

United Nations
Nations UniesInternational Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

(IT-05-88/R77.1)

DRAGAN JOKIĆ**DRAGAN JOKIĆ***Charged with contempt of the Tribunal in the Popović et al. case*Prosecution witness before Trial Chamber II of the Tribunal in the case *The Prosecutor v. Vujadin Popović et al.*

- Sentenced to four months' imprisonment

*Crimes charged with:***Contempt of the Tribunal (Rule 77(A)(i) of the Rules of Procedure and Evidence of the Tribunal)**

- As a witness called by the Prosecution before Trial Chamber II of the International Tribunal, Dragan Jokić knowingly and wilfully interfered with the administration of justice by contumaciously refusing to testify, contrary to Rule 77(A)(i) of the Rules.

Indictment	1 November 2007 (order in lieu of indictment)
Initial appearance	19 November 2007, pleaded not guilty
Trial Chamber Judgement	27 March 2009, sentenced to four months' imprisonment
Appeals Chamber Judgement	25 June 2009 (public redacted version filed on 3 July 2009), sentence affirmed

STATISTICS

Trial days	2
Witnesses called by Prosecution	0
Witnesses called by Defence	2
Exhibits	Defence: 7

TRIAL	
Commenced	10 December 2007
Trial Chamber III	Judge Carmel Agius (presiding), Judge O-Gon Kwon, Judge Kimberly Prost, Judge Ole Bjørn Støle (reserve)
Counsel for the Prosecution	The Trial Chamber
Counsel for the Defence	Branislava Isailović
Judgement	27 March 2009

APPEAL	
Appeals Chamber	Judge Mehmet Güney (presiding), Judge Fausto Pocar, Judge Liu Daqun, Judge Andréia Vaz and Judge Theodor Meron
Counsel for the Prosecution	The Trial Chamber
Counsel for the Defence	Branislava Isailović
Judgement	25 June 2009 (public redacted version filed on 3 July 2009)

RELATED CASES
*by geographical area*POPOVIĆ *et al.* (IT-05-88) "SREBRENICA"

INDICTMENT AND CHARGES

In accordance with Rule 77 of its Rules of Procedure and Evidence, the Tribunal can conduct proceedings for contempt of court. The ICTY's jurisdiction in respect of contempt is not expressly outlined in the Statute. However, it is firmly established that the Tribunal possesses an inherent jurisdiction, deriving from its judicial function, to ensure that its exercise of the jurisdiction expressly given to it by the Statute is not frustrated and that its basic judicial functions are safeguarded. As an international criminal court, the Tribunal possesses the inherent power to deal with conduct interfering with its administration of justice. Such interference may be by way of conduct which obstructs, prejudices or abuses the Tribunal's administration of justice. Those who knowingly and wilfully interfere with the Tribunal's administration of justice in such a way may, therefore, be held in contempt of the Tribunal.

In 1995, Dragan Jokić was Chief of Engineering of the Zvornik Brigade of the Bosnian Serb Army, which operated in the Bratunac and Zvornik municipalities in the eastern region of Bosnia and Herzegovina and took part in the Srebrenica massacres. He was indicted by the Tribunal on 30 May 2001, and 17 January 2005 was convicted by a Trial Chamber of aiding and abetting extermination and persecutions on political, racial and religious grounds and aiding and abetting murder. He was sentenced to nine years' imprisonment. On 7 May 2007, the Appeals Chamber affirmed Jokić's convictions and sentence.

In 2007, Jokić was called to testify in the case *The Prosecutor v. Vujadin Popović et al.* as a Prosecution witness. On 31 October 2007, and again on 1 November, he refused to testify before the Tribunal. A confidential submission of 31 October by Counsel for Jokić detailed the reasons for his refusal to testify. Consequently, the Trial Chamber considered that there were sufficient grounds to proceed against the accused for contempt and issued an order in lieu of an indictment, declaring that it would prosecute the matter against Jokić itself.

On 1 November 2007, the Trial Chamber issued an order initiating contempt proceedings against Jokić pursuant to Rule 77 of the Rules of Procedure and Evidence.

Jokić was charged with:

Contempt of the Tribunal (Rule 77(A)(i) of the Rules of Procedure and Evidence of the Tribunal)

TRIAL

An initial appearance was held on 19 November 2007 before Trial Chamber II, consisting of Judge Carmel Agius (presiding), Judge O-Gon Kwon, Judge Kimberly Prost, and Judge Ole Bjørn Støle (reserve judge). Jokić pleaded not guilty to the charge against him.

On 10 December 2007, proceedings took place in which two Defence witnesses were heard.

On 15 December 2008, the Defence examined an expert appointed by the Chamber.

TRIAL CHAMBER JUDGEMENT

In its judgement, the Chamber stated that it was not disputed that on 31 October and 1 November 2007, Jokić repeatedly refused to testify in the case of Popović *et al.* He remained persistent in his refusal to testify even after it was explained to him that he could possibly be indicted for contempt. The Trial Chamber recalled that protective measures were granted when Jokić was subpoenaed. They were therefore not convinced that Jokić's security concerns provided a reasonable excuse for his refusal to testify.

Jokić further contended that he was afraid of falsely incriminating someone. His concern was supported to a certain extent by the Defence expert. A different conclusion was reached by the Chamber expert. The Trial Chamber noted that, while the Statute and Rules did not provide a standard on competency to testify before the Tribunal, applying the plain meaning of the words 'competency to testify' required that the proposed witness had a basic capacity to understand the questions put to him and give rational and truthful answers to those questions. The witness' credibility and the reliability of his answers could be questioned by the parties and must be assessed by the Chamber. The Chamber further found that a health condition did not automatically disqualify a witness from testifying. To undermine the capacity of a person to serve as a witness, such a condition must have a substantial effect on his credibility, which consequently empties his evidence from having any probative value. Applying this standard with reference to the evidence before it, the Chamber was not satisfied that Jokić lacked competency to testify.

After a careful reading of the reports of the Chamber and Defence experts, as well as hearing Jokić and observing his demeanour, the overall conclusion of the Trial Chamber was that the evidence showed that Jokić's subpoena presented him with a choice and he made a conscious decision not to testify and understood the consequences of his behaviour. The possibility that he was motivated by other considerations was not relevant.

The Trial Chamber was convinced beyond reasonable doubt that Jokić, by persistently refusing to testify without a reasonable excuse in the case of Popović *et al.*, knowingly and wilfully interfered with the Tribunal's administration of justice.

In deciding the punishment to be imposed, the Chamber took into consideration both the gravity of the conduct involved and the need to deter such conduct in the future. The Chamber considered that Jokić committed a serious offence, which went to the essence of the notion of justice. By his refusal to testify he had deprived the Chamber of relevant evidence and acted against the interests of justice. The Chamber, however, also took into account the personal circumstances of Jokić as well as the fact that he had no past record of interfering with the administration of justice before the Tribunal.

On 27 March 2009, Trial Chamber rendered its judgement, convicting Dragan Jokić with:

- Contempt of the Tribunal (Rule 77(A)(i) of the Rules of Procedure and Evidence of the Tribunal)

Sentence: four months' imprisonment

The sentence was to be served consecutively to any other then current prison term being served by Dragan Jokić.

APPEALS CHAMBER JUDGEMENT

The Defence filed a confidential notice of appeal on 14 April 2009 and a confidential appeal brief on 29 April 2009.

On 25 June 2009, the Appeals Chamber issued a confidential decision which dismissed all grounds of the confidential appeal and affirmed Jokić's sentence. On 3 July 2009, the Appeals Chamber filed a public redacted version of the judgement.