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IT-98-32/1-R77.2-A p.345

HC

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-A

Date: 16 November 2012

Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Khalida Rachid Khan, Presiding  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Arlette Ramaroson  
Judge Andréia Vaz

**Registrar:** Mr. John Hocking

**Judgement of:** 16 November 2012

**PROSECUTOR**

v.

**JELENA RAŠIĆ**

**PUBLIC**

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**JUDGEMENT**

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**The Office of the Prosecutor:**

Mr. Paul Rogers  
Mr. Kyle Wood  
Mr. Aditya Menon

**Counsel for Jelena Rašić:**

Ms. Mira Tapušković

A handwritten signature in black ink, appearing to be 'JLR'.

## CONTENTS

<b>I. INTRODUCTION .....</b>	<b>1</b>
A. BACKGROUND .....	1
B. THE APPEALS .....	2
C. PROVISIONAL RELEASE .....	3
D. ORAL ARGUMENTS.....	3
<b>II. STANDARD OF APPELLATE REVIEW IN SENTENCING .....</b>	<b>4</b>
<b>III. PROSECUTION’S APPEAL: THE TRIAL CHAMBER ERRED IN LAW IN PARTIALLY SUSPENDING RAŠIĆ’S SENTENCE .....</b>	<b>5</b>
A. FIRST SUB-GROUND: THE TRIAL CHAMBER ACTED <i>ULTRA VIRES</i> .....	6
1. Submissions .....	6
2. Discussion .....	7
B. SECOND SUB-GROUND: THE TRIAL CHAMBER ERRED IN SUSPENDING RAŠIĆ’S SENTENCE ON THE BASIS OF FACTORS IT HAD REJECTED AS MITIGATING .....	8
1. Submissions .....	9
2. Discussion .....	10
C. THIRD SUB-GROUND: THE TRIAL CHAMBER ERRED IN RELYING ON <i>EX PARTE</i> MEDICAL REPORTS AS A BASIS FOR SUSPENDING RAŠIĆ’S SENTENCE .....	13
1. Submissions .....	13
2. Discussion .....	14
D. CONCLUSION .....	16
<b>IV. JELENA RAŠIĆ’S APPEAL: THE TRIAL CHAMBER ERRED IN FACT AND LAW IN IMPOSING A 12-MONTH SENTENCE .....</b>	<b>17</b>
A. FIRST SUB-GROUND: THE SENTENCE WAS EXCESSIVE IN COMPARISON TO OTHER SENTENCES IN SIMILAR CASES .....	18
1. Submissions .....	18
2. Discussion .....	19
B. SECOND SUB-GROUND: THE TRIAL CHAMBER ERRED IN ASSESSING THE AGGRAVATING CIRCUMSTANCE .....	22
1. Submissions .....	22
2. Discussion .....	23
C. CONCLUSION .....	25
<b>V. DISPOSITION .....</b>	<b>26</b>
<b>VI. ANNEX – GLOSSARY.....</b>	<b>28</b>
A. ICTY TRIAL JUDGEMENTS .....	28
B. ICTY APPEAL JUDGEMENTS.....	28
C. ICTR APPEAL JUDGEMENTS .....	29
D. LIST OF ABBREVIATIONS, ACRONYMS, AND SHORT REFERENCES .....	29



## I. INTRODUCTION

1. The Appeals 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 (“Appeals Chamber” and “Tribunal”, respectively) is seised of two appeals against the “Written Reasons for Oral Sentencing Judgement”, issued on 6 March 2012 by Trial Chamber III of the Tribunal (“Trial Chamber”) in the case of *Prosecutor v. Jelena Rašić*, (“Sentencing Judgement”).<sup>1</sup>

### A. Background

2. The events giving rise to these appeals took place in the context of the trial in the case of *Prosecutor v. Milan Lukić and Sredoje Lukić* (“*Lukić and Lukić case*”). Jelena Rašić (“Rašić”) was charged with five counts of contempt of the Tribunal pursuant to Rule 77 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) for knowingly and wilfully interfering with the Tribunal’s administration of justice by procuring false witness statements for the defence of Milan Lukić.<sup>2</sup> At her initial appearance on 22 September 2010, Rašić pleaded not guilty to the charges in the Indictment.<sup>3</sup> Rašić subsequently revised her pleas to guilty and filed a joint motion with the Office of the Prosecutor (“Prosecution”) on 25 January 2012 requesting the Trial Chamber to: (i) amend the Indictment in accordance with a proposed draft indictment annexed to the motion (“Amended Indictment”); (ii) accept Rašić’s guilty pleas to Counts 1 through 5 of the Amended Indictment; and (iii) enter a finding of guilt against Rašić on each of the counts.<sup>4</sup>

3. On 31 January 2012, the Trial Chamber accepted the Amended Indictment and found that Rašić’s guilty pleas were voluntary, informed, and unequivocal, and that there was a sufficient factual basis establishing the crimes charged.<sup>5</sup> Rašić admitted that, on 18 and 20 October 2008 in Sarajevo, Bosnia and Herzegovina, she bribed Zuhdija Tabaković (“Tabaković”), a potential witness in the *Lukić and Lukić case*, by asking him to confirm, sign, and verify a pre-prepared witness statement (“Tabaković Statement”) in exchange for 1,000 Euros and by offering him additional money to testify on behalf of Milan Lukić.<sup>6</sup> She further admitted that, on or about

<sup>1</sup> *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R77.2, Written Reasons for Oral Sentencing Judgement, delivered orally on 7 February 2012 and filed on 6 March 2012. See also T. 68-74 (7 February 2012) (“Sentencing Hearing”).

<sup>2</sup> *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-R77.2, Submission of Indictment and Supporting Material Against Jelena Rašić, 9 July 2010 (confidential and *ex parte*), Annex A (“Indictment”). The Indictment was made public as per the Duty Judge’s oral order. See T. 4 (22 September 2010).

<sup>3</sup> T. 7 (22 September 2010).

<sup>4</sup> *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R77.2, Joint Motion for Consideration of Plea Agreement, 25 January 2012 (confidential). This motion was made public as per the Trial Chamber’s oral order. See T. 39-40 (31 January 2012).

<sup>5</sup> T. 36-37 (private session), 61 (31 January 2012).

<sup>6</sup> Amended Indictment, paras 2-6; T. 41-45 (31 January 2012). See also Sentencing Judgement, para. 10.

18 October 2008, she incited Tabaković to offer bribes to other potential witnesses in the *Lukić and Lukić* case by giving to him two pre-prepared statements, the details of the makers of which were left blank (“Other Statements”), and by asking him to find men born in Višegrad, Bosnia and Herzegovina, who had been in the Army of Bosnia and Herzegovina and who would be willing to sign the Other Statements in exchange for money.<sup>7</sup> She further admitted to procuring the Other Statements from Mr. X and Mr. Y, who had agreed with Tabaković to sign them, and did so on 23 October 2008 in exchange for 1,000 Euros.<sup>8</sup> Finally, she admitted to procuring second versions of the Tabaković Statement and the Other Statements by returning to Sarajevo between 23 October and 6 December 2008 with unsigned, revised versions of them and asking Tabaković to sign the revised version of his statement and to ask Mr. X and Mr. Y to sign the revised versions of the Other Statements.<sup>9</sup> The revised Tabaković Statement and Other Statements were returned to Rašić and were submitted to the Prosecution by Lead Counsel for Milan Lukić on 20 January 2009.<sup>10</sup>

4. The Trial Chamber accordingly found Rašić guilty on all five counts<sup>11</sup> and heard the parties’ submissions on sentencing the same day.<sup>12</sup> On 7 February 2012, the Trial Chamber sentenced Rašić to 12 months’ imprisonment.<sup>13</sup> It suspended the last eight months of her sentence and explained that 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 counting from [the date of the Sentencing Hearing]”.<sup>14</sup>

## **B. The Appeals**

5. The Prosecution filed its notice of appeal on 12 March 2012 and its appeal brief on 16 March 2012.<sup>15</sup> It submits that the Trial Chamber erred in suspending eight months of Rašić’s 12-month sentence.<sup>16</sup> Rašić filed her notice of appeal on 19 March 2012 and her appeal brief on 27 March 2012.<sup>17</sup> She submits that the Trial Chamber erred in imposing a 12-month sentence.<sup>18</sup>

<sup>7</sup> Amended Indictment, paras 7-8; T. 41-45 (31 January 2012). *See also* Sentencing Judgement, para. 11.

<sup>8</sup> Amended Indictment, paras 9-15; T. 45-49 (31 January 2012). *See also* Sentencing Judgement, para. 12.

<sup>9</sup> Amended Indictment, paras 16-19; T. 49-50 (31 January 2012). *See also* Sentencing Judgement, para. 13.

<sup>10</sup> Amended Indictment, paras 16-19; T. 49-50 (31 January 2012). *See also* Sentencing Judgement, para. 13.

<sup>11</sup> T. 41 (31 January 2012). *See also* Sentencing Judgement, para. 7.

<sup>12</sup> Prosecution: T. 51-60 (31 January 2012) (private session); T. 61-65 (31 January 2012).

<sup>13</sup> T. 73 (7 February 2012). *See also* Sentencing Judgement, para. 31.

<sup>14</sup> T. 73 (7 February 2012). *See also* Sentencing Judgement, para. 31.

<sup>15</sup> Prosecution Notice of Appeal, 12 March 2012 (“Prosecution Notice of Appeal”); Prosecution Appeal Brief, 16 March 2012 (public with confidential annex) (“Prosecution Appeal Brief”). *See also* Prosecution Book of Authorities, 16 March 2012.

<sup>16</sup> Prosecution Notice of Appeal, paras 2-4; Prosecution Appeal Brief, paras 5-24.

<sup>17</sup> Jelena Rašić’s Notice of Appeal, 19 March 2012 (“Rašić Notice of Appeal”); Jelena Rašić’s Appeal Brief, 26 March 2012 (“Rašić Appeal Brief”), *annexed to* Corrigendum to Jelena Rašić’s Appeal Brief, 27 March 2012.

<sup>18</sup> Rašić Notice of Appeal, paras 2-3; Rašić Appeal Brief, paras 2-17.

Rašić responded to the Prosecution Appeal Brief on 26 March 2012,<sup>19</sup> and the Prosecution responded to the Rašić Appeal Brief on 30 March 2012.<sup>20</sup> On the same day, the Prosecution filed its reply.<sup>21</sup> On 2 April 2012, Rašić replied to the Prosecution Response Brief.<sup>22</sup>

### C. Provisional Release

6. As of 16 March 2012, Rašić had served the entirety of the custodial part of her sentence and would have been eligible for release on that date, were it not for the pending appeal.<sup>23</sup> The Appeals Chamber has the discretion to provisionally release a convicted person while an appeal is pending, if the requirements set forth in Rule 65(I) of the Rules are satisfied. The Appeals Chamber considered that those requirements had been fulfilled and accordingly ordered Rašić's provisional release on 4 April 2012.<sup>24</sup> The terms and conditions of her provisional release were modified on 27 June 2012.<sup>25</sup>

### D. Oral Arguments

7. Rule 116 *bis*(A) of the Rules provides that an appeal of a decision on contempt rendered under Rule 77 of the Rules "may be determined entirely on the basis of written briefs". The parties have not requested to be heard orally on appeal. Having considered the written submissions of the parties, the Appeals Chamber does not deem it necessary to hear oral arguments in this case and hereby renders its Judgement.

<sup>19</sup> Jelena Rašić's Response to Prosecution's Appeal Brief, 26 March 2012 (public with confidential annex) ("Rašić Response Brief").

<sup>20</sup> Prosecution Response to Jelena Rašić's Appeal Brief, 30 March 2012 ("Prosecution Response Brief").

<sup>21</sup> Prosecution Reply to Jelena Rašić's Response Brief, 30 March 2012 ("Prosecution Reply Brief").

<sup>22</sup> Reply to the Prosecution's Response to Jelena Rašić's Appeal Brief, 2 April 2012 ("Rašić Reply Brief").

<sup>23</sup> Decision on Jelena Rašić's Urgent Motion for Provisional Release Pursuant to Rule 65(I), 4 April 2012 ("Decision Granting Provisional Release"), para. 12, fn. 39.

<sup>24</sup> Decision Granting Provisional Release, para. 13.

<sup>25</sup> Decision on Jelena Rašić's Motion for Modification of the Terms of her Provisional Release, 27 June 2012 ("Decision of 27 June 2012").

## II. STANDARD OF APPELLATE REVIEW IN SENTENCING

8. The Appeals Chamber recalls the applicable standard of appellate review pursuant to Article 25 of the Statute of the Tribunal (“Statute”). The Appeals Chamber reviews only errors of law which have the potential to invalidate the decision of the trial chamber and errors of fact which have occasioned a miscarriage of justice.<sup>26</sup>

9. Appeals against sentence, as in the case of appeals from a trial judgement, are appeals *stricto sensu*, which means that they are of a corrective nature and not trials *de novo*.<sup>27</sup> Trial chambers are vested with broad discretion in determining an appropriate sentence, including the determination of the weight given to mitigating or aggravating circumstances, due to their obligation to individualise penalties to fit the circumstances of the convicted person and the gravity of the crime.<sup>28</sup> As a general rule, the Appeals Chamber will not substitute its own sentence for that imposed by the trial chamber unless the appealing party demonstrates that the trial chamber committed a “discernible error” in exercising its discretion or failed to follow the applicable law.<sup>29</sup>

10. To demonstrate that the trial chamber committed a discernible error in exercising its discretion, an appellant is required to show that the trial chamber gave weight to extraneous or irrelevant considerations, failed to give weight or sufficient weight to relevant considerations, made a clear error as to the facts upon which it exercised its discretion, or that the trial chamber’s decision was so unreasonable or plainly unjust that the Appeals Chamber is able to infer that the trial chamber must have failed to properly exercise its discretion.<sup>30</sup>

<sup>26</sup> *Haradinaj et al.* Appeal Judgement, para. 9 and references cited therein. See also *Ntabakuze* Appeal Judgement, para. 10.

<sup>27</sup> *Haradinaj et al.* Appeal Judgement, para. 321 and references cited therein.

<sup>28</sup> *Milošević* Appeal Judgement, para. 297; *Ntabakuze* Appeal Judgement, para. 264.

<sup>29</sup> *Haradinaj et al.* Appeal Judgement, para. 321 and references cited therein; *Ntabakuze* Appeal Judgement, para. 264.

<sup>30</sup> *Haradinaj et al.* Appeal Judgement, para. 322 and references cited therein.

### III. PROSECUTION'S APPEAL: THE TRIAL CHAMBER ERRED IN LAW IN PARTIALLY SUSPENDING RAŠIĆ'S SENTENCE

11. The Trial Chamber held that the gravity of Rašić's crimes "fully merits the imposition of a twelve-month sentence of immediate imprisonment".<sup>31</sup> However, the Trial Chamber decided to suspend eight months of Rašić's sentence because she would experience "particularly difficult circumstances" as a result of being the only female detainee in the United Nations Detention Unit ("UNDU") and the "quasi-solitary confinement regime that would follow".<sup>32</sup> In reaching its conclusion, the Trial Chamber "accorded significant effect to [Rašić's] perception of her detention and the practical impact upon her well-being", and "considered Dr. Vera Petrović's reports concerning [...] Rašić's health condition, [her] comparatively young age and that this is the first time she is sentenced to a prison sentence".<sup>33</sup> The Trial Chamber specified that Rašić's health condition did not, in its view, constitute a mitigating factor, but that it would nonetheless "consider it in respect of the execution of the sentence imposed".<sup>34</sup>

12. The Prosecution submits that the Trial Chamber committed a series of errors in imposing a partially suspended sentence on Rašić.<sup>35</sup> In particular, it argues that the Trial Chamber: (i) acted *ultra vires*;<sup>36</sup> (ii) erred in suspending Rašić's sentence on the basis of factors it had rejected as mitigating;<sup>37</sup> and (iii) erred in relying on *ex parte* medical reports.<sup>38</sup> The Prosecution accordingly requests that the Appeals Chamber quash the Trial Chamber's suspension of Rašić's sentence and impose the full custodial term of 12 months' imprisonment.<sup>39</sup>

13. Rašić responds that the Prosecution fails to demonstrate that the Trial Chamber committed a discernible error in suspending her sentence.<sup>40</sup> In particular, she argues that: (i) the Trial Chamber duly exercised its discretion in suspending the sentence;<sup>41</sup> (ii) the Trial Chamber properly took into account factors justifying the suspension of her sentence;<sup>42</sup> and (iii) the Prosecution was not

<sup>31</sup> Sentencing Judgement, para. 31. *See also* T. 72 (7 February 2012).

<sup>32</sup> Sentencing Judgement, para. 31. *See also* T. 72 (7 February 2012).

<sup>33</sup> Sentencing Judgement, para. 31. *See also* T. 72-73 (7 February 2012).

<sup>34</sup> Sentencing Judgement, para. 30. *See also* T. 72 (7 February 2012).

<sup>35</sup> Prosecution Appeal Brief, paras 1-24. *See also* Prosecution Notice of Appeal, paras 2-4; Prosecution Reply Brief, paras 1-24.

<sup>36</sup> Prosecution Notice of Appeal, para. 2; Prosecution Appeal Brief, paras 1, 5-8. *See also* Prosecution Reply Brief, paras 1-7, 10.

<sup>37</sup> Prosecution Notice of Appeal, para. 3; Prosecution Appeal Brief, paras 2, 9-20; Prosecution Reply Brief, paras 1, 9-21.

<sup>38</sup> Prosecution Notice of Appeal, para. 4; Prosecution Appeal Brief, paras 3, 21-24; Prosecution Reply Brief, paras 1, 22-23.

<sup>39</sup> Prosecution Notice of Appeal, p. 2; Prosecution Appeal Brief, paras 4, 25; Prosecution Reply Brief, para. 24.

<sup>40</sup> Rašić Response Brief, paras 1, 16.

<sup>41</sup> Rašić Response Brief, paras 2-7.

<sup>42</sup> Rašić Response Brief, paras 3-5, 8-13.

prejudiced by the *ex parte* nature of the medical reports.<sup>43</sup> Rašić accordingly requests that the Appeals Chamber reject the Prosecution's appeal in its entirety.<sup>44</sup>

**A. First sub-ground: The Trial Chamber acted *ultra vires***

**1. Submissions**

14. The Prosecution submits that the Trial Chamber usurped the exclusive authority of the President of the Tribunal ("President") to grant post-conviction remedies when it effectively determined that Rašić should be released after serving only one-third of her 12-month sentence.<sup>45</sup> It further argues that "[t]hough one sentencing Chamber has previously suspended a sentence in its entirety, the [Statute and the R]ules grant only the President the power to free a detainee once a term of imprisonment is imposed."<sup>46</sup> The Prosecution argues that the circumstances of a case can either justify suspension of the whole sentence, or not at all.<sup>47</sup> Furthermore, it submits that a partial suspension of the sentence was neither argued for nor briefed by the parties.<sup>48</sup> Finally, the Prosecution submits that the execution of a sentence is not a matter for the Trial Chamber imposing the sentence, but rather for the prison authorities of the State enforcing it, the Registry, and the President, as appropriate.<sup>49</sup>

15. Rašić responds that it was proper for the Trial Chamber to treat the pronouncement of a sentence and the execution or enforcement thereof as separate concepts, and that the decision to execute a sentence by wholly or partially suspending it falls within the Trial Chamber's discretion.<sup>50</sup> She argues that the Prosecution's allegation that the suspension of her sentence equates to early release or commutation is misguided, as such post-conviction remedies only arise after a final appeal judgement has been pronounced or if the sentence of imprisonment has become final, factors which do not exist in her case.<sup>51</sup>

<sup>43</sup> Rašić Response Brief, paras 14-15.

<sup>44</sup> Rašić Response Brief, paras 1, 16.

<sup>45</sup> Prosecution Appeal Brief, paras 1, 5-8, *referring to, inter alia*, Article 28 of the Statute, Rule 124 of the Rules, *Stakić* Appeal Judgement, paras 392-393. *See also* Prosecution Reply Brief, paras 5, 7.

<sup>46</sup> Prosecution Appeal Brief, para. 8, *referring to Bulatović* Trial Judgement, para. 18. *See also* Prosecution Appeal Brief, paras 9, 19; Prosecution Reply Brief, para. 6.

<sup>47</sup> Prosecution Appeal Brief, paras 10-11. *See also* Prosecution Reply Brief, paras 17-18.

<sup>48</sup> Prosecution Appeal Brief, para. 12. Prosecution Reply Brief, para. 15. The Prosecution also submits that the Trial Chamber imposed a partially suspended sentence without giving the Prosecution an opportunity to comment on the legality of such a sentence. *See* Prosecution Appeal Brief, para. 22.

<sup>49</sup> Prosecution Appeal Brief, paras 18-20, *referring to, inter alia*, *M. Simić* Sentencing Judgement, para. 100; Prosecution Reply Brief, paras 2, 5, 10.

<sup>50</sup> Rašić Response Brief, paras 2-7, *referring to Stakić* Appeal Judgement, para. 392, *M. Simić* Sentencing Judgement, para. 100, *Bulatović* Trial Judgement, para. 18.

<sup>51</sup> Rašić Response Brief, para. 6.



## 2. Discussion

16. In cases of contempt of the Tribunal, Rule 77(G) of the Rules provides that the maximum penalty that may be imposed on a convicted person shall be a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both. The Rules do not expressly refer to the authority of trial chambers to suspend sentences. The Appeals Chamber notes, however, that the imposition of a suspended sentence is not unprecedented before this Tribunal in the case of contempt of the Tribunal,<sup>52</sup> and that the suspension of a sentence of imprisonment is common practice in many national jurisdictions, including countries of the former Yugoslavia.<sup>53</sup> Moreover, the Prosecution expressly conceded in the present case that the Trial Chamber “does have a power to impose a suspended sentence”.<sup>54</sup>

17. The Appeals Chamber considers that the Trial Chamber’s power to suspend a sentence is inherent to its authority to impose one.<sup>55</sup> Such power is operative at the time of sentencing, and not thereafter, and for this reason is entirely distinct from the power to grant pardon or commutation.<sup>56</sup> The authority to grant pardon or commutation pursuant to Article 28 of the Statute and Rules 123 through 125 of the Rules is vested exclusively in the President and that power relates to a post-

<sup>52</sup> See *Bulatović* Trial Judgement, para. 19.

<sup>53</sup> A number of civil law jurisdictions have a comprehensive framework allowing for the suspension of sentence. See, e.g., French Criminal Code of 1994 (permanently available at <http://www.legal-tools.org/doc/418004/>), Articles 132-29, 132-31; Belgium law dated 29 June 1964 (*Loi concernant la suspension, le sursis et la probation*) permanently available at <http://www.legal-tools.org/doc/af6d26/>; German Penal Code of 1998 (permanently available at <http://www.legal-tools.org/doc/e71bdb/>), Article 56; Swiss Penal Code of 1937 (permanently available at <http://www.legal-tools.org/doc/b83b19/>), Articles 42-46; Italian Penal Code of 1930 (permanently available at <http://www.legal-tools.org/doc/3d1864/>), Articles 163-168; Serbian Criminal Code of 2006 (permanently available at <http://www.legal-tools.org/doc/cdb624/>), Chapter V; Croatian Criminal Code of 1998 (permanently available at <http://www.legal-tools.org/doc/102d95/>), Articles 5, 64-72; Criminal Code of Bosnia and Herzegovina of 2003 (permanently available at <http://www.legal-tools.org/doc/b1a3bd/>), Article 59. A number of common law jurisdictions also allow suspension of a sentence as well as probation orders as an alternative to immediate incarceration. See, e.g., England and Wales Criminal Justice Act of 2003 (permanently available at <http://www.legal-tools.org/doc/5afe62/>), Section 189; Canadian Criminal Code of 1985 (permanently available at <http://www.legal-tools.org/doc/a63741/>), Section 731(1). A review of these national laws shows that while there is no unified regime, the option for a sentencing chamber to impose a suspended term of imprisonment is a part of their sentencing process. In general, where a sentence of imprisonment is suspended, the term imposed will not be executed unless the convicted individual commits another crime during the probation period. While France, Belgium, and Switzerland authorise a sentencing chamber to suspend a custodial sentence in full or in part, the criminal laws in Bosnia and Herzegovina, Italy, and Germany only allow for a suspension of the full custodial sentence. See Criminal Code of Bosnia and Herzegovina of 2003 (permanently available at <http://www.legal-tools.org/doc/b1a3bd/>), Article 59; German Penal Code of 1998 (permanently available at <http://www.legal-tools.org/doc/e71bdb/>), Article 56(4); Italian Penal Code of 1930 (permanently available at <http://www.legal-tools.org/doc/3d1864/>), Art. 163. Across the board, however, the option to suspend in full the term of imprisonment exists irrespective of whether the convicted individual has been detained on remand and will be credited for such time spent in detention.

<sup>54</sup> T. 58 (31 January 2012) (private session).

<sup>55</sup> Cf. *Tadić* Judgement in Sentencing Appeals, para. 28.

<sup>56</sup> The Appeals Chamber notes that, although they are distinct acts, the powers to grant, on the one hand, commutation or pardon and, on the other, early release are all governed by Article 28 of the Statute, Rule 125 of the Rules, and the Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the International Tribunal, IT/146/Rev.3, 16 September 2010 (“Practice Direction”). The Appeals Chamber notes that the Prosecution does not stipulate which specific type of post-conviction

conviction change in the sentence, thus overriding the decision of the sentencing chamber in specific circumstances, where the detainee has already served part of a final sentence.<sup>57</sup>

18. For the foregoing reasons, the Appeals Chamber finds that the power to suspend a sentence must be distinguished from the power to issue a pardon, commutation of sentence, or early release. Such suspension of a sentence, either in full or in part, does not infringe the authority of the enforcing State to execute the sentence in accordance with the applicable law of that State. Similarly, it does not “effectively remove the power from the President of the Tribunal to make the final determination regarding the [execution of the] sentence” imposed by the Trial Chamber.<sup>58</sup> Rather, the decision to suspend the last eight months of Rašić’s sentence of 12 months’ imprisonment forms an integral part of the Trial Chamber’s judicial discretion in the determination of the sentence.

19. As to the Prosecution’s submission that a partial suspension of the sentence was neither argued for nor briefed by the parties, the Appeals Chamber notes that both Rašić and the Prosecution made submissions relating to suspended sentences, with references to the *Bulatović* and the *Milan Simić* cases.<sup>59</sup> In any event, the Trial Chamber is not limited by the parties’ arguments in exercising its discretion to impose an appropriately individualised sentence.

20. Accordingly, the Appeals Chamber dismisses the Prosecution’s first sub-ground of appeal.

**B. Second sub-ground: The Trial Chamber erred in suspending Rašić’s sentence on the basis of factors it had rejected as mitigating**

21. The Trial Chamber considered that Rašić’s medical condition did not constitute a mitigating factor in her sentence, as her ill health did not fall within the parameters of “exceptional circumstances or ‘rare’ cases” which would alone allow for mitigation.<sup>60</sup> The Trial Chamber stated, however, that it would “consider [her health condition] in respect of the execution of the sentence imposed”.<sup>61</sup>

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release it submits the Trial Chamber granted, but the Appeals Chamber considers that this is of no consequence given that the identical decision making process for each type is governed by the same provisions.

<sup>57</sup> Cf. Practice Direction.

<sup>58</sup> *Stakić* Appeal Judgement, para. 392.

<sup>59</sup> T. 58-59 (private session) (Prosecution); 63-64 (Rašić Defence) (31 January 2012).

<sup>60</sup> Sentencing Judgement, para. 30.

<sup>61</sup> Sentencing Judgement, para. 30.



## 1. Submissions

22. The Prosecution submits that the Trial Chamber erred in basing the partial suspension of Rašić's sentence on her health condition, thereby impermissibly mitigating the sentence, despite having correctly rejected her health condition as a mitigating factor.<sup>62</sup> Furthermore, the Prosecution alleges that the Trial Chamber appears, wrongly, to have interpreted the Prosecution submissions on the execution of sentence to indicate that circumstances which cannot be mitigating can be used by the Trial Chamber to alter the length and type of sentence.<sup>63</sup> The Prosecution also argues that the alleged health problems are not sufficiently serious as to warrant the imposition of a suspended sentence.<sup>64</sup> In this context, the Prosecution refers to the *Milan Simić* case in which a trial chamber declined to adjust the sentence and held that the accused's need for complete nursing care was a matter pertaining to the execution of the sentence, and thus needed to be dealt with by the enforcing State.<sup>65</sup> The Prosecution contends that the circumstances cited by the Trial Chamber justify suspension of either all or none, but not part, of Rašić's sentence.<sup>66</sup>

23. Further, the Prosecution argues that the Trial Chamber erroneously credited in mitigation Rašić's "quasi-solitary confinement" as the only female detainee in the UNDU, since once convicted her stay in the UNDU is temporary pending transfer<sup>67</sup> and the conditions of her confinement are not truly solitary.<sup>68</sup>

24. Rašić responds that the Trial Chamber acted with appropriate discretion pursuant to Article 24 of the Statute when it based the suspension of her sentence on the practical impact that detention would have on her well-being and on the quasi-solitary nature of her confinement.<sup>69</sup> She further argues that in suspending the sentence, the Trial Chamber acted properly and within its mandate pursuant to Rule 101(B)(iii) of the Rules, taking into account the general practice regarding prison sentences in the courts of the former Yugoslavia.<sup>70</sup> In addition, she submits that the

<sup>62</sup> Prosecution Notice of Appeal, para. 3; Prosecution Appeal Brief, paras 9, 13-14, 17.

<sup>63</sup> Prosecution Appeal Brief, para. 20.

<sup>64</sup> Prosecution Appeal Brief, para. 16.

<sup>65</sup> Prosecution Appeal Brief, para. 18, *referring to M. Simić Sentencing Judgement*, para. 100.

<sup>66</sup> Prosecution Appeal Brief, paras 10-11. The Prosecution further argues that not even the Serbian Law cited by Rašić seems to contemplate partially suspended sentences. *See* Prosecution Reply Brief, para. 18.

<sup>67</sup> Prosecution Appeal Brief, para. 15.

<sup>68</sup> Prosecution Appeal Brief, para. 16; Prosecution Reply Brief, paras 11-14, *referring to* correspondence from the UNDU Commanding Officer.

<sup>69</sup> Rašić Response Brief, paras 9-10. Rašić further argues that the Prosecution does not cite an authority supporting its assertion that the Trial Chamber was not justified in taking her health condition into consideration in the enforcement of the sentence. *See* Rašić Response Brief, para. 12.

<sup>70</sup> Rašić Response Brief, para. 8. Rašić also responds that the Prosecution did not object to the qualification of her detention conditions as "quasi-solitary" and therefore waived its right to contest this issue on appeal. *See* Rašić Response Brief, para. 13.

Prosecution did not object to her references to Serbian sentencing laws at trial, and thus has waived the right to contest it on appeal.<sup>71</sup>

25. Moreover, Rašić argues that the Prosecution's insistence that her detention at the UNDU would not be permanent is "misinformed" because, in almost all contempt cases, the sentences imposed on the convicted person were enforced in the UNDU in their entirety.<sup>72</sup> She also argues that the Trial Chamber listed ten other mitigating factors in the Sentencing Judgement and implicitly acknowledged that the suspension of the remainder of her sentence was also based on these factors.<sup>73</sup>

26. The Prosecution replies that Rašić's reliance on Serbian sentencing law is misplaced, as only the Statute and the Rules govern sentencing at the Tribunal, not any national laws.<sup>74</sup> It further argues that the question of how quickly convicted persons are transferred to the enforcing State is irrelevant to the imposition of sentence.<sup>75</sup> Finally, the Prosecution replies that Rašić wrongly asserts that the Trial Chamber "implicitly acknowledged" that the mitigating factors it listed also informed its decision to suspend the remainder of her sentence.<sup>76</sup>

## 2. Discussion

27. The Appeals Chamber recalls that the imposition of a suspended sentence is within the judicial discretion of a trial chamber. However, the Appeals Chamber has held that a trial chamber's judicial discretion is not unlimited.<sup>77</sup> It is for the party challenging the sentence to demonstrate that the trial chamber ventured outside its discretionary framework in imposing the sentence.<sup>78</sup> The Trial Chamber found that Rašić's ill health was not severe enough to merit a mitigation of her sentence.<sup>79</sup> The Trial Chamber considered, however, that she would encounter "particularly difficult circumstances" in the UNDU which warranted a suspended sentence.<sup>80</sup> In this respect, the Trial Chamber determined Rašić's sentence, including its partial suspension, after taking into consideration the impact on her well-being, her perception of the detention as well as other

<sup>71</sup> Rašić Response Brief, para. 8.

<sup>72</sup> Rašić Response Brief, para. 11.

<sup>73</sup> Rašić Response Brief, para. 12, referring to Sentencing Judgement, paras 19-30.

<sup>74</sup> Prosecution Reply Brief, para. 17, referring to Rule 101(B)(iii) of the Rules and Article 24 of the Statute.

<sup>75</sup> Prosecution Reply Brief, para. 19.

<sup>76</sup> Prosecution Reply Brief, paras 20-21.

<sup>77</sup> See *supra* para. 10.

<sup>78</sup> See *supra* para. 9.

<sup>79</sup> Sentencing Judgement, para. 30.

<sup>80</sup> Sentencing Judgement, para. 31.



factors.<sup>81</sup> The Appeals Chamber is not satisfied that it was unreasonable for the Trial Chamber to take these factors into consideration in imposing a partially suspended sentence on Rašić.

28. In the Appeals Chamber's view, the Prosecution's submission that the Trial Chamber erroneously mitigated Rasic's sentence by partially suspending it on the basis of her health condition<sup>82</sup> is misguided as it relies again on a conflation of suspension and mitigation. The Trial Chamber considered that the effect that detention could have on Rašić's psychological well-being did not constitute a mitigating factor.<sup>83</sup> It held, however, that this constituted a relevant consideration, among others, to partially suspend "the execution of the sentence".<sup>84</sup> Regardless of whether Rašić will serve the remainder of eight months in detention, her sentence of 12 months' imprisonment remains unaffected. Therefore, the partial suspension of Rašić's sentence by the Trial Chamber<sup>85</sup> does not equate to a reduction of her sentence, and the Prosecution's submission in this respect is dismissed.

29. In this context, the Appeals Chamber further considers the Prosecution's argument that the Trial Chamber erroneously found that Rašić's health problems were serious enough to warrant the imposition of a suspended sentence.<sup>86</sup> In support of this argument, the Prosecution refers to the *Milan Simić* case in which the trial chamber neither mitigated nor suspended Milan Simić's sentence, although his health problems required "complete nursing care on a daily basis".<sup>87</sup> The Appeals Chamber recalls that while "sentences of like individuals in like cases should be comparable",<sup>88</sup> trial chambers have broad discretion in determining the appropriate sentence on account of their obligation to tailor the penalties to fit the individual circumstances of the convicted person and to reflect the gravity of the crimes.<sup>89</sup> Comparison between cases is thus generally of

<sup>81</sup> Sentencing Judgement, para. 31.

<sup>82</sup> See Prosecution Appeal Brief, para. 14. The Appeals Chamber is satisfied that, contrary to Rašić's assertion, the Prosecution explicitly opposed at trial her argument that "her detention resemble[d] a de facto solitary confinement". See *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R77.2, Prosecution Response to Urgent Motion for Provisional Release, 27 October 2010 (confidential), para. 2, referring to *Prosecutor v. Jelena Rašić*, Case No. It-98-32/1-R77.2, Urgent Motion for Provisional Release, 26 October 2012 (confidential) ("26 October 2010 Provisional Release Motion"), paras 16-18. Thus, Rašić's argument that the Prosecution has waived its right to object to the qualification of her detention conditions as quasi-solitary is dismissed.

<sup>83</sup> Sentencing Judgement, para. 30.

<sup>84</sup> Sentencing Judgement, paras 30-31. The Appeals Chamber notes that the Trial Chamber's reference to "the execution of the sentence" is misleading, as the execution of a sentence lies within the authority of the President and the enforcing state. However, the Appeals Chamber finds that this reference does not constitute an error of law, as the Trial Chamber's partial suspension of Rašić's sentence did not infringe the authority of the President and the enforcing state in this respect, as the suspended sentence was an integral part of its judicial discretion in the determination of Rašić's sentence (see *supra* paras 17-18).

<sup>85</sup> T. 72-73 (7 February 2012); Sentencing Judgement, para. 31.

<sup>86</sup> Prosecution Appeal Brief, para. 18.

<sup>87</sup> Prosecution Appeal Brief, para. 18, quoting *M. Simić* Sentencing Judgement, para. 100.

<sup>88</sup> *Milošević* Appeal Judgement, para. 326, quoting *Strugar* Appeal Judgement, para. 348; *Kvočka et al.* Appeal Judgement, para. 681.

<sup>89</sup> *Ntabakuze* Appeal Judgement, paras 264, 298.

limited assistance.<sup>90</sup> The Appeals Chamber finds that the *Milan Simić* case bears no relevance for the present case. There are too many variables in both cases to be able to transpose the sentencing considerations from the former to the latter. In particular, Milan Simić was convicted of two counts of torture as crimes against humanity,<sup>91</sup> while Rašić was not convicted of any of the Statute's core crimes. In these circumstances, the Prosecution has failed to show that the Trial Chamber erred in considering that Rašić's health problems were serious enough to warrant a partial suspension of her sentence.

30. Further, the Trial Chamber did not err in taking into consideration Rašić's conditions at the UNDU.<sup>92</sup> The Appeals Chamber notes that to date, no person convicted of contempt was transferred from the UNDU to an enforcing State to serve his or her sentence. Moreover, given the length of the sentence (12 months) and the length of time for which she had already been detained at the time of the Sentencing Judgement (84 days), the Appeals Chamber is satisfied that it was not unreasonable for the Trial Chamber to consider that Rašić would serve the remainder of her sentence at the UNDU. In these circumstances, the Prosecution has not shown that the Trial Chamber erred in taking into account Rašić's detention conditions at the UNDU.

31. With respect to the Prosecution's argument that Rašić's confinement in the UNDU is not truly solitary, the Appeals Chamber notes that the Trial Chamber considered the *ex parte* medical reports of Dr. Vera Petrović ("Petrović Reports")<sup>93</sup> concerning Rašić's health condition.<sup>94</sup> In these reports, Dr. Petrović made observations about Rašić's mental health condition at the UNDU.<sup>95</sup> While the Prosecution argues that Rašić was able to socialise "for 10 hours each weekday and for eight hours each day on Saturdays and Sundays" with other detainees in the UNDU to an extent that her confinement cannot be considered "quasi-solitary",<sup>96</sup> the Appeals Chamber finds that the Prosecution does not show an error in the Trial Chamber's finding. The Trial Chamber based its decision to impose a suspended sentence on Rašić's "*perception* of her detention and the practical impact upon her well-being".<sup>97</sup> The Prosecution does not show that the Trial Chamber ventured

<sup>90</sup> *Milošević* Appeal Judgement, para. 326 and references cited therein.

<sup>91</sup> *M. Simić* Sentencing Judgement, para. 34.

<sup>92</sup> Sentencing Judgement, para. 31.

<sup>93</sup> Medical Reports of Dr. Vera Petrović on Jelena Rašić dated 26 January 2012 and 1 February 2012, *annexed to Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R77.2, Registrar's Submission of Medical Reports, 6 February 2012 (confidential). The *ex parte* status of the Petrović Reports was lifted on 6 March 2012 by the Trial Chamber. See Sentencing Judgement, para. 34.

<sup>94</sup> Sentencing Judgement, para. 31. See also T. 73 (7 February 2012).

<sup>95</sup> "There was a short period of time when she was almost overcome by panic, at the very beginning, during the weekend, given that she was alone and in isolation (due to Detention Unit rules) for a longer period." See Petrović Reports, p. 6. "Her mental state is that of a moderate depressive reaction. She has a difficult time dealing with isolation on the floor where she stays, although she does realise that the management of the detention unit has done everything possible to reduce these feelings." See Petrović Reports, p. 8.

<sup>96</sup> Prosecution Reply Brief, para. 12.

<sup>97</sup> Sentencing Judgement, para. 31 (emphasis added). See also T. 72 (7 February 2012).

outside its scope of discretion when it relied on how Rašić perceived her confinement, on the basis of the Petrović Reports. Furthermore, the Appeals Chamber notes that the Trial Chamber based the suspension of the sentence not only on Rašić's perception of her detention but also on "Rašić's comparably young age and that this is the first time she is sentenced to a prison sentence."<sup>98</sup>

32. For the foregoing reasons, the Prosecution has failed to show that the Trial Chamber erred in suspending part of Rašić's sentence, arguing that the circumstances either justify suspension of the whole sentence, or not at all.

33. Accordingly, the Appeals Chamber dismisses the Prosecution's second sub-ground of appeal.

**C. Third sub-ground: The Trial Chamber erred in relying on *ex parte* medical reports as a basis for suspending Rašić's sentence**

34. In deciding to suspend part of Rašić's sentence, the Trial Chamber considered, among other things, two *ex parte* medical reports by Dr. Petrović concerning Rašić's health condition.<sup>99</sup> Following a request by the Prosecution during the Sentencing Hearing to gain access to the Petrović Reports,<sup>100</sup> the Trial Chamber determined on 6 March 2012, in its Sentencing Judgement, that "[g]iven the current stage of the proceedings, [...] 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."<sup>101</sup>

1. Submissions

35. The Prosecution submits that the Trial Chamber erred in law in relying on *ex parte* reports regarding Rašić's medical condition as a basis for suspending her sentence.<sup>102</sup> The Prosecution argues that it was deprived of the opportunity to make submissions in relation to these reports, as they were only available to the Prosecution on 6 March 2012 – five weeks after the sentencing submissions and nearly one month after the oral delivery of the Sentencing Judgement.<sup>103</sup> It contends that, had it had such opportunity, it would have argued that nothing in the Petrović Reports justified suspending the sentence either in full or in part.<sup>104</sup> Consequently, the Prosecution

<sup>98</sup> Sentencing Judgement, para. 31.

<sup>99</sup> Sentencing Judgement, para. 31, *See also* T. 73 (7 February 2012).

<sup>100</sup> T. 73 (7 February 2012). *See also* Sentencing Judgement, para. 33.

<sup>101</sup> Sentencing Judgement, para. 34.

<sup>102</sup> Prosecution Notice of Appeal, para. 4; Prosecution Appeal Brief, paras 21-22.

<sup>103</sup> Prosecution Appeal Brief, para. 21.

<sup>104</sup> Prosecution Appeal Brief, para. 22.

invites the Appeals Chamber to re-sentence Rašić and to impose an immediate term of 12 months' imprisonment.<sup>105</sup>

36. Rašić responds that the Prosecution was not prejudiced by the late submission of the Petrović Reports, given that the Prosecution did make oral submissions regarding her health and that the information on which its arguments were based could be found in various defence submissions.<sup>106</sup> Hence, Rašić argues that the Prosecution was fully and timely apprised of her health condition.<sup>107</sup>

37. The Prosecution replies that the fact that documents mentioning Rašić's health condition had been attached to unrelated motions does not remedy the prejudice occasioned.<sup>108</sup> The Prosecution argues that the Trial Chamber did not take these other medical reports into consideration but only referred to the Petrović Reports, which were not made available to the Prosecution until after the sentencing submissions.<sup>109</sup>

## 2. Discussion

38. The Appeals Chamber notes that the Petrović Reports were filed confidentially and *ex parte* on 6 February 2012. However, the Prosecution was only given access to the Petrović Reports on 6 March 2012, nearly one month after the sentence had been determined.<sup>110</sup> The Trial Chamber based its decision to lift the *ex parte* status of the reports on "the current state of the proceedings" and on the fact that "as a party to this case", the Prosecution had a right to access the Petrović Reports which "form part of the judicial basis of Jelena Rašić's sentence".<sup>111</sup> It further found that the reports were relevant for the assessment of the sentence.<sup>112</sup> In these circumstances, the Appeals Chamber finds that the Trial Chamber erred in not giving the Prosecution access to the Petrović Reports prior to the delivery of the Sentencing Judgement, as this deprived the Prosecution of the opportunity to make submissions in relation to them. Nonetheless, for the reasons set out below, the Appeals Chamber is not convinced that this error invalidates the Sentencing Judgement.

39. The Appeals Chamber notes that the Prosecution made submissions on Rašić's health condition on 31 January 2012.<sup>113</sup> The Appeals Chamber further notes that, on 26 October 2010, the Prosecution was made aware that Rašić felt "totally isolated" in the UNDU, due to her status as the

<sup>105</sup> Prosecution Appeal Brief, paras 24-25.

<sup>106</sup> Rašić Response Brief, para. 14.

<sup>107</sup> Rašić Response Brief, para. 14.

<sup>108</sup> Prosecution Reply Brief, para. 22.

<sup>109</sup> Prosecution Reply Brief, para. 22.

<sup>110</sup> Sentencing Judgement, para. 34.

<sup>111</sup> Sentencing Judgement, para. 34.

<sup>112</sup> Sentencing Judgement, para. 34.





only female detainee.<sup>114</sup> At that time, Rašić requested to be provisionally released, submitting, *inter alia*, that her limited communications with some of the male detainees for a period of two hours or less per day were insufficient for her well-being.<sup>115</sup> She argued that her detention therefore resembled “a de facto solitary confinement [...] [which] is inhumane, especially in the light of the presumption of innocence.”<sup>116</sup> In its decision of 12 November 2010, the Trial Chamber noted these submissions and granted Rašić’s request for provisional release.<sup>117</sup>

40. On 30 January 2012, Rašić stated that “the President of the Tribunal acknowledged and accommodated her disability during her detention”, and accordingly requested the Trial Chamber to “consider the effect that detention has on her psychological well-being as a mitigating factor for her sentence.”<sup>118</sup>

41. During its oral submissions on 31 January 2012, the Prosecution invited the Trial Chamber “to take a proper contextual understanding of what has been said within the medical reports relating to Ms. Ra[š]i[ć]”.<sup>119</sup> During the same hearing, Rašić referred to her specific conditions in detention.<sup>120</sup> Further, Judge Morrison stated during the hearing that:

So, I mean, effectively, being the only female in the – at the moment in the detention centre, [Rašić] is effectively in a degree of isolation which she wouldn’t be were she male.<sup>121</sup>

Ms. Tapušковиć responded that this statement was correct.<sup>122</sup>

42. The Appeals Chamber notes that, at the time the sentence was rendered, the Prosecution did not have access to the Petrović Reports. However, the above-mentioned written and oral submissions by the parties as well as the considerations and findings of the Trial Chamber show that the Prosecution had sufficient information about Rašić’s health condition at the time the sentence was rendered. The fact that some of this information was contained in filings relating to Rašić’s provisional release does not cause prejudice to the Prosecution, as these filings are part of the trial record. The Prosecution was thus able to consider their content and to make use of this

<sup>113</sup> T. 58-59 (31 January 2012) (private session).

<sup>114</sup> 26 October 2010 Provisional Release Motion, para. 16.

<sup>115</sup> 26 October 2010 Provisional Release Motion, para. 17.

<sup>116</sup> 26 October 2010 Provisional Release Motion, para. 18. *See also Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R77.2, Motion for Further Modification of the Terms of Provisional Release of Jelena Rašić, 12 July 2011 (confidential), para. 7.

<sup>117</sup> *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R77.2, Decision Granting Provisional Release Pending Trial, 12 November 2010 (confidential), pp. 3-4.

<sup>118</sup> *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R77.2, Corrigendum to Defence Mitigation Submission, 30 January 2012 (confidential) (“*Rašić* Corrigendum to Mitigation Submission”), para. 19.

<sup>119</sup> T. 58 (31 January 2012) (private session).

<sup>120</sup> T. 63-65 (31 January 2012).

<sup>121</sup> T. 65 (31 January 2012).

<sup>122</sup> T. 65 (31 January 2012).

information during its sentencing submissions.<sup>123</sup> Furthermore, the Prosecution does not show that the Petrović Reports include information that differed from the information available to the Prosecution during the sentencing submissions. The Appeals Chamber is therefore not satisfied that the Prosecution was prejudiced by the Trial Chamber's reliance on the Petrović Reports.

43. Accordingly, the Appeals Chamber dismisses the Prosecution's third sub-ground of appeal.

#### **D. Conclusion**

44. For the foregoing reasons, the Appeals Chamber rejects the Prosecution's appeal in its entirety.

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<sup>123</sup> See T. 58 (31 January 2012) (private session), referring to Rašić Corrigendum to Mitigation Submission, para. 19. The Prosecution further asked the Trial Chamber to take into consideration the medical reports relating to Rašić. See T. 58 (31 January 2012) (private session).

#### IV. JELENA RAŠIĆ'S APPEAL: THE TRIAL CHAMBER ERRED IN FACT AND LAW IN IMPOSING A 12-MONTH SENTENCE

45. The Trial Chamber held that the gravity of Rašić's crimes "fully merits the imposition of a twelve-month sentence of immediate imprisonment", but considered it appropriate to suspend eight months of the sentence.<sup>124</sup> It further considered Rašić's role, age, level of experience, guilty plea, expression of remorse, good character, lack of prior conviction, voluntary surrender, compliance with Trial Chamber orders, and good behaviour in detention as mitigating circumstances.<sup>125</sup> In its discussion of aggravating circumstances, the Trial Chamber "note[d] the position of trust in which [she] found herself in at the time of her crimes", and stated that "[a]s officers of justice, [members of defence teams] 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."<sup>126</sup>

46. Rašić submits that the Trial Chamber erred in fact and in law in sentencing her to 12 months' imprisonment.<sup>127</sup> In particular, she argues that the Trial Chamber erred in: (i) imposing a sentence that was unreasonably excessive in comparison to other sentences in similar cases;<sup>128</sup> and (ii) abusing its discretion by considering in aggravation circumstances that were outside the scope of the parties' arguments and unsupported by the evidence.<sup>129</sup> Rašić requests that the Appeals Chamber reduce the sentence imposed by the Trial Chamber.<sup>130</sup>

47. The Prosecution responds that Rašić: (i) fails to demonstrate that the Trial Chamber committed a discernible error in the exercise of its discretion; (ii) mischaracterises the Trial Chamber's findings; and (iii) relies on irrelevant factors and facts absent from the trial record.<sup>131</sup> The Prosecution accordingly requests that the Appeals Chamber dismisses Rašić's appeal in its entirety and affirms her 12-month sentence.<sup>132</sup>

<sup>124</sup> Sentencing Judgement, para. 31. *See also* T. 72-73 (7 February 2012).

<sup>125</sup> Sentencing Judgement, paras 19-22, 27. *See also* T. 70-71 (7 February 2012).

<sup>126</sup> Sentencing Judgement, para. 18. *See also* T. 69-70 (7 February 2012).

<sup>127</sup> Rašić Notice of Appeal, paras 2-3; Rašić Appeal Brief, paras 2-17.

<sup>128</sup> Rašić Notice of Appeal, para. 2; Rašić Appeal Brief, paras 2-12. *See also* Rašić Reply Brief, paras 1, 4, 7-10, 12-13.

<sup>129</sup> Rašić Notice of Appeal, para. 3; Rašić Appeal Brief, paras 13-17.

<sup>130</sup> Rašić Notice of Appeal, p. 2; Rašić Appeal Brief, para. 18.

<sup>131</sup> Prosecution Response Brief, para. 3.

<sup>132</sup> Prosecution Response Brief, paras 3, 20.

**A. First sub-ground: The sentence was excessive in comparison to other sentences in similar cases**

**1. Submissions**

48. Rašić avers that her sentence is excessive in comparison to the sentences imposed in the *Tabaković* and *Vujin* cases, because the Trial Chamber gave insufficient weight in mitigation to her *mens rea* for Counts 1 to 4 of the Amended Indictment.<sup>133</sup> In particular, she argues in relation to Counts 1 and 2 that her unawareness of the falsity of the *Tabaković* Statement and the Other Statements detracted from her “intent to interfere with the administration of justice”<sup>134</sup> and that she initially thought that the payments to *Tabaković* were a “humanitarian gesture” because he was struggling financially.<sup>135</sup> Regarding Counts 3 and 4, she submits that she was only aware of a substantial possibility that the Other Statements were false.<sup>136</sup>

49. Rašić further submits that the Trial Chamber disregarded substantial mitigating circumstances which outnumbered both the aggravating circumstances in her case and the mitigating circumstances in the *Tabaković* case.<sup>137</sup> She contends that while the Trial Chamber found that she sought no personal benefit from the crimes,<sup>138</sup> the *Tabaković* trial chamber considered that it was “not to [*Tabaković*’s] credit” that he sought financial advantage for his cooperation.<sup>139</sup>

50. The Prosecution responds that Rašić’s bribery of *Tabaković* was “a serious affront to the administration of justice regardless of her motives” or whether she knew the statements were false.<sup>140</sup> It submits that the “progression of knowledge about the falsity of the statements, and the mental elements of the crimes are clearly reflected in the Amended Indictment and the sentencing

<sup>133</sup> Rašić Appeal Brief, paras 3-8; Rašić Reply Brief, paras 2-6.

<sup>134</sup> Rašić Appeal Brief, para. 5; Rašić Reply Brief, paras 2-4.

<sup>135</sup> Rašić Appeal Brief, para. 6, referring to *Vujin* Contempt Judgement, paras 155-158, *Tabaković* Sentencing Judgement, para. 13; Rašić Reply Brief, para. 5.

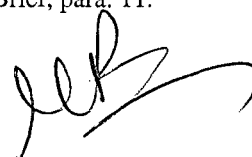
<sup>136</sup> Rašić Appeal Brief, para. 7. The Appeals Chamber will consider *infra* (see section IV. B. 2. Rašić’s submission in relation to Count 5 that the Trial Chamber applied a disparate standard to those applied in the *Tabaković* case when it found it aggravating that her criminal conduct was “persistent and repetitive” even though the same conduct in the *Tabaković* case was not considered aggravating. See Rašić Appeal Brief, paras 8, 17; Rašić Reply Brief, para. 8.

<sup>137</sup> Rašić Appeal Brief, paras 9-11; Rašić Reply Brief, paras 7-13. Rašić argues that the mitigating factors in the *Tabaković* case were limited to his cooperation with the Prosecution, his guilty plea, and his financial and family situation, whereas, in contrast, there are nine additional mitigating factors in her case. See Rašić Appeal Brief, paras 10-11; Rašić Reply Brief, para. 13.

<sup>138</sup> Rašić Appeal Brief, para. 11, referring to Sentencing Judgement, para. 19. Rašić submits that the Prosecution’s argument that the Trial Chamber never found that Rašić sought no personal benefit from the crimes misinterprets the Sentencing Judgement as such reference is included under the sub-heading “Mitigating Circumstances” in the Sentencing Judgement. See Rašić Reply Brief, para. 12, referring to Prosecution Response Brief, para. 16.

<sup>139</sup> Rašić Appeal Brief, para. 10, quoting *Tabaković* Sentencing Judgement, para. 12. See also Rašić Reply Brief, para. 4.

<sup>140</sup> Prosecution Response Brief, para. 10. See also Prosecution Response Brief, para. 11.



submissions”, as well as in Rašić’s sentence.<sup>141</sup> It further contends that “[t]o the extent Rašić argues this should also be considered a mitigating factor, she fails to explain why an error arises based on ‘double-counting’.”<sup>142</sup> The Prosecution avers that there is no evidence to support Rašić’s claim that she believed the bribes to be humanitarian gestures.<sup>143</sup>

51. The Prosecution further responds that the Trial Chamber was not bound by the *Tabaković* Sentencing Judgement and that a comparison of both cases explains why Rašić’s sentence is longer than Tabaković’s sentence.<sup>144</sup> It submits that the Trial Chamber made no finding on whether Rašić sought personal benefit from the crimes.<sup>145</sup>

52. Rašić replies that, even if her subjective knowledge is irrelevant, it supports a lesser sentence because it demonstrates that she lacked premeditation and was less of a link between the architects of the crime and Tabaković.<sup>146</sup> Finally, she argues that the Trial Chamber’s failure to impose a sentence similar to Tabaković’s sentence interfered with her defence strategy in weighing the probable outcomes of her case based on the jurisprudence of the Tribunal, thereby occasioning a miscarriage of justice.<sup>147</sup>

## 2. Discussion

53. The Appeals Chamber recalls that when determining an appropriate sentence in a situation where an accused has pleaded guilty, “[t]rial [c]hambers are in principle limited to the factual basis of the guilty plea, set forth in such documents as the indictment, the plea agreement and a written

<sup>141</sup> Prosecution Response Brief, para. 13, referring to Amended Indictment, paras 9, 16, T. 42, 48-49 (31 January 2012), *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1-R77.2, Defence Mitigation Submission, 27 January 2012 (confidential), para. 9.

<sup>142</sup> Prosecution Response Brief, para. 13.

<sup>143</sup> Prosecution Response Brief, para. 12. The Prosecution further argues that despite the *Tabaković* trial chamber’s finding that Tabaković might have been financially stressed at the time of his sentencing in March 2010, there is no evidence to support the claim that Rašić was aware of Tabaković’s financial situation when she bribed him in October 2008. See Prosecution Response Brief, para. 12.

<sup>144</sup> Prosecution Response Brief, paras 4-9. In particular, the Prosecution argues that: (i) Rašić held a position of trust before the Tribunal as Milan Lukić’s Case Manager and had a responsibility to protect the integrity of the proceedings (see Prosecution Response Brief, paras 5, 8); (ii) Tabaković, Mr. X, and Mr. Y would not have been involved in this criminal scheme, were it not for Rašić’s acts (see Prosecution Response Brief, para. 5); (iii) Tabaković was only convicted of three counts of contempt, each done at Rašić’s behest (see Prosecution Response Brief, para. 6); (iv) Tabaković cooperated extensively with the Prosecution (see Prosecution Response Brief, para. 7); and (v) Rašić lied to Prosecution investigators, hindering the investigation (see Prosecution Response Brief, para. 8, referring to, *inter alia*, T. 53-57 (31 January 2012)). The Prosecution does not respond specifically to Rašić’s reference to the *Vujin* Contempt Judgement.

<sup>145</sup> Prosecution Response Brief, para. 16, referring to Sentencing Judgement, para. 19.

<sup>146</sup> Rašić Reply Brief, para. 6. See also Rašić Reply Brief, para. 10.

<sup>147</sup> Rašić Reply Brief, para. 7.

statement of facts.”<sup>148</sup> In this case, the factual basis for the guilty pleas was set forth in the Amended Indictment and the submissions of the parties during the Sentencing Hearing.<sup>149</sup>

54. With respect to Counts 1 and 2, the factual basis for the guilty plea states that Rašić knowingly and wilfully interfered with the Tribunal’s administration of justice by bribing Tabaković, asking him to sign a pre-prepared witness statement, and by inciting him to offer bribes to potential witnesses in the *Lukić and Lukić* case.<sup>150</sup> Regarding Counts 3 and 4, the factual basis for the guilty pleas states that Rašić knowingly and wilfully interfered with the Tribunal’s administration of justice by procuring a false witness statement from both Mr. X and Mr. Y, with the awareness of the substantial likelihood that the statements were false.<sup>151</sup> With respect to Count 5, the factual basis for the guilty plea states that Rašić knowingly and wilfully interfered with the Tribunal’s administration of justice by procuring new versions of a false witness statement for Tabaković, Mr. X, and Mr. Y, knowing these statements to be false.<sup>152</sup>

55. Contrary to Rašić’s submission that the Trial Chamber gave insufficient weight in mitigation to her *mens rea*, the Appeals Chamber finds that there is nothing in the Sentencing Judgement to suggest that the Trial Chamber failed to consider her level of intent. As described above, her level of intent was clearly set forth in the factual basis for her guilty pleas and the submissions of the parties,<sup>153</sup> which were referred to by the Trial Chamber when determining her sentence.<sup>154</sup> Moreover, there is no support in the record for Rašić’s assertion that she initially thought that her payments to Tabaković were humanitarian in nature, and the Appeals Chamber recalls “that motive is generally not an element of criminal liability.”<sup>155</sup>

56. With respect to Rašić’s argument that she lacked premeditation and was less of a link between the “architects of the crime” and Tabaković, the Appeals Chamber notes that the Trial Chamber took into account Rašić’s limited role in the scheme to procure false evidence as a mitigating circumstance, finding that “[t]he 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* trial.”<sup>156</sup> Thus, the Appeals Chamber finds that Rašić has failed to

<sup>148</sup> *M. Nikolić* Judgement on Sentencing Appeal, para. 12.

<sup>149</sup> Amended Indictment; T. 41-50, 61 (31 January 2012). See also Sentencing Judgement, paras 10-13.

<sup>150</sup> Amended Indictment, paras 2-8; T. 41-45 (31 January 2012). See also Sentencing Judgement, paras 10-11.

<sup>151</sup> Amended Indictment, paras 9-15; T. 45-49 (31 January 2012). See also Sentencing Judgement, para. 12.

<sup>152</sup> Amended Indictment, paras 16-19; T. 49-50 (31 January 2012). See also Sentencing Judgement, para. 13.

<sup>153</sup> The Prosecution acknowledged that Rašić was not initially aware that the Tabaković Statement was false (T. 42 (31 January 2012)).

<sup>154</sup> Sentencing Judgement, paras 10-13.

<sup>155</sup> *Limaj et al.* Appeal Judgement, para. 109.

<sup>156</sup> Sentencing Judgement, para. 19, referring to T. 57 (31 January 2012).



demonstrate that the Trial Chamber gave inappropriate consideration to Rašić's role in the crime as a mitigating circumstance.<sup>157</sup>

57. Regarding Rašić's contention that the Trial Chamber failed to consider the sentence imposed on Tabaković, the Appeals Chamber notes that the Trial Chamber did not expressly refer to the *Tabaković* Sentencing Judgement. The Appeals Chamber recalls that while sentences of like individuals in like cases should indeed be comparable,<sup>158</sup> trial chambers have broad discretion in determining the appropriate sentence on account of their obligation to tailor the penalties to fit the individual circumstances of the convicted person and to reflect the gravity of the crimes.<sup>159</sup> Comparison between cases is thus generally of limited assistance.<sup>160</sup>

58. The Trial Chamber considered that Rašić was in a position of trust as Milan Lukić's Case Manager when she committed the crimes.<sup>161</sup> Furthermore, it took into account that Rašić pleaded guilty to five counts of contempt while Tabaković pleaded guilty to three counts of contempt.<sup>162</sup> The Trial Chamber considered that Rašić's co-operation with the Prosecution was not "substantial" within the meaning of Rule 101(B)(ii) of the Rules" and that she lied in response to questions asked by the Prosecution which were material to its investigation.<sup>163</sup> As a result, the Trial Chamber gave little weight to Rašić's co-operation. In contrast, the *Tabaković* trial chamber held that Tabaković's co-operation with the Prosecution constituted a "powerful mitigating circumstanc[e]" that weighed "heavily in favour of the Accused", even though he had initially contacted the Prosecution for financial gain.<sup>164</sup> Accordingly, the Appeals Chamber finds that Rašić has failed to demonstrate that the Trial Chamber erred in taking into account and weighing the relevant mitigating and aggravating factors to tailor a sentence to meet Rašić's individual circumstances and the gravity of her crimes.<sup>165</sup>

59. Finally, the Appeals Chamber notes that, when considering mitigation, the Trial Chamber stated "that it has not been argued that Jelena Rašić would have received any personal benefit from the crimes."<sup>166</sup> Thus, the Appeals Chamber is satisfied that the Trial Chamber took this factor into

<sup>157</sup> Sentencing Judgement, para. 19.

<sup>158</sup> *Milošević* Appeal Judgement, para. 326, quoting *Strugar* Appeal Judgement, para. 348; *Kvočka et al.* Appeal Judgement, para. 681.

<sup>159</sup> *Ntabakuze* Appeal Judgement, paras 264, 298.

<sup>160</sup> *Milošević* Appeal Judgement, para. 326.

<sup>161</sup> Sentencing Judgement, para. 18.

<sup>162</sup> Sentencing Judgement, paras 6, 36; *Tabaković* Sentencing Judgement, paras 4, 19.

<sup>163</sup> Sentencing Judgement, para. 26.

<sup>164</sup> *Tabaković* Sentencing Judgement, para. 12.

<sup>165</sup> In addition, the Appeals Chamber notes that Rašić argues for the first time in reply that the Trial Chamber's failure to impose a sentence similar to Tabaković's sentence allegedly rendered the outcome of plea agreements unpredictable. See Rašić Reply Brief, para. 7. The Appeals Chamber finds this argument to be without merit since decisions of trial chambers have no binding force on each other. See *Aleksovski* Appeal Judgement, para. 114.

<sup>166</sup> Sentencing Judgement, para. 19.



consideration in mitigation of the sentence. However, in light of the Trial Chamber's assessment of the gravity of the crimes and Rašić's limited co-operation with the Prosecution, the Appeals Chamber finds that Rašić has not shown that it committed a discernible error by attributing limited weight to this fact in mitigation of her sentence.

60. In light of the foregoing, the Appeals Chamber finds that Rašić has failed to show that her sentence was excessive in relation to other sentences. Accordingly, the Appeals Chamber dismisses Rašić's first sub-ground of appeal.

**B. Second sub-ground: The Trial Chamber erred in assessing the aggravating circumstance**

1. Submissions

61. Rašić submits that the Trial Chamber abused its discretion by considering her to be an "officer of justice" who held a position of trust, arguing that: (i) this aggravating circumstance was outside the scope of arguments put forth by the parties; and (ii) this finding is inconsistent with the Trial Chamber's factual findings on her age, role, and level of experience.<sup>167</sup> Moreover, she submits that: (i) since she initially did not know that the statements were false, she lacked the requisite *mens rea* to exploit her alleged position of trust or affect others in a criminal manner;<sup>168</sup> and (ii) the Trial Chamber failed to note that this factor could only affect her culpability for Count 5 of the Amended Indictment.<sup>169</sup>

62. Rašić further submits in relation to Count 5 of the Amended Indictment that the Trial Chamber contravened Article 21 of the Statute when it applied a disparate standard and found it aggravating that her criminal conduct was "persistent and repetitive" even though the same conduct in *Tabaković* was not considered aggravating.<sup>170</sup> Rašić further submits that the sentence does not reflect the significance of her role and the form and degree of her participation, as the Trial Chamber itself found that others connected to the *Lukić and Lukić* case "were responsible for recruiting her to commit these offences."<sup>171</sup>

<sup>167</sup> Rašić Appeal Brief, paras 13-15. Rašić further submits that "[o]fficer" is a title generally reserved for those with sufficient training and education, such as a licensed attorney." See Rašić Appeal Brief, para. 14.

<sup>168</sup> Rašić Appeal Brief, para. 15.

<sup>169</sup> Rašić Appeal Brief, para. 15.

<sup>170</sup> Rašić Appeal Brief, paras 8, 17; Rašić Reply Brief, para. 8.

<sup>171</sup> Rašić Appeal Brief, para. 16, quoting Sentencing Judgement, para. 19. Rašić submits that despite the acknowledgement of the Trial Chamber that she was not the original instigator of the criminal scheme, the 12-month sentence suggests that her rank and role were given insufficient weight in mitigation. See Rašić Appeal Brief, para. 16.



63. The Prosecution responds that Rašić fails to demonstrate that the Trial Chamber erred in finding that she abused a position of trust as a case manager.<sup>172</sup> It argues that Rašić's submissions are largely semantic because she was acting as an "officer of justice" by virtue of her role as a case manager which placed her in a significant position of trust despite her youth and inexperience.<sup>173</sup> Moreover, it submits that she fails to explain how the Trial Chamber was unreasonable in describing a case manager as an "officer of justice" or how this description had a negative impact on her sentence.<sup>174</sup>

64. The Prosecution further responds that Rašić's knowledge of the falsity of the Tabaković Statement is irrelevant to whether she bribed him and incited him to bribe others.<sup>175</sup> It submits that Rašić fails to show that the Trial Chamber erroneously considered the fact that her criminal conduct was "persistent and repetitive" as an aggravating factor just because the *Tabaković* trial chamber did not explicitly mention this as an aggravating factor.<sup>176</sup> Finally, the Prosecution also submits that she fails to explain how her sentence should be shorter merely because others might be more culpable than she.<sup>177</sup>

## 2. Discussion

65. The Appeals Chamber finds that Rašić has failed to show that the Trial Chamber erroneously relied on her position as an "officer of justice" as an aggravating circumstance. The Appeals Chamber notes that neither party explicitly argued that Rašić was an "officer of justice". However, the Appeals Chamber observes that the Trial Chamber used this term to describe Rašić's position of trust as a member of the defence team.<sup>178</sup> This position of trust was mentioned by the Prosecution when it submitted that "Ms. Ra[š]i[ć] occupied a position of trust, as [...] Case Manager, whose activities were at a level above those of Mr. Tabaković, whilst he was a level himself above Mr. X and [Mr.] Y."<sup>179</sup> Thus, Rašić's argument effectively turns on semantics and she has failed to show that the Trial Chamber abused its discretion when it relied on an aggravating circumstance that was not mentioned by the parties.

66. Similarly, the Appeals Chamber finds that Rašić has failed to show that the Trial Chamber's finding that she was an "officer of justice" is not supported by the evidence. Again, the Appeals

<sup>172</sup> Prosecution Response Brief, para. 17. The Prosecution does not explicitly respond to Rašić's submission that the aggravating circumstance of "officer of justice" was outside the scope of arguments put forth by the parties.

<sup>173</sup> Prosecution Response Brief, para. 17.

<sup>174</sup> Prosecution Response Brief, para. 17.

<sup>175</sup> Prosecution Response Brief, para. 18.

<sup>176</sup> Prosecution Response Brief, para. 14.

<sup>177</sup> Prosecution Response Brief, para. 19.

<sup>178</sup> Sentencing Judgement, para. 18.

<sup>179</sup> T. 57 (31 January 2012).

Chamber finds that this argument effectively turns on semantics as opposed to substance. The Trial Chamber used this term to describe the obligations of “any professional involved in the proceedings before the Tribunal”, including members of defence teams.<sup>180</sup> It took into account that, as a member of Milan Lukić’s defence team, Rašić held a “position of trust”, and that she was “obligated to act conscientiously with full respect of the law and applicable rules”.<sup>181</sup>

67. The specific obligation to fully respect the applicable law is contained in the disciplinary regime applicable to members of a defence team. Pursuant to Article 35 (i) and (v) of the Code of Professional Conduct for Counsel, members of a defence team display professional misconduct if they: (i) violate the Rules; or (ii) engage in conduct which is prejudicial to the proper administration of justice before the Tribunal.<sup>182</sup>

68. In these circumstances, the Appeals Chamber finds that the Trial Chamber correctly found that Rašić was in a position of trust by virtue of her being a member of the defence team. As this position of trust is accorded to every member of a defence team, Rašić has failed to show that the Trial Chamber’s finding that she was an “officer of justice” was inconsistent with its findings on her age, role, and level of experience.

69. With respect to Rašić’s submission that she initially did not know that the statements were false and consequently lacked the *mens rea* to exploit her position of trust, the Appeals Chamber finds that Rašić cannot, at this stage, challenge the factual basis for the plea agreement. This part of her sub-ground of appeal is thus dismissed.

70. Furthermore, the Appeals Chamber finds that the Trial Chamber did not violate the principle under Article 21 of the Statute that all persons shall be equal before the Tribunal. While it considered in aggravation that Rašić’s conduct was “persistent and repetitive”, the *Tabaković* trial chamber did not consider it as an aggravating factor. The Appeals Chamber recalls that decisions of a trial chamber have no binding force on each other.<sup>183</sup> Thus, a trial chamber is not precluded from considering an aggravating factor which was not accepted as an aggravating circumstance in another case. In these circumstances, the Appeals Chamber is satisfied that the Trial Chamber’s reliance on the “persistent and repetitive” nature of Rašić’s conduct as an aggravating factor was within its reasonable discretion.

<sup>180</sup> Sentencing Judgement, para. 18.

<sup>181</sup> Sentencing Judgement, para. 18.

<sup>182</sup> Code of Professional Conduct for Counsel Appearing Before the International Tribunal, IT/125 Rev. 3, 22 July 2009 (“Code of Professional Conduct for Counsel”). See also Articles 34 and 40 of the Code of Professional Conduct for Counsel.

<sup>183</sup> *Aleksovski* Appeal Judgement, para. 114.

71. Accordingly, the Appeals Chamber dismisses Rašić's second sub-ground of appeal.

**C. Conclusion**

72. In light of the forgoing, the Appeals Chamber rejects Rašić's appeal in its entirety.

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## V. DISPOSITION

For the foregoing reasons, **THE APPEALS CHAMBER,**

**PURSUANT TO** Article 25 of the Statute and Rules 77, 116*bis*, 117, and 118 of the Rules;

**NOTING** the respective submissions of the parties;

**DISMISSES** the Prosecution's appeal in its entirety;

**DISMISSES** Rašić's appeal in its entirety;

**AFFIRMS** the sentence of 12 months' imprisonment imposed by the Trial Chamber which: (i) suspended the last eight months of the sentence, explaining that 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 a period of two years as of 7 February 2012; and (ii) ordered that credit be given under Rule 101(C) of the Rules for the time Rašić has already spent in detention;

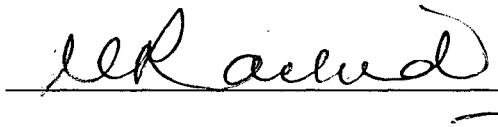
**NOTES** that Rašić has already completed the custodial part of her sentence as she has been in detention for 147 days;

**NOTES** that Rašić has been provisionally released pursuant to the Decision Granting Provisional Release and that the terms and conditions of her provisional release were modified in the Decision of 27 June 2012; and

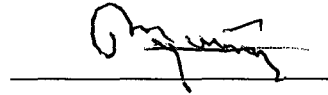
**FINDS** that the terms and conditions of Rašić's provisional release as set out in the Decision Granting Provisional Release and in the Decision of 27 June 2012 are no longer applicable.



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



Judge Khalida Rachid Khan, Presiding



Judge Mehmet Güney



Judge Fausto Pocar



Judge Arlette Ramaroson



Judge Andréia Vaz

Dated this sixteenth day of November 2012,  
At The Hague,  
The Netherlands

[Seal of the Tribunal]

## VI. ANNEX – GLOSSARY

### A. ICTY Trial Judgements

*Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-R77.4, Contempt Proceedings Against Kosta Bulatović, Decision on Contempt of the Tribunal, 13 May 2005 (“*Bulatović Trial Judgement*”)

*Prosecutor v. Milan Simić*, Case No. IT-95-9/2-S, Sentencing Judgement, 17 October 2002 (“*M. Simić Sentencing Judgement*”)

*Prosecutor v. Zuhdija Tabaković*, Case No. IT-98-32/1-R77.1, Sentencing Judgement, 18 March 2010 (“*Tabaković Sentencing Judgement*”)

### B. ICTY Appeal Judgements

*Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 March 2000 (“*Aleksovski Appeal Judgement*”)

*Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-A, Judgement, 19 July 2010 (“*Haradinaj et al. Appeal Judgement*”)

*Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Judgement, 28 February 2005 (“*Kvočka et al. Appeal Judgement*”)

*Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-A, Judgement, 27 September 2007 (“*Limaj et al. Appeal Judgement*”)

*Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Judgement, 12 November 2009 (“*Milošević Appeal Judgement*”)

*Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006 (“*M. Nikolić Judgement on Sentencing Appeal*”)

*Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgement, 22 March 2006 (“*Stakić Appeal Judgement*”)

*Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Judgement, 17 July 2008 (“*Strugar Appeal Judgement*”)

*Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement in Sentencing Appeals, 26 January 2000 (“*Tadić Judgement in Sentencing Appeals*”)

*Prosecutor v. Duško Tadić*, Case No. IT-94-1-A-R77, Judgement on Allegations of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000 (“*Vujin Contempt Judgement*”)

### C. ICTR Appeal Judgements

*Aloys Ntabakuze v. The Prosecutor*, Case No. ICTR-98-41A-A, Judgement, 8 May 2012 (“*Ntabakuze Appeal Judgement*”)

### D. List of abbreviations, acronyms, and short references

Amended Indictment	Amended Indictment, annexed to <i>Prosecutor v. Jelena Rašić</i> , Case No. 98-32/1-R77.2, Joint Motion for Consideration of Plea Agreement, 25 January 2012 (originally confidential; made public as per Trial Chamber’s oral order; see T. 39-40 (31 January 2012)).
Appeals Chamber	The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991
Code of Professional Conduct for Counsel	Code of Professional Conduct for Counsel Appearing Before the International Tribunal, IT/125 Rev. 3; 22 July 2009
Dr. Petrović	Dr. Vera Petrović
Indictment	<i>Prosecutor v. Jelena Rašić</i> , Case No. IT-98-32/1-R77.2, Indictment, 9 July 2010 (originally confidential; made public as per the Duty Judge’s oral order; see T. 4 (22 September 2010)).
Other Statements	False statements signed by Mr. X and Mr. Y
Petrović Reports	Medical Reports of Dr. Vera Petrović on Jelena Rašić, dated 26 January 2012 and 1 February 2012, annexed to <i>Prosecutor v. Jelena Rašić</i> , Case No. IT-98-32/1-R77.2, Registrar’s Submission of Medical Reports, 6 February 2012 (confidential) (originally <i>ex parte</i> ; the <i>ex parte</i> status was lifted on 6 March 2012 by the Trial Chamber; see Sentencing Judgement, para. 34).
Practice Direction	Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, and Early Release of Persons Convicted by the International Tribunal,

	IT/146/Rev. 3, 16 September 2010
President	President of the Tribunal
Prosecution	Office of the Prosecutor of the Tribunal
Prosecution Appeal Brief	<i>Prosecutor v. Jelena Rašić</i> , Case No. IT-98-32/1-R77.2-A, Prosecution Appeal Brief, 16 March 2012 (public with confidential annex)
Prosecution Notice of Appeal	<i>Prosecutor v. Jelena Rašić</i> , Case No. IT-98-32/1-R77.2-A, Prosecution Notice of Appeal, 12 March 2012
Prosecution Response Brief	<i>Prosecutor v. Jelena Rašić</i> , Case No. IT-98-32/1-R77.2-A, Prosecution Response to Jelena Rašić's Appeal Brief, 30 March 2012
Prosecution Reply Brief	<i>Prosecutor v. Jelena Rašić</i> , Case No. IT-98-32/1-R77.2-A, Prosecution Reply to Jelena Rašić's Response Brief, 30 March 2012
Rašić	Jelena Rašić
Rašić Appeal Brief	<i>Prosecutor v. Jelena Rašić</i> , Case No. IT-98-32/1-R77.2-A, Jelena Rašić's Appeal Brief, 26 March 2012, <i>annexed to Prosecutor v. Jelena Rašić</i> , Case No. IT-98-32/1-R77.2-A, Corrigendum to Jelena Rašić's Appeal Brief, 27 March 2012
Rašić Notice of Appeal	<i>Prosecutor v. Jelena Rašić</i> , Case No. IT-98-32/1-R77.2-A, Jelena Rašić's Notice of Appeal, 19 March 2012
Rašić Reply Brief	<i>Prosecutor v. Jelena Rašić</i> , Case No. IT-98-32/1-R77.2-A, Reply to the Prosecution's Response to Jelena Rašić's Appeal Brief, 2 April 2012
Rašić Response Brief	<i>Prosecutor v. Jelena Rašić</i> , Case No. IT-98-32/1-R77.2-A, Jelena Rašić's Response to Prosecution's Appeal Brief, 26 March 2012 (public with confidential annex)
Rules	Rules of Procedure and Evidence of the Tribunal
Sentencing Judgement	<i>Prosecutor v. Jelena Rašić</i> , Case No. IT-98-32/1-R77.2, Written Reasons for Oral Sentencing Judgement, 6 March 2012
Statute	Statute of the Tribunal
T.	Transcript page from hearings at trial in the



	present case
Tabaković	Zuhdija Tabaković
Tabaković Statement	False statement signed by Tabaković
Trial Chamber	Trial Chamber III of the Tribunal
Tribunal	International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991
UNDU	United Nations Detention Unit