution’s motion to reconsider the decision on the Prosecution’s motion for variation of protective measures, confidential, 17 Jan 2012; Decision on the Prosecution’s motion for variation of protective

24 October 2008, Zuhdija Tabaković met with Mr. X and Mr. Y, both born in Višegrad, and asked each of them whether they would be willing to sign a statement in exchange for 1,000 Euro. Each man agreed and knew that by putting his name to the statement and signing it, he would be providing a false statement. On 23 October 2008, Zuhdija Tabaković met with Mr. X and Mr. Y at a café near the Novi Grad municipality building. Zuhdija Tabaković accompanied, first, Mr. X to the building where he was introduced to Jelena Rašić. She brought Mr. X into the building where she completed his statement, which Mr. X signed and which was then certified by a municipality official. The process was then repeated for Mr. Y. Jelena Rašić kept the originals of each statement dated 23 October 2008. After having put their names on the statements and signed them, Mr. X and Mr. Y received 1,000 Euro each.<sup>22</sup>

13. Lastly, Jelena Rašić has admitted to returning to Sarajevo between 23 October and 6 December 2008 with unsigned, revised versions of the false statements of Zuhdija Tabaković, Mr. X and Mr. Y. When she met with Zuhdija Tabaković, she asked him to sign the revised version of his own statement and to ask Mr. X and Mr. Y respectively to sign the revised versions of their statements. Zuhdija Tabaković signed his statement and agreed to obtain the signatures of the other two men. All three statements dated 5 December 2008 were signed and returned to Jelena Rašić. On 20 January 2009, Lead Counsel for Milan Lukić Defence handed over copies of the signed 5 December 2008 statements of Zuhdija Tabaković, Mr. X and Mr. Y to the Prosecution.<sup>23</sup>

### III. SENTENCING

#### A. Introduction

14. Rule 77(G) of the Rules 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.

15. Pursuant to Article 24(2) of the Statute and Rule 101(B) of the Rules, the Trial Chamber shall, in determining the appropriate sentence, consider the gravity of the offence, the individual circumstances of the convicted person, any aggravating circumstances, any mitigating circumstances, including substantial co-operation with the Prosecution of the convicted person

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measures, confidential, confidential, 5 Sep 2011; *Prosecutor v. Lukić and Lukić* (Case No. IT-98-32/1-T), Hearing, 2 Apr 2009, T.6588, 6590 (private session).

<sup>22</sup> Amended indictment, Counts 3 and 4, paras 9-15.

<sup>23</sup> *Id.*, Count 5, paras. 16-19.

before or after conviction, and the general practice regarding prison sentences in the courts of the former Yugoslavia. The enumeration in these provisions is not exhaustive.<sup>24</sup>

16. At the hearing on 31 January 2012, the Prosecution made oral submissions in respect of sentencing and also addressed the Defence Mitigation Submission.<sup>25</sup> The Defence submitted that Jelena Rašić's sentence should be three months' imprisonment or, should the Chamber determine a higher sentence, that the sentence be suspended.<sup>26</sup>

## **B. Discussion**

### 1. Gravity of the offence

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

### 2. Aggravating circumstances

18. 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 notes her persistent and repetitive criminal conduct, evidenced by her bringing the revised statements to Mr. Tabakovic, Mr. X and Mr. Y for signature at a point when she knew that the statements were false.

### 3. Mitigating circumstances

#### (a) Jelena Rašić's role, age and level of experience

19. The factual basis shows that Jelena Rašić was not, and could not, have been the original instigator of the broader criminal conduct of procuring false evidence for use in the *Lukić and Lukić*

<sup>24</sup> *Prosecutor v. Milan Babić* (Case IT-03-72-A), Judgement on sentencing appeal, 18 Jul 2005, para. 43 (“*Babić Sentencing Judgement*”).

<sup>25</sup> Hearing, 31 Jan 2012, T. 51-60.

<sup>26</sup> Mitigation Submission, para. 20.

trial. The Prosecution also accepts this.<sup>27</sup> It is obvious that another or others connected to the *Lukić and Lukić* case in some way were responsible for recruiting her to commit these offences. In this respect, the Chamber has considered the personal circumstances of Jelena Rašić, 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 even though she was employed as case manager. The Chamber has also noted the parties' submissions in this respect.<sup>28</sup> Moreover, it is also noted that it has not been argued that Jelena Rašić would have received any personal benefit from the crimes.

(b) The guilty plea, expression of remorse, good character and lack of prior conviction

20. The guilty plea itself weighs in as mitigation. An accused's admission of guilty demonstrates honesty and respect for justice. It contributes directly to the fundamental mission of the Tribunal to establish the truth in relation to the crimes over which it has jurisdiction.<sup>29</sup> Guilty pleas also contribute to the Tribunal's work by saving resources by avoiding trials.<sup>30</sup> The fact that Jelena Rašić decided to plead guilty just before trial was to commence does not change the Trial Chamber's opinion on this point.<sup>31</sup>

21. An expression of remorse is a mitigating factor provided that the Trial Chamber is satisfied that the remorse is sincere.<sup>32</sup> The Defence states in the Mitigation Submission that Jelena Rašić recognises the gravity of her crimes and their detrimental impact upon the administration of justice before the Tribunal.<sup>33</sup> It is also stated that she is ready to accept the consequences of her actions, something which Jelena Rašić herself also said when questioned by the Trial Chamber on 31 January 2012.<sup>34</sup> The Trial Chamber is satisfied that the expressions of remorse, which are unambiguous and extensive, are sincere and has, therefore, given appropriate weight to them.

22. The Trial Chamber has also considered the Defence's submissions concerning Jelena Rašić's good character and lack of prior conviction, which submissions the Prosecution accepts.<sup>35</sup>

<sup>27</sup> Hearing, 31 Jan 2012, T. 57.

<sup>28</sup> Prosecution submissions, *id.*, T. 53; Mitigation Submission, paras 14-16.

<sup>29</sup> See, e.g., *Prosecutor v. Milan Simić* (Case No. IT-95-9/2-S), Sentencing Judgement, 17 Oct 2002 ("*Simić* Sentencing Judgement"), para. 83.

<sup>30</sup> *Id.*, para. 84.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Prosecutor v. Stevan Todorović* (Case No. IT-95-9/1-S), Sentencing Judgement, 31 Jul 2001, para. 89.

<sup>33</sup> Mitigation Submission, paras 6-9.

<sup>34</sup> *Ibid.*; Hearing, 31 Jan 2012, T. 41.

<sup>35</sup> Mitigation Submission, paras 10-11; Hearing, 31 Jan 2012, T. 52.

(c) Co-operation with the Prosecution

23. The Defence submitted that Jelena Rašić's efforts "to cooperate with the Prosecution shall militate against a higher sentence."<sup>36</sup> It noted that Jelena Rašić attended two interviews with the Prosecution and "contributed to the investigation to the extent her rights as a suspect person permitted".<sup>37</sup> The Defence submitted that the Prosecution in its pre-trial brief stated that Jelena Rašić "to a large extent" confirmed the allegations of the Prosecution.<sup>38</sup> The Defence noted that the Prosecution also set out in its pre-trial brief "everything the accused did not confirm" of the Prosecution's case.<sup>39</sup> Referring to the *Vasiljević* case, the Defence submitted that the Trial Chamber in that case acknowledged that "a sign of cooperation, however modest" constitutes a mitigating factor.<sup>40</sup> Lastly, the Defence submitted, referencing the *Plavšić* case, that the absence of significant co-operation with the Prosecution, "cannot be considered an aggravating circumstance."<sup>41</sup>

24. The Prosecution submitted that Jelena Rašić lied on several occasions during her interviews with the Prosecution.<sup>42</sup> It argued that while she did agree to be interviewed, "it cannot accept that there can be credit for co-operation [...] because the interview actively misled the investigation on particular key aspects of this case."<sup>43</sup>

25. Co-operation with the Prosecution is explicitly mentioned in Rule 101(B) as an aspect which shall be considered in mitigation, provided the co-operation has been substantial. The Trial Chamber recalls that the *Vasiljević* Trial Chamber held, disagreeing with the Prosecution's submission that "only a self-incriminatory statement could justify granting some mitigation to the accused", that Mitar Vasiljević's statement "did not disclose anything which was not already known, or very little."<sup>44</sup> The Trial Chamber continued that "the actual content of such a statement is relevant to the amount of mitigation to give" and stated that the fact that a statement was given by the accused "may in itself in some cases be a sign of co-operation, however modest."<sup>45</sup> However, the Trial Chamber was not satisfied that the statement given amounted to "substantial" co-

<sup>36</sup> Mitigation Submission, para. 4.

<sup>37</sup> *Ibid.*, where the Defence also states that at the second interview "after being notified of her pending indictment, and of her rights, she exercised her right to remain silent."

<sup>38</sup> Hearing, 31 Jan 2012, T. 62, referring to paras 40-41 of the Prosecution's submission pursuant to Rule 65ter(E) with confidential Annexes I, II and III, partially public, 2 May 2011.

<sup>39</sup> Hearing, 31 Jan 2012, T. 62, referring to para. 42 of the Prosecution's pre-trial brief.

<sup>40</sup> Mitigation Submission, fn 6, referring to *Prosecutor v. Mitar Vasiljević* (Case No. IT-98-32), Trial Judgement, 29 Nov 2002 ("*Vasiljević* Trial Judgement"), para. 299.

<sup>41</sup> Hearing, 31 Jan 2012, T. 62.

<sup>42</sup> *Id.*, T. 52-57.

<sup>43</sup> *Id.*, T. 57.

<sup>44</sup> *Vasiljević* Trial Judgement, para. 299.

<sup>45</sup> *Ibid.*



operation. Therefore, it concluded that the co-operation given by Mitar Vasiljević “was indeed modest [and gave it] very little weight.”<sup>46</sup>

26. This Trial Chamber considers that Jelena Rašić’s co-operation with the Prosecution during her interviews is to be considered in a similar manner. She did agree to be interviewed and told the truth regarding certain aspects of the Prosecution’s case. However, rather than remain silent, she elected to lie in response to other questions posed, including concerning matters material to the Prosecution’s investigation. For these reasons, the Trial Chamber holds that, while Jelena Rašić did co-operate with the Prosecution, her co-operation cannot be considered ‘substantial’ within the meaning of Rule 101(B)(ii) of the Rules. The Trial Chamber has, therefore, given only little weight to it. Naturally, the fact that Jelena Rašić refrained from co-operating substantially with the Prosecution, is not an aggravating factor and has not been so considered by the Chamber.<sup>47</sup>

(d) Voluntary surrender, compliance with Trial Chamber orders and good behaviour in detention

27. The Defence submitted that Jelena Rašić surrendered voluntarily to officials of the Ministry of the Interior of the Republic of Serbia on 14 September 2010.<sup>48</sup> The Prosecution did not object to this submission. Recalling that the conclusion as to whether a fact amounts to a mitigating circumstance is made on the balance of probabilities, the Trial Chamber has considered the Defence’s submission in mitigation.<sup>49</sup> 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. Likewise, the Trial Chamber has considered in mitigation 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 UNDU.

(e) Health condition

28. The Defence argued that Jelena Rašić’s health condition is comparable to other serious health problems which Chambers have acknowledged as mitigating factors.<sup>50</sup> It further argued that the Chamber should consider in mitigation the effect that detention has on her psychological well-being.<sup>51</sup>

29. The Prosecution submitted 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

<sup>46</sup> *Vasiljević* Trial Judgement, para. 299.

<sup>47</sup> *Prosecutor v. Biljana Plavšić* (Case No. IT-00-39&40/1-S), Sentencing Judgement, 27 Feb 2003, para. 64.

<sup>48</sup> Mitigation Submission, para. 3, referring to the Urgent motion for provisional release, confidential, 26 Oct 2010.

<sup>49</sup> *Prosecutor v. Enver Hadžihasanović and Amir Kubura* (Case No. IT-01-47-A), Judgement, 22 Apr 2008, para. 302.

<sup>50</sup> Mitigation Submission, para. 19.

her criminal behaviour.<sup>52</sup> It agreed that this may be of some relevance but argued that it may not be a matter which should weigh heavily.<sup>53</sup> In respect of the Defence argument that a longer sentence be suspended, the Prosecution submitted 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.<sup>54</sup>

30. The Trial Chamber takes the view that ill health should be considered in mitigation only in exceptional circumstances or “rare” cases.<sup>55</sup> Jelena Rašić’s health condition in the present case does not fall within these parameters and the Trial Chamber will, therefore, consider it in respect of the execution of the sentence imposed.

### C. Sentencing

31. In the Oral Sentencing Judgement, the Trial Chamber held that the gravity of Jelena Rašić’s crimes fully merits the imposition of a twelve-month sentence of immediate imprisonment at the UNDU.<sup>56</sup> However, it considered it appropriate to suspend eight months of the sentence. In so doing, the Trial Chamber took account of the particularly difficult circumstances that would be engendered by Jelena Rašić being the only female detainee in the UNDU and the quasi-solitary confinement regime that would follow. Such quasi-solitary nature of the confinement is neither unlawful in widely accepted jurisprudence nor designed to be punitive. However, the Trial Chamber accorded significant effect to the accused’s perception of her detention and the practical impact upon her well-being. In this context, the Trial Chamber considered Dr. Vera Petrović’s reports concerning Jelena Rašić’s health condition, Jelena Rašić’s comparably young age and that this is the first time she is sentenced to a prison sentence.<sup>57</sup>

32. In the Oral Sentencing Judgement, the Trial Chamber stated that Jelena Rašić would be given credit for the 78 days she had spent in detention. This figure failed to take into account the six days that Jelena Rašić was detained in Serbia prior to her transfer to the Tribunal.<sup>58</sup> Credit should, therefore, be given for the 84 days Jelena Rašić had spent in detention as at 7 February 2012.

<sup>51</sup> Mitigation Submission, para. 19.

<sup>52</sup> Hearing, 31 Jan 2012, T. 58.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Id.*, T. 58-59.

<sup>55</sup> *Simić* Sentencing Judgement, para. 98, cited with approval by the Appeals Chamber in *Babić* Sentencing Judgement, para. 43.

<sup>56</sup> Sentencing hearing, 7 Feb 2012, T. 72.

<sup>57</sup> Registrar’s submission of medical reports, confidential and *ex parte*, 6 Feb 2012. See also Order to the Registrar, confidential and *ex parte*, 3 Feb 2012.

<sup>58</sup> Registrar’s submission regarding days of detention, confidential, 10 Feb 2012, para. 1.

## IV. OTHER MATTERS

### A. Prosecution's Oral Request

33. At the sentencing hearing, the Prosecution requested access to the two medical reports of Dr. Vera Petrović as they had been referred to in the sentencing judgement and form a basis thereof.<sup>59</sup> The Defence objected to the request, referring to the reasons for which the Trial Chamber ordered the Registrar to file the reports confidentially and *ex parte* on the record.<sup>60</sup>

34. In ordering the Registrar to file the reports on the record, the Trial Chamber held that the reports are relevant to the Trial Chamber's assessment of the sentence to be imposed upon Jelena Rašić.<sup>61</sup> Given the current stage of the proceedings, however, and considering the fact that the medical reports form part of the judicial basis of Jelena Rašić's sentence, it is in the interest of justice that the reports be provided to the Prosecution, which, as a party to this case, has a right to access them.

### B. Pending motions

35. The Trial Chamber is seised of the "Motion of the accused Jelena Rašić for access to confidential materials in the *Lukić and Lukić* case", filed confidentially on 26 January 2011 before the Appeals Chamber seised of the *Lukić and Lukić* trial, whereby the Defence requests access to *inter partes* and *ex parte* confidential material in the *Lukić and Lukić* case.<sup>62</sup> On 6 September 2011, the Appeals Chamber decided the motion in part and referred the remainder thereof to this Trial Chamber.<sup>63</sup> The Trial Chamber considers that this motion is now moot.

## V. DISPOSITION

36. Having found Jelena Rašić **GUILTY** of five counts of contempt of the Tribunal pursuant to Rule 77 of the Rules Pursuant as set out in the amended indictment, the Trial Chamber:

**AFFIRMS** the sentence imposed by the Oral Sentencing Judgement, with the amendment that credit be given pursuant to Rule 101(C) of the Rules for the 84 days Jelena Rašić spent in detention as at 7 February 2012;

<sup>59</sup> Sentencing hearing, 7 Feb 2012, T. 73.

<sup>60</sup> *Ibid.*

<sup>61</sup> Order to the Registrar, confidential and *ex parte*, 3 Feb 2012, p. 2.

<sup>62</sup> All filings concerning this motion have been filed both in *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-A, and in *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R77.2.

<sup>63</sup> Decision on Jelena Rašić's motion for access to confidential *inter partes* and *ex parte* material from the *Lukić and Lukić* case, confidential, 6 Sep 2011, p. 5.

**ORDERS** that upon completion of her sentence, Jelena Rašić be released from custody as soon as the necessary formalities have been completed;

**ORDERS** that the *ex parte* status of the “Registrar’s submission of medical reports”, filed on 6 February 2012, be lifted and the Registrar to provide the submission to the Prosecution as soon as practicable; and


**DECLARES MOOT** the “Motion of the accused Jelena Rašić for access to confidential materials in the *Lukić and Lukić* case”, filed confidentially on 26 January 2011.

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


Dated this sixth day of March 2012.

At The Hague

The Netherlands



\_\_\_\_\_  
Judge Howard Morrison  
Presiding



\_\_\_\_\_  
Judge Michèle Picard



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Judge Prisca Matimba Nyambe

[Seal of the Tribunal]