

Annex 3 to

Gucati Appeal Brief

Pursuant to

Rule 179(1) of the Rules of Procedure and Evidence before the Kosovo Specialist
Chambers (“Rules”)

Public

SUMMARY OF SENTENCING AUTHORITIES

“Brima”

Independent Counsel v Brima et al, SCSL-2005-02/03(10-23), Trial Chamber I, 21 September 2005:

Guilty plea. On 9 March 2005, the accused saw a vehicle that they knew was transporting a protected witness, called out the name of the witness, told her that they knew she was testifying and threatened her. The sentence was a conditional discharge with probation for one year.

“Al Khayat”

Karma Mohamed Tahsin Al Khayat, STL-14-05/S/CJ, Reasons for Sentencing Judgment, Contempt Judge, 6 October 2015:

The Deputy Head of News and Political Programs and shareholder at Al Jadeed TV was convicted after trial of contempt for failing to remove from Al Jadeed TV’s website and its YouTube channel information on purported confidential witnesses in the *Ayyash et al* case in violation of an order dated 10 August 2012. The accused was involved in the identification of three protected witnesses. The sentence was a fine of 10,000 EUR.

(note: conviction overturned on appeal and sentence set aside accordingly – *Karma Mohamed Tahsin Al Khayat*, STL-14-05/A/AP, Appeals Panel, Judgment on Appeal, 8 March 2016 at pages 92 and 93)

“Marijačić”

Prosecutor v Marijačić and Rebić, IT-95-14-R77.2, Judgement, ICTY Trial Chamber, 10 March 2006:

The accused was convicted of contempt after a trial relating to the newspaper publication on 18 November 2004 of the identity of a witness (repeatedly named) who testified in closed session, and of extensive quotations from the statement of the witness (which had been repeated in testimony), in the knowledge that the information was the subject of protection orders issued by the Tribunal. The sentence was a fine of 15,000 EUR.

“Jović”

Prosecutor v Josip Jović, IT-95-14 & IT-95-14/2-R-77, Judgement, ICTY Trial Chamber III, 30 August 2006:

The accused was convicted after trial of contempt for violating two court orders (16 March 1998 and 1 December 2000) by numerous publications of transcripts from closed session testimony of a protected witness, including his identity and the content of his testimony: “the Accused published a protected witness’ evidence and, after

being ordered to cease disclosing confidential material, compounded this contempt by publishing, in each of 22 consecutive newspaper editions, the transcripts of the witness' closed testimony". The sentence was a fine of 20,000 EUR.

"Al Amin"

Ibrahim Mohamed Ali Al Amin STL-14-06/S/CJ, Reasons for Sentencing Judgement, Contempt Judge, 5 September 2016:

The accused was convicted after trial. The accused published the names, photographs and significant personal details of 17 witnesses and, after what was acknowledged by Mr Al Amin as a public outcry and claims from various members of the public that his previous publication had infringed the law, he then published a second article with the photographs, names and personal information of a further 15 witnesses. It was established that a number of witnesses experienced fear, two witnesses lost confidence in the Tribunal's ability to maintain the confidentiality of its witness information, and at least one of the exposed witnesses suffered direct harm in the loss of business. The sentence was a fine of 20,000 EUR.

"Morina"

Prosecutor v Astrit Haraqija and Bajrush Morina, IT-04-84-r77.4-A, Appeals Chamber, Judgement, 23 July 2009:

The accused was convicted after trial of contempt based on the intimidation of a protected witness in the case of *Prosecutor v Ramush Haradinaj et al.* The accused met the witness in order to tell him to withdraw from testifying, invoking the “powerful authority of third parties” and alluding to the killing of witnesses who had testified. The sentence was 3 months’ imprisonment.

“Beqaj”

Prosecutor v Beq Beqaj, IT-03-66-T-R77, ICTY, Trial Chamber I, Judgement on Contempt Allegations, 27 May 2005:

The accused was convicted after trial. The accused knowingly interfered with a critical witness in a series of communications seeking to convince him to withdraw his statements against the accused in the case of *Prosecutor v Fatmir Limaj, Haradin Bala and Isak Musliu* Case No IT-03-66-T. The witness was particularly vulnerable, and under a witness protection programme, which this was known to the accused. The sentence was four months’ imprisonment.

“Tabaković”

Prosecutor v Zuhdija Tabaković, IT-98-32/1-R77.1, Trial Chamber II, Sentencing Judgment, 18 March 2010:

Guilty plea. The accused received 1000 EUR to sign a false statement for use by a defendant and introduced two other men who also agreed to provide false statements

for money. The accused and the two others were named in the defendant's witness list and their false statements were provided to the Prosecution by the defence. The sentence was 3 months' imprisonment.

"Nshogoza"

Léonidas Nshogoza, ICTR-07-91-A, Appeals Chamber, Judgement, 15 March 2010:

The accused was convicted after trial of contempt based on his violation of a witness protection order in the case of *Prosecutor v Jean de Dieu Kamuhanda* by meeting with and disclosing the identifying information of protected witnesses who had previously implicated Kamuhanda in an attack at Gikomero Parish on 12 April 1994. The accused repeatedly met with witnesses in the presence of third parties in disregard for protective measures. He obtained recantation statements from the witnesses and brought them to a notary public's office for the witnesses to confirm their statements and have them notarized. Those recantation statements were submitted to the Appeals Chamber in support of Kamuhanda's application for the admission of additional evidence on appeal. One such witness testified before the Appeals Chamber and recanted his earlier testimony at trial. That witness subsequently pleaded guilty to giving false testimony before the Appeals Chamber. It was an aggravating circumstance that the accused was an experienced investigator with a legal background who stood in a position of trust with the Tribunal. The sentence was 10 months' imprisonment.

(dissenting Judge Robinson: "the custodial sentence of 10 months of imprisonment stands in stark contrast to other prevailing practice at the Tribunal and the ICTY,

where conduct of similar gravity is either not prosecuted or typically results exclusively in a fine. In the present case, the appropriate penalty, based on Nshogoza's specific conduct as found by the Trial Chamber, would either have been a reprimand or at most a fine of \$1,000.")

(dissenting Judge Mehmet Güney: "... in light of the jurisprudence of the *ad hoc* Tribunals, the imposition of 10 months of imprisonment could be considered excessive")

"Šešelj (No.1)"

Prosecutor v Šešelj, IT-03-67-R77.2-A, Appeals Chamber, Judgement, 19 May 2010:

The accused was convicted after trial of contempt by disclosing confidential information regarding three protected witnesses, and excerpts of a confidential written statement of one of those three, in a book in violation of orders granting protective measures made by the Trial Chamber which was trying him on 14 counts of crimes against humanity and violations of the laws or customs of war. The sentence was 15 months' imprisonment.

"Šešelj (No.2)"

Prosecutor v Šešelj, IT-03-67-R77.3, Trial Chamber, Judgment, 31 October 2011:

The accused was convicted after trial in relation to disclosing the identity of a further 10 protected witnesses in another book. The accused published the book “deliberately and spitefully” and pre-emptively to frustrate actions of the Registrar pursuant to orders of the Trial Chamber. The book sold 10,000 hard copies and was then placed on a website. The electronic publication and dissemination of the book increased the scope of the disclosure further. The accused indicated that he intended to continue disclosing information in knowing violation of orders of the Chamber in the future. The accused was previously convicted for contempt of court. The sentence was 18 months’ imprisonment.

Prosecutor v Šešelj, IT-03-67.R77.3A, Appeals Chamber, Judgement, 28 November 2012:

The Amicus Prosecutor appealed the sentence of 18 months’ imprisonment and requested a sentence of three years. 18 months’ imprisonment was upheld.

“Šešelj (No.3)”

Prosecutor v Šešelj, IT-03-67-R77.4, Trial Chamber II, Judgement, 28 June 2012:

The accused was convicted of contempt after trial in relation to the refusal to comply with repeated orders and decisions of the Chamber to remove from his website material revealing confidential information about a number of protected witnesses. The accused had two previous convictions for contempt. The repetitious nature of his conduct was demonstrated by his continuing refusal to obey the orders and decisions requiring him to remove confidential material, which he has disclosed on many

occasions over the course of several years, and this flagrant disregard for the orders and decisions amounted to a direct attack upon the judicial authority of the Tribunal. The sentence was 2 years' imprisonment.

Prosecutor v Šešelj, IT-03-67-R77.4-A, Appeals Chamber, Judgement, 30 May 2013:

The sentence of 2 years' imprisonment was confirmed.

"Kamara"

Independent Counsel v Kamara et al, SCSL-11-02-T (669-703), Trial Chamber II, Sentencing Judgment in Contempt Proceedings, 16 October 2012:

Kamara was convicted after trial of threatening a witness (TF1-334) who had testified, and of disclosing information in relation to another protected witness (TFI-333) in knowing violation of an order. Kamara instigated the plan to have the witnesses recant their testimony in an effort to have a review of the conviction and/or sentence of Kamara. Both witnesses were important witnesses. The sentence was two years' imprisonment.

"Rasić"

Prosecutor v Jelena Rasić, IT-98-32/1-R77.2-A, Appeals Chamber, Judgement, 16 November 2012:

Guilty plea. The accused was convicted of contempt for knowingly and wilfully interfering with the administration of justice by procuring false witness statements for the defence of Milan Lukić. On 18 and 20 October 2008 she bribed Tabaković to sign a pre-prepared witness statement in exchange for 1000 EUR and offered him additional money to testify. She incited Tabaković to offer bribes to other potential witnesses by giving him two pre-prepared statements, the details of the makers of which were left blank and asked him to find men who had been in the Army of Bosnia and Herzegovina who would be willing to sign the statements in exchange for money. She then procured false statements from two others who had agreed with Tabaković in exchange for 1000 EUR. She subsequently returned and procured second revised versions of each of the false statements. The false statements were thereafter submitted to the Prosecution by the defence for Lukić. The accused was in a position of trust as an “officer of justice” and a member of the defence team. Her conduct was persistent and repetitive. The sentence was 12 months’ imprisonment (last 8 months of which were suspended for 2 years).

“Gombo”

Prosecutor v Jean-Pierre Bemba Gombo and others, ICC-01/05-01/13/2312, Trial Chamber VII, Decision Re-sentencing, 17 September 2018:

The accused was convicted after trial of offences against the administration of justice related to intentionally and corruptly influencing witnesses, and soliciting, inducing or assisting the false testimonies of 14 defence witnesses. The prosecution requested a sentence of five years’ imprisonment. Following illicit coaching, the corrupted

witnesses subsequently testified falsely in the main trial. The offences extended over a lengthy period of time – at least 13 months. The offences were organised and executed over a prolonged period. There was a calculated plan to illicitly interfere with witnesses in order to ensure that they would provide evidence in Mr Bemba’s favour. The offences were devised, planned and committed by the three convicted persons together. The number of perpetrators involved in the commission of the offences at stake – because of a necessary need of organisation and the potential of a coercive group dynamic – was relevant. The offences were extensive in scope, planning, preparation and execution. The offences featured the aggravating features that they involved the abuse of lawyer-client privilege and attendant rights, and the taking advantage of Mr Bemba’s position as long-time and current MLC President. The sentence was 12 months’ imprisonment (served) with a fine of 300,000 EUR. Sentences of 5 years’ imprisonment were not appropriate:

“As noted by the Mangenda defence: ‘The five-sentence sought by the Prosecution would mean the imposition of a sentence equal to or greater than that imposed on a participant in the execution of more than 1000 prisoners; on the person responsible for the notorious Omarska camp; a guard at the Keratem Camp; a General who facilitated the Srebrenica genocide; a General who commanded troops involved in war crimes; and a municipal official who oversaw expulsions and killings’...referring to ICTY, Trial Chamber, *Prosecutor v. Dražen Erdemović*, Sentencing Judgement, 5 March 1998, IT-96-22-Tbis, para. 23; ICTY, Appeals Chamber, *Prosecutor v. Miroslav Kvočka et al.*, Judgement, 28 February 2005, IT-98-30/1-A, paras 724-725 (in respect of *Prcać*); ICTY, Trial Chamber, *Prosecutor v. Duško Sikirica et al.*, Sentencing Judgement, 13 November 2001, IT-95-8-S, para. 239 (in respect of *Došen*); ICTY, Trial Chamber, *Prosecutor v. Vujadin Popović et al.*, Judgement, 10 June 2010, IT-05-88-T, page 837 (in respect of *Gvero*, whose sentence was not

disturbed on appeal following his death during appellate proceedings); ICTY, Appeals Chamber, *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Judgement, 22 April 2008, IT-01-47-A, page 133; ICTY, Trial Chamber, *Prosecutor v. Milan Simić*, Sentencing Judgment, 17 October 2002, IT-95-9/2-S, para. 122.”

“Ngirabatware”

Prosecutor v Ngirabatware and others, MICT-18-116-T, IRMCT, Judgement, Single Judge, 25 June 2021:

The accused was convicted after trial. From approximately June 2015 to August 2018, Ngirabatware offered and paid bribes through a number of associates to recanting witnesses and intermediaries to influence their prospective evidence. Many thousands of Euros were paid in bribes, as “the backbone of a highly organized effort aimed at obtaining the recantations of, in particular, four witnesses, in anticipation of review proceedings relating to Ngirabatware’s conviction for genocide. In particular, the two main Prosecution witnesses underpinning Ngirabatware’s conviction for genocide were interfered with and were paid for their cooperation with the Ngirabatware defence, in connection with the review proceedings, in amounts exceeding millions of Rwandan francs. Question and answer documents were created for the witnesses which contained pointed questions and detailed responses related to, for example: (i) the circumstances surrounding the witnesses’ decision to recant; (ii) their initial refusal to meet with Defence counsel and the circumstances surrounding the witnesses’ decision to recant; and (iii) questions about their false testimony and why they lied during Ngirabatware’s trial. The documents were used to train witnesses to assist Ngirabatware in overturning his conviction. Ngirabatware

repeatedly shared confidential information related to the witnesses and the contents of confidential filings related to his review proceedings with his associates in knowing violation of protective measures. Further, steps were taken to train three Intermediaries to give false evidence, corroborating that of the Recanting Witnesses. Witnesses were induced to sign recantation letters, which were submitted to the Appeals Chamber in Review Proceedings based on instructions as to what to say. The prosecution requested that Ngirabatware be sentenced to seven years of imprisonment, stressing that the Accused engaged in an unprecedented and elaborate interference scheme and underlining that Ngirabatware had already been convicted for genocide, yet initiated and directed the criminal scheme. The sentence was 2 years' imprisonment to run, concurrently with the sentence of 30 years for genocide.

Prosecutor v Ngirabatware and others, MICT-18-116-A, IRMCT, Appeals Chamber, 29 June 2022:

The prosecution appealed the sentence imposed on Ngirabatware, requesting an order that the sentence be served consecutively. Having set aside the order that the sentence be served concurrently, the Appeals Chamber reviewed the Single Judge's assessment of the sentencing factors and determined itself the appropriate sentence to be imposed on Ngirabatware. The appropriate term was two years [the dissenting Judge thought 18 months' was the appropriate term]. Both the Single Judge and Appeals Chamber considered that hardship of detention in the context of the global pandemic was properly taken into account as a mitigating factor.