

UNITED NATIONS
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

MICT-17-111-R90 (Contempt)

DATE: 15 May 2018

BEFORE A SINGLE JUDGE

Before: Judge Aydin Sefa Akay

Registrar: Mr Olufemi Elias

Date: 15 May 2018

IN THE CASE AGAINST

PETAR JOJÍĆ
VJERICA RADETA

PUBLIC

REPLY OF THE *AMICUS CURIAE* PROSECUTOR TO THE LETTER FROM
THE REPUBLIC OF SERBIA RE: REFERRAL OF THE CASE

Amicus Curiae Prosecutor

Ms. Diana Ellis QC
Mr. Sam Blom-Cooper

Office of the Prosecutor

Mr. Serge Brammertz

Government of the Republic of Serbia

Introduction

1. The *Amicus Curiae* Prosecutor replies to the responses made by the Republic of Serbia (“Serbia”) to the arguments raised by the *Amicus Curiae* Prosecutor to resist the referral of the case to the national jurisdiction of Serbia.

Procedural History on the issue of Referral

2. On 15 February 2018, the Single Judge invited Serbia to provide written submissions on its jurisdiction, willingness and preparedness to accept the case of Petar Jojić and Vjerica Radeta (“the Accused”) for trial.¹
3. By letter dated 13 March 2018 the Minister of Justice replied that, “having considered the legal opinions from the Senior Public Prosecutor’s Office in Belgrade and the High Court in Belgrade, the Republic of Serbia is prepared to conduct criminal proceedings” against the Accused.
4. The Single Judge invited the *Amicus Curiae* Prosecutor to provide written submissions “on whether referring this case to Serbia would serve the interests of justice, the expediency of the proceedings and respect the right of the Accused to a fair trial”.²
5. On 5 April 2018, the *Amicus Curiae* Prosecutor filed submissions in which she set out a reasoned argument for opposing referral of the case.³
6. On 11 April 2018, the Single Judge then invited submissions from Serbia to address the matters raised by the *Amicus Curiae* Prosecutor.⁴
7. Before Serbia filed any response, on 12 April 2018, the *Amicus Curiae* Prosecutor filed an Addendum to her submissions of 5 April 2018, specifically dealing with the issue of immunity from prosecution.⁵
8. Serbia responded on 26 April 2018 to the Single Judge’s request for submissions, but did not address the issue of immunity.⁶ On 3 May 2018, the Single Judge therefore invited Serbia to deal with the point specifically.⁷

¹ Order for Submissions – 15 February 2018

² Order for Submissions – 22 March 2018

³ Response of the *Amicus Curiae* Prosecutor to the Letter from the Republic of Serbia re Referral of the Case – 5 April 2018

⁴ Order for Submissions from the Republic of Serbia – 11 April 2018

⁵ Addendum of the *Amicus Curiae* Prosecutor to the Letter from the Republic of Serbia – 12 April 2018

9. Serbia responded, *inter alia*, on the issue of immunity from prosecution on 8 May 2018.⁸

Submissions

I) Serbia's Response of 26 April 2018 to the *Amicus Curiae* Prosecutor's Submissions

10. In its submissions of 26 April 2018, Serbia highlights a number of examples demonstrating that it has complied with its mandatory responsibility pursuant to Article 29 of the Statute of the ICTY to execute orders of the ICTY and identifies individuals who have been subject to transfer. It fails, however, to provide any acceptable explanation as to why it has failed to comply with its obligations in respect of the two Accused by executing the Warrants for Arrest and Orders for Surrender of 19 January 2015 ("the Orders").
11. Serbia now relies on the finding of Judge Dilparić in the High Court in Belgrade, upheld on appeal, that there is no jurisdiction to transfer the two Accused on charges of contempt. However, Serbia fails to provide any explanation as to why it distinguishes the two Accused whose transfer is ordered to answer contempt charges when other individuals have previously been transferred to The Hague from Serbia on similar charges.⁹
12. It is fleetingly suggested that the refusal of the Serbian courts to transfer is "the same as the position of the Republic of France in the *Hartmann* case". Respectfully, it is not same at all. The ICTY/MICT is not applying (or "favouring") different criteria for different states. Ms Hartmann attended her trial in The Hague; she was present for her appeal; when her fine was converted into a 7-day sentence, having already spent a number of days in custody, the French Minister of Foreign Affairs refused to have her transferred to serve the balance of her sentence. The French courts never determined that there was no jurisdiction for transfer of Ms Hartmann to The Hague on charges of contempt.
13. Serbia raises the lengthy nature of the proceedings in the case of *The Prosecutor v Vojislav Šešelj* as demonstrating a lack of expediency at the ICTY. The history of proceedings was

⁶ Response to Order for Submissions of 11 April 2018 – 26 April 2018

⁷ Order to Additional Submissions – 3 May 2018

⁸ Response of the Republic of Serbia to the Addendum of the *Amicus Curiae* Prosecutor of 12 April 2018 to the Letter from the Republic of Serbia

⁹ See example *Prosecutor v Ljubiša Petković* – IT-03-67-R.77.1-I; The order in lieu of indictment against Mr Petković was issued on 13 May 2008. Mr Petković was transferred from Serbia to The Hague on 28 May 2008.

very specific to that case, and not typical of the conduct of trials before the Tribunal. It suffices to note that had Serbia executed the Warrants for Arrest and Orders for Surrender, in the present case, in a proper and timely manner the case would have been concluded years ago.

14. Serbia submits that the two Accused are not of sufficient importance to justify transfer. This is not the test to be applied. It should be noted that the accusation is that they were part of a group whose aim was to disrupt the proper functioning of the criminal justice system in the case of Vojislav Šešelj, by interfering with witnesses. Offences of this nature are of the utmost gravity.
15. The fact that the two Accused are prepared to submit to trial in Serbia is not a relevant consideration. It is not for Serbia to defy mandatory obligations, nor for an Accused to seek to choose where to be tried. The fact that the two Accused attended the court in Serbia, and were not immediately apprehended in accordance with the Orders of the ICTY, underlines the lack of respect shown by Serbia to the supremacy of the ICTY.
16. The only explanations advanced by Serbia for its failure to respond to the Orders of the ICTY over a period of many months have been repeatedly rejected by the Trial Chamber of ICTY.

II) Serbia's Response to the Addendum Submission of the *Amicus Curiae* Prosecutor

17. Serbia's response on the issue of immunity fails to address the concerns raised by the *Amicus Curiae* Prosecutor.
18. The provisions of the Constitution of the Republic of Serbia provide for immunity to be granted to Deputies of the National Assembly in matters that go beyond "expressing an opinion or casting a vote while performing the functions of a Deputy", as it appears to be suggested by Serbia to which it is limited. There is no legal provision, cited or otherwise, that circumscribes the scope of immunity as averred in the previous submissions of the *Amicus Curiae* Prosecutor.¹⁰
19. Further, Serbia states it is inappropriate for the *Amicus Curiae* to raise the issue of hostility shown in Serbia towards the ICTY. In the Response, however, there is then a lengthy discourse to justify why citizens of the state of Serbia have such feelings of hostility.

¹⁰ Addendum of the *Amicus Curiae* Prosecutor to the Letter from the Republic of Serbia – 12 April 2018

20. Criticism is also raised of the approaches made by the *Amicus Curiae* Prosecutor in seeking recordings and transcripts in the High Court of Belgrade through the President of the High Court in Belgrade and Judge Dilparić. It is to be noted that Serbia entirely omits reference to the unnecessarily protracted difficulties that were presented to the *Amicus Curiae* Prosecutor – consistent with Serbia’s sustained lack of cooperation in these proceedings – in obtaining simple court documents held in Serbia that ultimately required an order for service of the transcripts to the *Amicus Curiae*, which once again reminded Serbia of its obligations under Article 29 of the Statute.¹¹
21. For the avoidance of doubt, the approach taken by the *Amicus Curiae* Prosecutor to the Serbian judicial authorities to obtain the transcripts and recordings was entirely in accordance with the advice received at the time from the Senior Office of the Belgrade Field Office of the ICTY. If necessary, the Single Judge is invited to review the Requests for Assistance filed by the *Amicus Curiae* Prosecutor,¹² and the direct requests to Serbia also filed with the Trial Chamber,¹³ and to form his own view of the appropriateness of the *Amicus Curiae*’s conduct in this matter.

Conclusion

22. For all the reasons set out herein and before, the *Amicus Curiae* Prosecutor remains strongly opposed to referral of this case to the Republic of Serbia.

Word count: 1550

Respectfully submitted,



Dated this day the 15 May 2018

DIANA ELLIS QC

At London, UK

Amicus Curiae Prosecutor

SAM BLOM-COOPER

¹¹ Decision on the *Amicus Curiae*’s Request for Assistance – 28 August 2017

¹² Requests for Assistance – 7 July 2017 & 3 October 2017

¹³ Letters of request to Serbian judicial authorities for Transcripts & Recordings – filed 28 July 2017

