

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

(IT-99-36-R77)

MILKA MAGLOV**MILKA MAGLOV***Proceedings terminated*

- Co-counsel for Radoslav Brđanin from September 2001 and April 2002

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

- As co-counsel for Radoslav Brđanin, Maglov was indicted for intimidating, or otherwise interfering with a protected witness to the Prosecution; or, alternatively, for attempting to intimidate or otherwise interfere with the witness; and for disclosing the identity and whereabouts of the witness to a member of the public, in violation of an order for Protective Measures issued by the Trial Chamber in July 2000.

Order (in lieu of indictment)	15 April 2003, allegations for contempt of the Tribunal amended on 6 February 2004
Initial appearance	4 December 2003
Proceedings terminated	17 December 2004

STATISTICS

Trial days	4
Witnesses called by Prosecution	5
Witnesses called by Defence	0
Exhibits	Prosecution: 17 Defence: 5

TRIAL	
Commenced	16 February 2004
Proceedings terminated	17 December 2004
Trial Chamber III	Judge O-Gon Kwon (presiding), Judge Amin El Mahdi, Judge Iain Bonomy
<i>Amicus Curiae</i> Prosecutor	Brenda Hollis
Counsel for the Defence	Jonathan Cooper, Peter Murphy

RELATED CASES <i>by geographical area</i>
BRĐANIN (IT-99-36) "Krajina"

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.

Maglov's assignment as co-counsel for Brđanin was suspended on 9 April 2002, following allegations made by a protected witness to the Prosecution, accusing Maglov of intimidation and of disclosing his identity.

Following receipt of this complaint, the Judges requested a formal investigation of the complaint by an *amicus curiae* appointed for that purpose. Subsequently to the investigation, the Trial chamber issued on 15 April 2003 an "Order Concerning Allegations Against Milka Maglov", charging Maglov with contempt pursuant to Rule 77. On 8 May 2003, the Trial Chamber issued an "Order Instigating Proceedings Against Milka Maglov", directing the Registrar to appoint another *amicus curiae* and ordering the *amicus curiae* Prosecutor to prosecute Maglov on the following two grounds: the alleged intimidation of the Witness, and the alleged disclosure of the identity of the Witness to a member of the public in violation of an order of a Chamber.

On 6 February 2004, the Trial Chamber granted the motion by the *amicus curiae*, filed on 12 January 2004, to amend the allegations for contempt of the Tribunal, and ordered the *Amicus Curiae* Prosecutor to prosecute Maglov for the following allegations:

1. Intimidating, or otherwise interfering with the Witness, pursuant to Rule 77(A)(iv); or, alternatively,
2. Attempting to intimidate, or otherwise interfere with the Witness, pursuant to Rule 77(B); and
3. Disclosing the identity and whereabouts of the Witness to a member of the public, in violation of an order of a Chamber, pursuant to Rule 77(A)(ii).

TRIAL

The case was initially assigned to the Brdjanin Trial Chamber, composed of Judge Agius (presiding), Judge Taya, and Judge Janu. Trial proceedings against Maglov commenced on 16 February 2004. The *amicus curiae* Prosecutor closed her case on 19 February 2004, taking a total of four trial days, in which five witnesses were heard and 17 documents tendered. For her part, the defendant produced five documents.

On 24 February 2004, the Respondent confidentially filed a "Motion for Judgement of Acquittal - Rule 98 bis". The *amicus curiae* Prosecutor confidentially filed a "Response to The Respondent's Motion for Judgement of Acquittal - Rule 98 bis" on 26 February 2004, and a "Corrigendum to Confidential Response to The Respondent's Motion for Judgement of Acquittal - Rule 98 bis" on 27 February 2004. On 4 March 2004, the Respondent confidentially filed "Milka Maglov's Reply to the Prosecutor's Response to Ms. Maglov's Motion for Judgement of Acquittal Pursuant to Rule 98 bis."

On 19 March 2004, the Trial Chamber rendered its judgement under Rule 98 bis, acquitting Maglov of count three (revealing the identity of a protected witness). On 6 April 2004, Maglov filed the "Request to the Trial Chamber Under Rule 73 to Certify Permission to Appeal Decision on Motion for Acquittal Under Rule 98 bis Dated 19 March 2004" in which she requested the Trial Chamber to certify permission to appeal the "Decision on Motion for Acquittal Pursuant to Rule 98 bis." Her request was dismissed on 20 April 2004.

As the Trial Chamber assigned to the case dissolved on 1 September 2004, after its issuance of the judgement in the Brdjanin case, the case was reassigned to Trial Chamber III on 22 September 2004.

During a hearing on 13 December 2004, the *amicus curiae* made an oral motion to vacate the orders of the Trial Chamber issued on 15 April 2003 and 6 February 2004, which had initiated the proceedings. In its decision of 17 December 2004, the Trial Chamber terminated the contempt proceedings against Maglov. All charges were withdrawn.