



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-94-1-A-AR77
Date: 27 February 2001
Original: English
French

IN THE APPEALS CHAMBER

Before: President Claude Jorda
Judge Mohamed Bennouna
Judge Patricia Wald
Judge Fausto Pocar
Judge Liu Daqun

Registrar: Mr. Hans Holthuis

Judgement of: 27 February 2001

PROSECUTOR

v.

DU[KO TADIC

**APPEAL JUDGEMENT ON ALLEGATIONS OF CONTEMPT
AGAINST PRIOR COUNSEL, MILAN VUJIN**

Counsel for the Appellant:

Mr. Vladimir Domazet for Milan Vujin

Counsel for the Interested Party:

Mr. Anthony Abell for Du{ko Tadi}

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 (hereinafter "the International Tribunal"),

NOTING the Judgement on allegations of contempt against prior counsel, Milan Vujin (hereinafter "the Appellant") issued by the Appeals Chamber, ruling in the first instance, on 31 January 2000 (IT-94-1-A-R77) (hereinafter "the Judgement");

NOTING that the Appeals Chamber, ruling in the first instance, found the Appellant guilty of contempt of the International Tribunal pursuant to Rule 77 of the Rules of Procedure and Evidence of the International Tribunal (hereinafter "the Rules") and, accordingly, fined the Appellant Dfl 15,000 and directed the Registrar to consider striking him off the list of assigned counsel kept pursuant to Rule 45 of the Rules;

NOTING the Application for leave to appeal against the Judgement on allegations of contempt against prior counsel, Milan Vujin (IT-94-1-A-AR77), filed by the Appellant on 7 February 2000 (hereinafter "the Application");

NOTING the Response by the interested party, Du{ko Tadi}, to the Application for leave to appeal filed on 17 February 2000, (hereinafter "the Interested Party" and "the Response" respectively);

NOTING the Respondent's Reply to the Response by the Interested Party, Du{ko Tadi}, to the Application for leave to appeal filed confidentially on 22 February 2000;

NOTING the Order of the President assigning Judges to a bench of the Appeals Chamber (hereinafter "the Bench") issued in French on 8 March 2000;

NOTING the Decision on the Application for leave to appeal issued in French on 25 October 2000 whereby the Bench granted leave to appeal having concluded that "the arguments advanced in support of the Application for leave to appeal justify a more thorough review by the Appeals Chamber";

NOTING the Order of the President assigning Judges to the Appeals Chamber issued in French on 26 October 2000;

NOTING the Appellant's Brief filed confidentially on 3 November 2000, in which the Appellant submits, *inter alia*, that: (i) the Tribunal does not have the power to set up a procedure for contempt and to punish such contempt; (ii) that Rule 77 of the Rules does not provide for the striking off the list of eligible counsel by the Registrar; and (iii) that the Appeals Chamber, ruling in the first instance, incorrectly found him guilty in relation to the allegation that he had: (a) put forward to the Appeals Chamber in support of an application pursuant to Rule 115 of the Rules a case which was known to the Appellant to be false in relation to the weight to be given to statements made by one Mla|o Radi} and in relation to the responsibility of one Goran Borovnica for the killing of the two Muslim policemen, and (b) manipulated the proposed testimony of witnesses A and B;

CONSIDERING the Response by the Interested Party, Du{ko Tadi}, to the Appellant's Brief filed on 5 December 2000 (hereinafter "the Response");

NOTING that Rule 77 of the Rules does not expressly provide for the right to appeal a contempt conviction of the Appeals Chamber;

CONSIDERING, however, that the Rules must be interpreted in conformity with the International Tribunal's Statute which, as the United Nations Secretary-General states in his report of 3 May 1993 (S/25704) must respect the "internationally recognized standards regarding the rights of the accused" including Article 14 of the International Covenant on Civil and Political Rights (hereinafter "the International Covenant");

CONSIDERING that Article 14(5) of the International Covenant on Civil and Political Rights guarantees that "[e]veryone convicted of a crime shall have the right to have his conviction and sentence reviewed by a higher tribunal according to law";

CONSIDERING moreover that Article 14 of the International Covenant reflects an imperative norm of international law to which the Tribunal must adhere;

CONSIDERING that the procedure established under Rule 77 of the Rules is of a penal nature, and that a person convicted pursuant to Rule 77 of the Rules faces a potential custodial sentence of up to 7 years' imprisonment;

CONSIDERING that this means that a person found guilty of contempt by the Appeals Chamber must have the right to appeal the conviction;

CONSIDERING that the preferred course in this case would have been for the contempt trial to have been initially referred to a Trial Chamber, thereby providing for the possibility of appeal, rather than being heard by the Appeals Chamber, ruling in the first instance;

CONSIDERING however that it is the duty of the International Tribunal to guarantee and protect the rights of those who appear as accused before it;

DECIDES therefore that due to the special circumstances of this case, it is appropriate for the Appeals Chamber to consider the merits of the Appellant's complaints;

CONSIDERING paragraphs 12 to 29 of the Judgement in which the basis of the International Tribunal's power to prosecute and punish matters of contempt is clearly set out;

CONSIDERING that Article 15 of the Tribunal's Statute instructs the Judges of the International Tribunal to "adopt rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and **other appropriate matters**" (*emphasis added*);

CONSIDERING that in order to function effectively and fairly, the International Tribunal must have the power to prosecute and punish contempt;

CONSIDERING that the adoption of rules to prosecute and punish contempt falls within the purview of "other appropriate matters" as required by Article 15 of the Statute;

DECIDES that the Appellant's submission regarding the International Tribunal's lack of power to prosecute and punish contempt is without merit;

NOTING that Rule 77 of the Rules does not provide for the striking off the list of eligible counsel as punishment following a conviction for contempt;

NOTING also that the Judgement of the Appeals Chamber did not order that the Appellant be struck off the list of eligible counsel but merely directed the Registrar to “consider” striking the Appellant off the list;

CONSIDERING that when convicted of contempt pursuant to Rule 77 of the Rules, counsel can expect to be either suspended or struck off the list of assigned counsel kept by the Registrar pursuant to Rule 45 of the Rules;

DECIDES that the Appellant’s submission regarding the direction of the Appeals Chamber, ruling in the first instance, to the Registrar to consider striking him off the list is without merit;

CONSIDERING that the Appeals Chamber may only overturn a Chamber’s finding of fact, when ruling in the first instance, “where the evidence relied on could not have been accepted by any reasonable tribunal or where the evaluation of evidence is wholly erroneous”¹;

CONSIDERING that it was not submitted during the contempt proceedings before the Appeals Chamber, in the first instance, that the allegations made against the Appellant, if established, would not constitute contempt of the International Tribunal in the sense of knowingly and wilfully interfering with the administration of justice;

CONSIDERING that the Appeals Chamber, ruling in the first instance, heard twelve witnesses who testified as to events which were capable of supporting the allegations of contempt, heard eight witnesses called by the Appellant, and heard the Appellant’s testimony;

CONSIDERING the detailed and careful analysis of the evidence as set out by the Appeals Chamber, ruling in the first instance, in its Judgement;

¹ Judgement, *The Prosecutor v. Zlatko Aleksovski*, Case no.: IT-95-14/1-A, Appeals Chamber, 24 March 2000, para. 63.

NOTING that the Appellant sought to admit additional evidence for consideration, namely the statement of Vlado Krckovski, taken in Prijedor on 4 February 2000 (hereinafter “the Statement”);

CONSIDERING that, pursuant to Rule 115 of the Rules, a party may present additional evidence to the Appeals Chamber only if such proof was not available to it during the trial;

CONSIDERING that the Appellant has not made any submissions regarding the availability or otherwise of the Statement at trial;

DECIDES therefore that the Statement is inadmissible for the purposes of the present appeal;

DECIDES that the evidence relied upon for the Judgement would have “been accepted by any reasonable tribunal” and that the evaluation of the evidence was not “wholly erroneous” and, accordingly, that there is no basis to consider overturning the findings of fact;

DECIDES that the Appellant’s submissions regarding the Appeals Chamber’s findings of fact, ruling in the first instance, are wholly without merit;

CONSIDERING that, pursuant to Rule 116 *bis* (A) of the Rules, an appeal of a Decision rendered pursuant to Rule 77 may be determined entirely on the basis of the parties’ written briefs;

CONSIDERING also that, pursuant to Rule 116 *bis* (D) of the Rules, the Presiding Judge, after consulting members of the Appeals Chamber, may decide not to pronounce the judgement in public in the presence of the parties;

DECIDES that, pursuant to Rule 116 *bis* (A) and (D) of the Rules, this Appeal will be determined entirely on the basis of the written briefs and that the judgement will not be pronounced in public in the presence of the parties;

FOR THE FOREGOING REASONS,

ORDERS that:

- (i) the Judgement of the Appeals Chamber, ruling in the first instance, is upheld;
- (ii) the Appellant's appeal is dismissed;
- (iii) the Appellant is to pay a fine of Dfl 15,000 to the Registrar of the Tribunal within twenty one days;
- (iv) the Registrar may consider, bearing in mind the factual findings against the Appellant by the Appeals Chamber ruling in the first instance and in accordance with his powers, to strike off or suspend the Appellant for a set period from the list of assigned counsel kept pursuant to Rule 45 of the Rules and to report his conduct as found by the Appeals Chamber, ruling in the first instance, to the professional body to which he belongs.

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

Done this twenty-seventh day of February 2001
At The Hague
The Netherlands

/signed/

Claude Jorda
President
Appeals Chamber

Judge Wald has appended to this Judgement a Separate Opinion dissenting from the finding of jurisdiction.

[Seal of the Tribunal]