

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

(IT-02-54/R-77.4)

KOSTA BULATOVIĆ**KOSTA
BULATOVIĆ***Convicted of contempt of the Tribunal in the Milošević case*Defence witness before Trial Chamber III of the Tribunal in the case *The Prosecutor v. Slobodan Milošević*

- Sentenced to 4 months' imprisonment, suspended for a period of two years

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

- As a witness called by the Defence before Trial Chamber III of the Tribunal, Bulatović knowingly interfered with the administration of justice by contumaciously refusing to answer questions asked by the Prosecution contrary to Rule 77(A)(i) of the Rules.

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| Indictment | 20 April 2005 |
| Initial appearance | 6 May 2005, pleaded not guilty |
| Trial Chamber Judgement | 13 May 2005, sentenced to four months' imprisonment, suspended for a period of two years |
| Appeals Chamber Judgement | 29 August 2005, sentence affirmed |

STATISTICS

| TRIAL | |
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| Commenced | 6 May 2005 |
| Trial Chamber III | Judge Patrick Robinson (presiding), Judge O-Gon Kwon, Judge Iain Bonomy |
| Counsel for the Prosecution | Carla Del Ponte, Geoffrey Nice |
| Counsel for the Defence | Stéphane Bourgon |
| Judgement | 13 May 2005 |

| APPEAL | |
|------------------------------------|--|
| Appeals Chamber | Judge Theodor Meron (presiding), Judge Fusto Pocar, Judge Mohamed Shahabuddeen, Judge Mehmet Güney, Judge Wolfgang Schomburg |
| Counsel for the Prosecution | Carla Del Ponte, Geoffrey Nice, Hildegard Uertz- Retzlaff |
| Counsel for the Defence | Stéphane Bourgon |
| Judgement | 29 August 2005 |

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.

Bulatović was called to testify in the case *The Prosecutor v. Slobodan Milošević* as a Defence witness. On Friday, 14 April 2005, he appeared before the Tribunal, completed his examination in chief and was partially cross examined. When the trial resumed on Monday, 19 April 2005, Milošević was absent due to illness. Pursuant to the Appeals Chamber decision on the assignment of Defence Counsel, which was issued on 1 November 2004, the Trial Chamber decided to continue the proceedings in Milošević's absence and hear the remainder of Bulatović's testimony.

When the Prosecutor began his questions, Bulatović repeatedly refused to answer and "*was advised further of the possibility that he might be held in contempt were he to maintain that position, which could result in the imposition of a period of imprisonment or a fine.*" Bulatović maintained his refusal to answer any questions and the proceedings were then adjourned overnight "*to enable him to reflect on the position he was in and to take legal advice.*"

Consequently, the Trial Chamber considered that there were sufficient grounds to proceed against the witness for contempt, and issued an order *proprio motu*, in lieu of an indictment, declaring that it would prosecute the matter itself. On 20 April 2005 Trial Chamber issued an order initiating proceedings against Bulatović pursuant to Rule 77 of the Rules of Procedure and Evidence.

On 25 April 2005, Bulatović returned to the Tribunal and concluded his evidence in the Milošević Defence.

Bulatović was charged with:

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

TRIAL

An initial appearance was held on 6 May 2005 before Trial Chamber III, consisting of Judge Patrick Robinson (presiding), Judge O-Gon Kwon and Judge Iain Bony. The accused pleaded not guilty to the charge against him. The arguments of the parties were heard on the same day.

TRIAL CHAMBER DECISION

In its decision, the Trial Chamber found that it had reason to believe that the accused may be in contempt of the Tribunal because he knowingly and wilfully interfered with the administration of justice by contumaciously refusing to answer questions asked by the Prosecution and persisted in that refusal when fully advised of the position and given a further opportunity to respond.

The decision further states that although he was given a number of opportunities to present an explanation for his refusal to comply with the Trial Chamber order, the accused refused to do so. The Trial Chamber therefore concluded that the accused plainly acted with the necessary *mens rea* to establish that he is guilty of contempt of the Tribunal.

The Trial Chamber further considered that, by refusing to answer, the accused defied the authority of the court and created the risk that the authority of the Trial Chamber would be undermined and that the administration of justice would be brought into disrepute.

On 13 May 2005, the Trial Chamber issued its written decision finding the accused to be in contempt of the Tribunal and sentencing him to four months' imprisonment to be suspended for two years on grounds of serious health problems. The Chamber ordered that the sentence would not take effect unless, during the two year period, the accused committed another offence anywhere that was punishable with imprisonment, including contempt of court.

A separate opinion of Judge Bonomy was appended to the decision.

APPEALS PROCEEDINGS

On 27 May 2005, Bulatović filed a notice of appeal against the decision of Trial Chamber III.

The Appeals Chamber considered that it was irrelevant to the contempt proceeding against the appellant whether the Trial Chamber was in error in ordering a continuance of the trial proceedings in the absence of the accused Milošević. As a witness before the Tribunal, the appellant had an obligation to abide by any orders issued by the Trial Chamber, regardless of his personal view of the legality of those orders.

In response to the appellant's argument that the Trial Chamber erred by finding that he "plainly acted with the necessary *mens rea* to establish that he is guilty of contempt of the Tribunal", the Appeals Chamber pointed out that the appellant was asked on several occasions to answer the questions posed to him and the possibility of a contempt order was explained to him. Therefore he acted wilfully and with full knowledge of what he was doing.

On 29 August the Appeals Chamber, consisting of Judge Theodor Meron (presiding), Judge Fausto Pocar, Judge Mohamed Shahabuddeen, Judge Mehmet Güney and Judge Wolfgang Schomburg, issued a decision dismissing the appellant's appeal.