

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

(IT-03-67-R77.1)

**LJUBIŠA PETKOVIĆ****LJUBIŠA  
PETKOVIĆ***Convicted of contempt of the Tribunal in the Šešelj case*Prosecution Witness before Trial Chamber III of the Tribunal in the case *The Prosecutor v. Vojislav Šešelj*

- Sentenced to four months' imprisonment

*Crimes convicted of:***Contempt of the Tribunal (Rule 77(A)(ii) of the Rules of Procedure and Evidence of the Tribunal)**

- He failed to answer the Tribunal's confidential subpoena to appear as a Court witness.

<b>Order (in lieu of an indictment)</b>	13 May 2008 (made public on 28 May 2008)
<b>Initial appearance</b>	29 May 2008, pleaded not guilty
<b>Trial Chamber Judgement</b>	11 September 2008, sentenced to four months' imprisonment
<b>Sentence served</b>	Sentence completed on 26 September 2008

## STATISTICS

Trial days	1
Witnesses called by Defence	2
Defence exhibits	19

TRIAL	
Commenced	3 September 2008
Closing arguments	3 September 2008
Trial Chamber I	Judge Jean-Claude Antonetti (presiding), Judge Frederik Harhoff, Judge Flavia Lattanzi
Counsel for the Defence	Branislava Isailović
Judgement	11 September 2008

RELATED CASES <i>by geographical area</i>	
ŠEŠELJ(IT-03-67)	

## 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 this 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.

The order in lieu of an indictment against Ljubiša Petković was filed confidentially on 13 May 2008. It was made public on 28 May 2008.

According to the order, on 7 April 2008 Ljubiša Petković failed to answer the Tribunal's confidential subpoena to appear as a Court witness in the case of Vojislav Šešelj.

Ljubiša Petković was charged with:

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

## PRE-TRIAL

Ljubiša Petković was transferred to the Tribunal on 28 May 2008. An initial appearance was held on 29 May 2008 and Ljubiša Petković pleaded not guilty the charge of contempt of the Tribunal.

## TRIAL

The trial took place on 3 September 2008. The Defence called and examined two witnesses, the accused himself and his wife Ljiljana Petković

## TRIAL CHAMBER JUDGEMENT

The Chamber found that Ljubiša Petković failed to comply with the obligations imposed on him by the subpoena issued on 7 April 2008 to appear before the Court as a "Chamber witness" on 13 May 2008.

The Defence contended that Ljubiša Petković did not know that he was the addressee of the subpoena and that his state of health prevented him from notifying the Chamber that he could not comply with the order. The Trial Chamber considered the circumstances surrounding the notification of the subpoena and the deterioration of the state of health of Ljubiša Petković and found that they did not amount to "just excuses" pursuant to Rule 77(A)(iii) of the Rules, as submitted by the Defence who maintained that Ljubiša Petković should be acquitted.

The Trial Chamber found that Ljubiša Petković knowingly and wilfully interfered with the administration of justice by not complying with the subpoena. In its consideration of the sentence to be imposed, the Trial Chamber considered the gravity of the offence, the general sentencing practice of the courts of the former Yugoslavia and the jurisprudence of the Tribunal and the aggravating circumstance of Ljubiša Petković's failure to comply with the Trial Chamber's order. Various mitigating circumstances were also taken into consideration.

As to the gravity of the offence, the Trial Chamber emphasized that witnesses are not the property of a particular party and when a Trial Chamber issues a subpoena for a witness to appear before the Court and

testify, witnesses have to comply. In this particular case, Ljubiša Petković could not refuse to testify as a Court witness, stating that he was a “Defence witness”.

On 11 September 2008, Trial Chamber rendered its judgement, convicting Ljubiša Petković with:

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

Sentence: four months of imprisonment, with credit being given for the three months and 14 days spent in detention in the United Nations Detention Unit.

On 26 September 2008, Ljubiša Petković was released from custody after having served his sentence.