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International  
Criminal Tribunal  
for the former  
Yugoslavia

Tribunal Pénal  
International pour  
l'ex-Yougoslavie

# SUMMARY OF JUDGEMENT

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CHAMBERS

## SUMMARY OF JUDGEMENT IN THE CASE OF CONTEMPT AGAINST LJUBIŠA PETKOVIĆ

- Today, Thursday 11 September 2008, the Trial Chamber, consisting of Judges Jean-Claude Antonetti (President), Frederik Harhoff and Flavia Lattanzi, is delivering its Judgment on the allegations against Ljubiša Petković, the Accused, pursuant to article 77(A)(iii) of the Rules of procedure and Evidence of the Tribunal. This is only a summary which does not form part of the Judgment delivered by the Trial Chamber. The only authoritative account of the Trial Chamber's findings is in the written Judgment, copies of which will be available after the hearing. The Accused and the Defence will be given a confidential version of the Judgment while a public redacted version will be available to the public.
- Rule 77(A)(iii) reads:
  - A) The Tribunal, in the exercise of its inherent power, may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who: [...] iii)"without just excuses fails to comply with an order to attend before a Chamber;"
- The Accused is charged for having knowingly and wilfully interfered with the administration of justice by refusing to comply with the Subpoena issued on 7 April 2008, *proprio motu* and confidentially, by the Trial Chamber, in the case against Vojislav Šešelj. This Subpoena ordered Ljubiša Petković to appear before the Trial Chamber as of 13 May 2008 as a "Chamber witness". The Accused having failed to do, the Chamber decided to initiate the proceedings itself.
- The Trial was held on 3 September with the Defense presenting two witnesses: the Accused and his wife.
- The Defence of Ljubiša Petković acknowledged that the *actus reus* of the offence of contempt as described in Rule 77(A)(iii) of the Rules was constituted by the mere fact that the Accused failed to appear at the time and location indicated by the Trial Chamber. The Trial Chamber equally considers that the *actus reus* of the offence of contempt is constituted by the absence of the Accused at the hearing of 13 May 2008.

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- The Trial Chamber thereafter considered whether the circumstances surrounding the notification of the Subpoena and the deterioration of the state of health of the Accused could amount to “just excuses” pursuant to Rule 77(A)(iii) of the Rules, as submitted by the Defence in support of her contention that the Accused should be acquitted.
  - The Trial Chamber considers that the Accused has not established the existence of just excuses pursuant to Rule 77(A)(iii) of the Rules. First, considering all the elements in his possession, the Accused could not reasonably doubt that he was the addressee of the Subpoena. Second, though psychologically fragile, the Accused was not in a state of health which prevented him from informing the Trial Chamber that he could not comply with the Subpoena.
- 1 Moreover, the Trial Chamber considers that the *mens rea* of the offence is constituted by the fact that the Accused, instead of complying with the obligations imposed on him by the Subpoena, voluntarily failed to execute it by choosing to escape, without just excuses. As a consequence, he knowingly and wilfully interfered with the administration of justice.
- Therefore, the Trial Chamber is satisfied beyond reasonable doubt that the Accused is guilty of the offence of contempt pursuant to Rule 77(A)(iii) of the Rules.
  - In its determination of the sentence, the Trial Chamber took into consideration the gravity of the offence, the general sentencing practice of the courts of the former Yugoslavia and the jurisprudence of the Tribunal as well as the aggravating circumstance constituted by the failure of the Accused to comply, for the second time, with an order of the Trial Chamber. Due consideration was also given to the following mitigating circumstances: the absence of any prior criminal history, the fact that he voiced excuses for his conduct and the family and personal circumstances of the Accused. In that regard, the Trial Chamber has, in its determination of the sentence, taken into account the financial circumstances of the Accused.
  - Before reading the disposition, the Trial Chamber wishes to underline the gravity of the offence for which the Accused is found guilty. In that regard, the Trial Chamber wishes to recall that witnesses are not the property of the parties and that when the Trial Chamber decides, by way of subpoena, that their testimony is necessary for the establishment of the truth, they have to comply with it. When ordered to appear as a Trial Chamber witness pursuant to Rule 98 of the Rules, the Accused could not refuse to comply with the Subpoena stating that he was a “Defence witness”.

- For the reasons summarised above, having taken into consideration the totality of the arguments and evidence presented by the Defence, the Trial Chamber decides that, pursuant to Rule 77 of the Rules:
  - i) The Accused, Ljubiša Petković, is guilty of contempt of the Tribunal, punishable pursuant to Rule 77(A)(iii) of the Rules;
  - ii) The Accused, Ljubiša Petković, is sentenced to 4 months of imprisonment, credit being given to the 3 months and 14 days spent in detention in the United Nations Detention Unit;
  - iii) The Registry takes all the necessary measures for the Accused to serve his sentence.

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