



**REPUBLIC OF SERBIA  
HIGH COURT IN BELGRADE  
WAR CRIMES CHAMBER  
Pom Ik2 Po2 48/2016  
18 May 2016  
Belgrade**

**THE HIGH COURT IN BELGRADE, War Crimes Chamber**, Judge for Preliminary Proceedings Milan Dilparić, having been seized of the Order of the Trial Chamber of the International Criminal Tribunal (hereinafter ICTY) in proceedings for the crime of contempt of the international tribunal in case IT-03-67-R77.5 of 19 January 2015 against Petar Jojić, Vjerica Radeta and Jovo Ostojić, pursuant to Article 30 of the Law on Cooperation of Serbia and Montenegro with 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 (*Official Gazette of the FRY /Federal Republic of Yugoslavia/* Nos. 18/2002 and 16/2003 – hereinafter *The Law on Cooperation*), having heard the accused, issued the following ruling on 18 May 2016.

**RULING**

**IT IS HEREBY ESTABLISHED** that the conditions have not been fulfilled for the surrender and arrest of the accused persons Petar Jojić, Vjerica Radeta and Jovo Ostojić pursuant to the Order of the ICTY Trial Chamber of 19 January 2015 in the case IT-03-67-R77.5.

**Statement of Reasons**

In letter number Pov. 2/2016-16 of 24 March 2016, the Ministry of Justice of the Republic of Serbia submitted to this Court the decisions of the ICTY Trial Chamber of 19 January 2015 in the case IT-03-67-R77.5. By these decisions, warrants or arrest and orders for surrender were issued for the accused before the ICTY, Petar Jojić, Vjerica Radeta and Jovo Ostojić, so that proceedings could be conducted for the crime of contempt of the international tribunal.

Considering that Article 28 of the Law on Cooperation prescribes that in proceedings pursuant to orders for surrender, the investigating judge (hereinafter the judge for preliminary proceedings, in accordance with the Law on Criminal Procedure, *Official Gazette of the RS /Republic of Serbia/* No. 72/11) is to inform the accused about the Order and the charges brought

against him and question him about all the circumstances relevant to taking a decision on the Order issued by the International Criminal Tribunal, the judge for preliminary proceedings of the High Court in Belgrade, War Crimes Chamber, questioned the accused on 17 May 2016 in the presence of the Prosecutor for War Crimes and their defence counsel of choice.

During the questioning the accused denied having committed the crime with which they have been charged and challenged the order for surrender to the ICTY, and, furthermore, expressed their readiness to be tried before a court in the Republic of Serbia.

Article 16, paragraph 2 of the Constitution of the Republic of Serbia prescribes that the generally accepted rules of international law and ratified international treaties are an integral part of the legal order of the Republic of Serbia and are implemented directly, and that ratified international treaties must be in harmony with the Constitution.

Article 142, paragraphs 1 and 2 of the Constitution of the Republic of Serbia establishes that judicial authority in the Republic of Serbia is unified and that courts are autonomous and independent in their operations, adjudicating in accordance with the Constitution, laws and other administrative acts, when so envisaged by the law, generally accepted rules of international law and ratified international treaties.

The matter of the cooperation of the competent authorities of the Republic of Serbia with the ICTY is regulated by the Law on Cooperation, wherein the obligation of the Republic of Serbia to respect and implement the rulings of the ICTY and provide assistance to its investigative and judicial organs is prescribed in Article 1, paragraph 2.

Article 2, paragraph 2 of this Law stipulates that the provisions of the Statute of the ICTY are generally accepted rules of international law.

Article 3, paragraph 3 of the above Law prescribes that cooperation with the International Criminal Tribunal takes place in the Serbian language or one of the languages of the ICTY, accompanied by a translation into the Serbian language.

The Law on Cooperation has been implemented in the territory of the Republic of Serbia since 2002, with amendments in 2003, and to this day none of its parts have been challenged by either the ICTY or any domestic or international institutions. The cooperation of this Court with the ICTY during the past 10 years has taken place at the highest level, and thus this Court has fully



complied with some 200 requests for assistance to the ICTY, and with binding court orders in over 100 cases. Particular emphasis ought to be placed on the fact that this Court cooperated with the ICTY in cases of contempt of the international tribunal, when requests were made to this Court for questioning witnesses (Trial Chamber Order IT-03-67-T of 24 April 2008) or when, during proceedings in cases of contempt of the international tribunal, this Court was given the power to question a witness (Trial Chamber Decision IT-03-67-T of 3 April 2008).

The procedure for surrender of accused persons to the ICTY and the conditions of surrender are regulated by the provisions of Chapter IV of the above Law on Cooperation, whereby in Article 29, paragraph 2, it is stated that the conditions for surrender have been fulfilled if it is established that the request is made for a person against whom proceedings are under way, that an indictment against the person whose surrender is sought has been confirmed pursuant to Article 19 of the ICTY Statute, that the crime is also punishable under domestic law and that it is a crime that falls under the jurisdiction of the ICTY (Articles 2, 3, 4 and 5 of the Statute).

Considering the above, this Court was bound to establish whether in this specific case the four conditions for surrender of accused stated above have been fulfilled, and thus, bearing in mind the above provision of Article 29, paragraph 2 of the Law on Cooperation, found as follows:

- *The conditions have not been fulfilled for surrender of the accused pursuant to the order of the ICTY of 19 January 2015.*

Specifically, the identities of the persons whose arrest and surrender were requested have been established incontrovertibly. There is a confirmed indictment against the accused (Confidential Annex A – Redacted Revised Order In Lieu of Indictment, issued on the basis of the Decision Issuing Redacted Version of Revised Order in Lieu of Indictment of 19 January 2015). The accused were indicted for a crime that is also punishable under domestic law, that is, the applicable legal regulations of the Republic of Serbia.

Considering the fourth condition for surrender of the accused set out in Article 29, paragraph 2 of the Law on Cooperation, the Court found that this condition has not been fulfilled, in view of the fact that the crime with which the accused are burdened – contempt of the international tribunal – is not defined by Articles 2, 3, 4 and 5 of the ICTY Statute, moreover, it is not at all envisaged by the Statute, but rather only by the Rules of Procedure and Evidence. Furthermore, it is necessary to specifically emphasise that the authority of the ICTY to conduct contempt proceedings was established on 11 February 1994 with the adoption of the Rules of Procedure and Evidence,

which were thereafter amended a number of times. However, the Law on Cooperation, which regulates the entire field of cooperation of the Republic of Serbia with the ICTY, was adopted in 2002, therefore eight years after the adoption of the said Rules, so on the basis of this it may be concluded that the intention of the legislator was to not include the crime of "contempt of the international tribunal" among the spectrum of crimes for which surrender to the ICTY is permitted, and later amendments to the Law on Cooperation from 2003 did nothing to change the position of the legislator in this respect.

On the other hand, not even the ICTY Statute (adopted by UN Resolution 827 on 25 May 1993), which has also been amended on a number of occasions to this day, has not regulated the obligations of individual states for cooperation with the ICTY any differently. Specifically, Article 29, paragraph 1, of the Statute prescribes that states shall cooperate with the ICTY in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law, while paragraph 2 prescribes that states shall comply without undue delay with any requests for assistance or an order issued by a Trial Chamber, including, d) the arrest or detention of persons; and e) the surrender or transfer of the accused to the International Tribunal.

Acknowledging the provisions of the ICTY Statute as generally accepted rules of international law, as prescribed by Article 2, paragraph 2 of the Law on Cooperation, this Court finds that the obligation to cooperate, in the sense of arrests and surrender of persons, pertains solely to the crimes of serious violations of international humanitarian law. The aforementioned crimes are specifically envisaged by Articles 2, 3, 4 and 5 of the ICTY Statute, and as such the following crimes are defined: 1) serious violations of the Geneva Conventions of 1949, 2) violations of the laws and customs of war, 3) genocide and 4) crimes against humanity, but the crime of "contempt of the international tribunal" is not included. Since for the crime of "contempt of the international tribunal", and any of other crimes that might be envisaged by the Rules of Procedure and Evidence, the Law on Cooperation and the ICTY Statute do not prescribe surrender as binding, this Court finds that the conditions for the surrender of the accused Petar Jojić, Vjerica Radeta and Jovo Ostojić have not been fulfilled, as all the cumulative prescribed conditions of Article 29, paragraph 3 of the Law on Cooperation have not been fulfilled.

In rendering its decision, this Court did not challenge the jurisdiction of the ICTY to conduct trial proceedings for the crime of "contempt of the international tribunal" under Rule 77 of the Rules of Procedure and Evidence, as prosecution for this crime undoubtedly prevents any disruption of the trial proceedings before the ICTY. However, the responsibilities of the judiciary organs of this state were set forth in Article 145 of the Constitution of the Republic of Serbia,



paragraph 2 of which prescribes that judicial decisions be based on the Constitution, laws, ratified international treaties and regulations adopted pursuant to laws. Therefore, there is no basis for acting on the order in question for surrender of the accused in either this or in any other case in which the conditions for surrender of the accused have not been fulfilled pursuant to the Law on Cooperation, since such an obligation has not been prescribed by either the Constitution or by the law, or by any other applicable legal regulation of the Republic of Serbia.

Furthermore, it is necessary to particularly emphasise that this Court took into consideration the request of the ICTY submitted to it on 24 March 2016 because it was founded on the provisions of the Statute and Rules of Procedure and Evidence of the ICTY, and since such an obligation is envisaged by Article 4, paragraph 1 of the Law on Cooperation; however, this judge for preliminary proceedings finds that the provisions of the Rules of Procedure and Evidence cannot be considered generally accepted rules of international law, and as such they are not binding *ex officio* for the Republic of Serbia to act on if the conditions prescribed by the Constitution, law or the Statute of the ICTY are not fulfilled. The fact that the Law on Cooperation prescribes that the provisions of the ICTY Statute are generally accepted rules of international law does not justify the analogy that the same holds true for the Rules of Procedure and Evidence.

In rendering the decision the judge kept in mind Article 6, paragraph 1, of the Law on Cooperation, which prescribes that under this law, the procedure is urgent, which is why in this specific case he acted as above. Specifically, the warrants of arrest and orders for surrender of the accused of 19 January 2015 were delivered to this Court on 24 March 2016. Bearing in mind the substance of the documents delivered, this Court requested additional documents from the ICTY, to make it possible to take a decision on the conditions for the surrender of the accused persons, which further extended the decision-making process, since the subsequently delivered documents were delivered only in the English language, which is why they first had to be translated, and as such were finally delivered to this Court on 4 May 2016, in the Serbian language, pursuant to Article 3, paragraph 3 of the Law on Cooperation.

In this specific case, particular consideration was given to the provision of Rule 11 *bis* of the Rules of Procedure and evidence (Referral of the Indictment to Another Court), which envisages the possibility of the ICTY referring prosecution to national authorities after an indictment has been confirmed. Bearing in mind the significance and severity of the crime with which the accused were charged in the ICTY indictment, that the underlying act of this crime is also sanctioned by the criminal legislation of the Republic of Serbia and that, according to the indictment, these crimes were committed in the territory of the Republic of Serbia, this judge finds that in this specific case

the processing of the accused for the above acts can be conducted efficiently and effectively by the competent judicial organs of the Republic of Serbia.

Considering the above, the judge for preliminary proceedings finds that rendering a decision on the warrants for the arrest of the accused is moot, bearing in mind that, as a preliminary matter, it has been determined that the conditions have not been fulfilled for the surrender of the accused Petar Jojić, Vjerica Radeta and Jovo Ostojić.

Considering the above and pursuant to Article 30 of the Law on Cooperation, and since the factual and legal context is the same, a single ruling was rendered on the ICTY orders for surrender and warrants of arrest for the accused Petar Jojić, Jovo Ostojić and Vjerica Radeta.

**Judge for Preliminary Proceedings**

Milan Dilparić

/signed and stamped/

**Please deliver to:**

1. War Crimes Prosecutor's Office
2. The Accused
3. Defence Counsel for the Accused
4. Pursuant to Article 30, paragraph 1, of the Law on Cooperation, forward the case files for a decision to the chamber from Article 21, paragraph 4, of the ZKP /Law on Criminal Procedure/.

*The Judge*