



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of the
former Yugoslavia since 1991

Case No.: IT-95-5/18-R77.2

Date: 14 December 2011

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Order of: 14 December 2011

IN THE CONTEMPT CASE OF MILAN TUPAJIĆ

PUBLIC

**PUBLIC REDACTED VERSION OF "ORDER IN LIEU OF INDICTMENT" ISSUED ON
30 NOVEMBER 2011**

Office of the Prosecutor in Case IT-95-5/18-T

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Government of Bosnia and Herzegovina

via the Embassy of Bosnia and Herzegovina to
The Netherlands, The Hague

The Accused in Case IT-95-5/18-T

Mr. Radovan Karadžić

Standby Counsel in Case IT-95-5/18-T

Mr. Richard Harvey

The Accused in the Contempt case of Milan Tupajić

Mr. Milan Tupajić

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seised of the “Prosecution Motion for Order in Lieu of an Indictment and for Warrant of Arrest”, filed confidentially by the Office of the Prosecutor (“Prosecution”) on 28 October 2011, and hereby issues this order in lieu of indictment pursuant to Rule 77 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) in relation thereto.

I. Background

1. On 23 September 2011, the Chamber issued a subpoena ordering Milan Tupajić (“Witness”) to appear and testify before the Chamber in the case of *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, commencing on 3 October 2011 (“First Subpoena”).¹ On the same day, the Chamber also requested the government of Bosnia and Herzegovina (“BiH”) to serve the First Subpoena on the Witness, to take all necessary measures to ensure that he appears to testify before the Chamber as indicated in the First Subpoena, and to provide a written report on the execution of the First Subpoena.²

2. On 5 October 2011, BiH submitted the memorandum of service of the First Subpoena and accompanying documentation, which included correspondence from the Witness and some medical documentation (“First Memorandum of Service”). These were all translated into English and filed on 26 October 2011. The First Memorandum of Service indicates that Milan Tupajić has read the First Subpoena and is unwilling to appear before the Chamber.³ In the accompanying correspondence, the Witness states that although he has testified in the past at the Tribunal in the case of *Prosecutor v. Krajišnik*, he is unwilling to come to testify in the *Karadžić* case primarily due to his current medical problems [REDACTED].⁴ The Witness submits lengthy medical documentation in order to support his claim that he is unfit to travel and testify.⁵

3. On 27 October 2011, the Accused’s legal advisor informed the Chamber that the Accused would not be filing a response to the Motion.⁶

¹ Subpoena Ad Testificandum, confidential, 23 September 2011.

² Order to the Government of Bosnia and Herzegovina Concerning Subpoena Ad Testificandum, confidential, 23 September 2011.

³ First Memorandum of Service, confidential, pp. 3–4.

⁴ First Memorandum of Service, confidential, pp. 5–6.

⁵ First Memorandum of Service, confidential, Annex, pp. 1–13.

⁶ Hearing, T. 20453 (private session) (27 October 2011).

4. On 3 November 2011, the Chamber issued a second subpoena once again ordering the Witness to appear and testify in the *Karadžić* case (“Second Subpoena”).⁷ In it, the Chamber noted that the reasons provided by the Witness for his refusal to comply with the First Subpoena did not constitute a just excuse and therefore reiterated its order requiring to him to appear and testify in the *Karadžić* case.

5. On 8 November 2011, BiH submitted the memorandum of service of the Second Subpoena (“Second Memorandum of Service”). This was translated into English and filed on 11 November 2011. The Second Memorandum of Service indicates that the Witness continues to refuse to comply with the Second Subpoena and states that his reasons were given to the Chamber previously.⁸ The Witness gives no additional information for his unwillingness to comply with the Second Subpoena.

II. Discussion

6. Rule 77(A) of the Rules provides that 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 without just excuse fails to comply with an order to attend before a Chamber.⁹ When a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may initiate proceedings itself and if the Chamber considers that there are sufficient grounds to proceed against a person for contempt, it may issue an order in lieu of an indictment and either direct *amicus curiae* to prosecute the matter or prosecute the matter itself.¹⁰

7. The Witness states that he is unwilling and unable to travel to the Tribunal to testify, despite the issuance of the two subpoenas. The Chamber has assessed whether the reasons put forth by the Witness satisfy the requirement of just excuse under Rule 77 (A)(iii). With respect to his health concerns, the Chamber is not satisfied, on the basis of the material available,¹¹ that the Witness is unable to testify. [REDACTED].

8. In light of the Witness’s refusal to comply with the two subpoenas issued by the Chamber, as specified in both memoranda of service, and absent the Witness’s showing of a just excuse preventing him from complying with the two subpoenas, the Chamber has reason to

⁷ Second Subopena Ad Testificandum, confidential, 3 November 2011.

⁸ Second Memorandum of Service, confidential, pp. 2–3.

⁹ Rule 77(A)(iii).

¹⁰ Rule 77(C)(iii); Rule 77(D)(ii).

¹¹ Memorandum of Service, confidential, Annex, pp. 1–13.

believe that Milan Tupajić may be in contempt of the Tribunal, and considers that there are sufficient grounds to proceed against him for contempt.

III. Disposition

9. Accordingly, the Chamber, pursuant to Rules 54 and 77 of the Rules, hereby issues this order in lieu of an indictment and **ORDERS** the prosecution for **CONTEMPT OF THE TRIBUNAL**, punishable under Rule 77(A) and (G) of the Rules, of:

Milan Tupajić, born 2 June 1954 at Knežina, Sokolac, Bosnia and Herzegovina, whose prosecution is being pursued for:

having been informed on 5 October 2011 and 8 November 2011, respectively, of the contents of the two subpoenas dated 23 September 2011 and 3 November 2011, and of his obligation to appear before the Chamber or to show good cause why he could not comply with the two subpoenas and therefore knowingly and wilfully interfering with the administration of justice by refusing to comply with the Chamber's First Subpoena of 23 September 2011 and Second Subpoena of 3 November 2011.

AND DECIDES to prosecute the matter itself.

Done in English and French, the English text being authoritative.



Judge O-Gon Kwon
Presiding

Dated this fourteenth day of December 2011
At The Hague
The Netherlands

[Seal of the Tribunal]