

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

(IT-95-5/18-R77.2)

MILAN TUPAJIĆ**MILAN TUPAJIĆ***Convicted of contempt of the Tribunal in the Karadžić case*Prosecution witness before Trial Chamber III in the case *The Prosecutor v. Radovan Karadžić**Crimes convicted of:*

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

- Tupajić failed to comply with two subpoenas to appear as a Prosecution witness in the Karadžić trial

Order (in lieu of an indictment)	30 November 2011 (made public on 14 December 2011)
Initial appearance	16 December 2011, pleaded not guilty
Trial Chamber Judgement	24 February 2012, sentenced to two months' imprisonment

STATISTICS

Trial days	1
Witnesses called by Defence	1
Defence exhibits	20

TRIAL	
Trial Chamber III	Judge O-Gon Kwon (presiding), Judge Howard Morrison, Judge Melville Baird and Judge Flavia Lattanzi (Reserve Judge)
Counsel for the Defence	Aleksandar Lazarević
Judgement	Pronounced on 24 February 2012

INDICTMENT AND CHARGES

In accordance with Rule 77 of its Rules of Procedure and Evidence, the Tribunal can conduct proceedings for contempt of court. Although the ICTY's jurisdiction in respect of contempt is not expressly outlined in the Statute, 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. Those who knowingly and wilfully interfere with the Tribunal's administration of justice may, therefore, be held in contempt of the Tribunal.

An order in lieu of an indictment against Tupajić was filed confidentially on 30 November 2011. It was made public on 14 December 2011.

According to the order, a subpoena was issued by the Chamber on 23 September 2011 ordering Tupajić to appear for testimony before it in the case of Prosecutor v. Radovan Karadžić commencing on 3 October 2011. On 5 October 2011, the authorities of BiH submitted the memorandum of service, which indicated that Tupajić had read the subpoena but was unwilling to appear before the Chamber. On 3 November 2011, the Chamber issued the second subpoena but the witness again refused to comply with it.

Tupajić was charged with:

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

TRIAL

The trial took place on 3 February 2012. The Defence called only the accused as a witness.

TRIAL CHAMBER JUDGEMENT

The Chamber found that the Accused did not appear before the Chamber in the Karadžić case as ordered in two subpoenas, dated 23 September 2011 and 3 November 2011, respectively. Therefore, the Chamber finds the accused failed to comply with its orders as set forth in the subpoenas.

In the First and Second Memorandum of Service, the accused stated that he was unwilling to testify before the Chamber in the Karadžić case and that his primary reason for refusing to appear before the Chamber related to his health concerns. The Chamber reviewed the documents the accused submitted in support of his health concerns but considered that Tupajić's health concerns did not constitute a just excuse for his failure to comply with the orders as contained in the subpoenas.

At trial, in private session, the accused submitted evidence in relation to other reasons for refusing to appear before the Chamber. The Chamber examined these reasons and considers that they also did not constitute a just excuse under Rule 77 (A)(iii) of the Rules.

The Chamber considered that the First and Second Memorandum of Service establish that the accused was aware of the contents of the subpoenas and the obligation contained therein to appear and testify before the Chamber. The accused was also aware of the consequences of his failure to comply with the subpoenas. However, the accused acted contrary to the instructions contained in the subpoenas. The Chamber thus found that the Accused knowingly and willingly interfered with the administration of justice by refusing to comply with the subpoenas.

Accordingly, the Chamber was satisfied that the Accused was guilty of the offence of contempt pursuant to Rule 77(A)(iii) of the Rules.

In making a determination on sentencing, the Chamber first considered the gravity of the offence and the fact that by refusing to comply with the subpoenas and to testify before the Chamber, the accused had deprived the Chamber in the Karadžić case of relevant evidence. The Chamber took into account the Accused's health and his current financial and family situation as mitigating factors. The Chamber did not consider any aggravating circumstances.

On 24 February 2012, Trial Chamber rendered its judgement, convicting Tupajić of:

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

Sentence: 2 months' imprisonment (credit was given for time spent in detention)