



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

Case Nos. IT-95-14 &
IT-95-14/2-R77
Date: 30 August 2006
Original: English

IN TRIAL CHAMBER III

**Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy**

Registrar: Mr. Hans Holthuis

Judgement of: 30 August 2006

PROSECUTOR

v.

JOSIP JOVIĆ

JUDGEMENT

The Office of the Prosecutor

**Mr. David Akerson
Mr. Salvatore Cannata**

Counsel for the Accused

Mr. Krešimir Krsnik

Background

1. Mr. Josip Jović (the “Accused”) faces one charge of Contempt of the Tribunal in respect of conduct in November and December 2000. At that time, the Accused was the editor-in-chief of *Slobodna Dalmacija*, a Croatian daily newspaper. The Office of the Prosecutor (the “Prosecution”) alleges that the Accused published information and material in his newspaper concerning a protected witness and refused to comply with an order to cease such publication. An indictment was filed on 29 August 2005¹ and confirmed on 12 September 2005,² the Accused made his initial appearance on 14 October 2005,³ the case was transferred to this Trial Chamber on 24 April 2006,⁴ the parties submitted pre-trial briefs⁵ and a trial was conducted on 11 July 2006.⁶

2. The protected witness whose evidence the Accused is charged with disclosing is Mr. Stjepan Mesić, the President of the Republic of Croatia. Before he was elected to that office,⁷ Mr. Mesić was a witness for the Prosecution in *Prosecutor v. Blaškić*.⁸ By written order of the Trial Chamber which presided over that case, filed on 10 June 1997, “the accused [Mr. Blaškić], his counsels and their representatives” were prohibited from “disclos[ing] to the public or to the media the name[s] of the witnesses residing in the territory of the former Yugoslavia or any information which would permit them to be identified”.⁹ Mr. Mesić provided a written statement for the Prosecution, dated 19 April 1997, and testified at the Tribunal from 16 to 19 March 1998.¹⁰ Pursuant to an oral order of the *Blaškić* Trial Chamber, issued in private session on 16 March 1998 just before Mr. Mesić began testifying,¹¹ his testimony was delivered in closed session.¹² As this Trial Chamber has

¹ See Indictment, 29 August 2005. The Indictment was later amended, such that the First Amended Indictment, filed 15 June 2006, is the operative indictment in this case.

² See Decision on Review of Indictment and Order for Non-Disclosure, 12 September 2005.

³ See Transcript of Proceedings, p. 5 (Initial Appearance, 14 October 2005). The Accused failed to appear for the originally scheduled initial appearance on 26 September 2005, and an arrest warrant subsequently was issued. See Warrant of Arrest and Order for Surrender, 28 September 2005.

⁴ See Order Reassigning a Case to a Trial Chamber, 24 April 2006.

⁵ See Prosecutor’s Pre-Trial Brief Pursuant to Rule 65 ter(E), 15 June 2006 (“Prosecution’s Pre-Trial Brief”); The Accused Josip Jović’s Pre-Trial Brief Pursuant to Rule 65ter(F), 26 June 2006 (“Accused’s Pre-Trial Brief”).

⁶ The Accused failed to appear for the originally scheduled trial on 3 July 2006, and trial was rescheduled for 11 July 2006. See Transcript of Proceedings, pp. 17, 29 (3 July 2006); Decision on Second Motion for Postponement of Trial, 4 July 2006.

⁷ President Mesić was elected to his first term on 7 February 2000. He was re-elected to a second term on 16 January 2005. See <http://www.predsjednik.hr/>

⁸ *Prosecutor v. Blaškić*, Case No. IT-95-14 (“*Blaškić*”).

⁹ *Blaškić*, Decision of Trial Chamber I on the Requests of the Prosecutor of 12 and 14 May 1997 in Respect of the Protection of Witnesses, 10 June 1997 (dated 6 June 1997), p. 7.

¹⁰ See *Blaškić*, Transcript of Proceedings, pp. 7095 (16 March 1998) (closed session) - 7322 (19 March 1998) (closed session).

¹¹ “When a Chamber orders a private session, the audio and video broadcast is suspended, but the blinds in the courtroom are not lowered and therefore those sitting in the public gallery are able to see the proceedings, without

explained, “when a Chamber orders that testimony be given in closed session, rendering everything that transpires confidential, such an order applies to all persons coming into possession of the protected information.”¹³

3. On 27 November 2000, *Slobodna Dalmacija* ran a front-page item, titled “Transcripts from The Hague”, which indicated that the article contained the “first full and accurate testimony by Stjepan MESIĆ at The Hague Tribunal on 19 April 1997”.¹⁴ What the newspaper referred to as “testimony” was in fact an excerpt of Mr. Mesić’s written statement dated 19 April 1997. Mr. Mesić’s only in-court testimony in *Blaškić* occurred between 16 and 19 March 1998, which the newspaper noted by stating that Mr. Mesić gave evidence “two times on his own initiative before the International Court for the War Crimes Committed in the Territory of the former Yugoslavia. The first time was on 19 April 1997 and the second time between 16 and 19 March 1998. At his own request, Mesić’s second testimony was a confidential one.”¹⁵ More of Mr. Mesić’s written statement appeared in the 28 November 2000 edition of *Slobodna Dalmacija*, including the statement that “Mesić’s second testimony was secret, at his own request.”¹⁶ On 29 November 2000, the newspaper referred to a press conference at which President Mesić was reported to have said that the excerpts published in the prior two editions of *Slobodna Dalmacija* corresponded to what he had told the Tribunal.¹⁷ Additional excerpts of Mr. Mesić’s written statement appeared in the 30 November 2000 edition.¹⁸

4. The Prosecution in the *Blaškić* case brought these articles to the attention of the relevant Trial Chamber on 1 December 2000.¹⁹ That same day, the Chamber ordered that “the publication

being able to hear them. Those parts of proceedings that are conducted in private session are redacted from the public version of the transcript.” *Prosecutor v. Marijačić and Rebić*, Case No. IT-95-14-R77.2, Judgement, 10 March 2006 (“*Marijačić and Rebić*”), para. 24.

¹² See *Blaškić*, Transcript of Proceedings, p. 7088 (16 March 1998) (private session) (“JUDGE JORDA: After having deliberated, the judges have decided unanimously that Mr. Mesić’s testimony will be in closed session.”).

¹³ *Marijačić and Rebić*, para. 28.

¹⁴ Prosecution Exhibit 11, tab 1.

¹⁵ *Ibid.*

¹⁶ See Prosecution Exhibit 11, tab 2.

¹⁷ See Prosecution Exhibit 11, tab 3 (“The transcripts that are being publicised by *Slobodna Dalmacija*, and so far I have seen two articles, correspond quite well to what I stated before the court in The Hague. . . . – said President Stipe Mesić at a regular monthly press conference held on Tuesday, thus confirming the authenticity of the first part of his testimony in The Hague as published by our paper.”).

¹⁸ See Prosecution Exhibit 11, tab 4.

¹⁹ See *Blaškić*, *Ex Parte* and Under Seal Notice of Breach of Security in Respect of Private Session Hearings, 1 December 2000, pp. 1 (The “Prosecutor received copies of a series of articles published in *Slobodna Dalmacija* in which the full text of a statement Stipe Mesić provided to the Prosecutor, in confidence, was published.”) (footnote omitted), 2 (Annex C contains “[c]opies of articles from *Slobodna Dalmacija* dated 28, 29 and 30 November, respectively, in which are reproduced parts of the confidential statement that Stipe Mesić provided to the Prosecutor

of statements or testimonies of the witness concerned, and generally, of any protected witness, shall cease immediately . . . [A]ny publication of these statements or testimonies, shall expose its author(s) and those responsible to be found in contempt of the Tribunal”.²⁰ In its order, the Trial Chamber asked “the Registrar to send a copy of this decision by telefax to . . . ‘Slobodna Dalmacija’ as soon as practicable”.²¹ The Accused acknowledged at trial that he “received the order on the 1st of December, 2000 through a fax machine.”²²

5. On 3 December 2000, *Slobodna Dalmacija* printed the 1 December 2000 order and described it as “arrogant”,²³ “interference in Croatian sovereignty”²⁴ and “[a]ggression on a legal state”.²⁵ The newspaper also printed an excerpt of the transcript of the 16 March 1998 proceedings in *Blaškić*, which were conducted in private session and during which Prosecution and Defence counsel made submissions about whether Mr. Mesić should testify in closed session.²⁶ The next day, the newspaper’s front page stated, “Josip Jović, Editor-in-Chief: I Don’t Have any Moral Obligations towards The Hague”.²⁷ An accompanying article stated that the Accused said “he would take a decision on further publication of the texts ‘after studying all the legal aspects of the ban.’”²⁸

6. “*Slobodna Reveals The Hague Secret*”, read the front page of the 6 December 2000 edition.²⁹ “*Exclusive[:]* Transcript of the Secret Testimony of the Protected Witness Stjepan Mesić before the Tribunal in The Hague in March 1998 in the Proceedings Against Tihomir Blaškić”.³⁰ That day’s edition of the newspaper featured, for the first time, an excerpt of the 16 March 1998 closed session transcript.³¹ In an accompanying piece, titled “Six Reasons Why *Slobodna* is Publishing Mesić’s Testimony”,³² the Accused wrote: “[D]espite the Order from the Tribunal in

in 1997.”). Although the document quoted here was filed *ex parte* and under seal, the Trial Chamber considers that lifting the *ex parte* and sealed status of the quoted excerpts is appropriate for the just resolution of this case. The Chamber declines to lift the *ex parte* and sealed status of portions of the document not quoted in this Judgement.

²⁰ *Blaškić*, Order for the Immediate Cessation of Violations of Protective Measures for Witnesses, 1 December 2000, p. 1.

²¹ *Ibid.*, p. 2.

²² Transcript of Proceedings, pp. 69-70 (Trial, 11 July 2006).

²³ Prosecution Exhibit 11, tab 5.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ See Prosecution Exhibit 11, tab 5.

²⁷ Prosecution Exhibit 11, tab 6.

²⁸ *Ibid.*

²⁹ See Prosecution Exhibit 11, tab 8.

³⁰ *Ibid.*

³¹ See *ibid.*

³² *Ibid.*

The Hague which threatens ‘Slobodna Dalmacija’ with penalties . . . , we decided, notwithstanding the risk, to publish instalments of the whole contents of Mesić’s mysterious testimony given before the Tribunal in The Hague from 16 to 19 March 1998”.³³ Between 7 and 29 December 2000, *Slobodna Dalmacija* published 21 additional excerpts of Mr. Mesić’s closed session testimony.³⁴

7. On 8 December 2000, the Prosecution notified the Trial Chamber of the newspaper’s apparent violation of the 1 December 2000 order and asked that, among other things, “the author(s) of the articles in issue, and Josip Jović, the Editor-in-Chief of *Slobodna Dalmacija*, be ordered to appear before the Trial Chamber . . . to show cause why they should not be held in contempt of the Tribunal”.³⁵ As *Slobodna Dalmacija* continued to publish excerpts of Mr. Mesić’s March 1998 testimony throughout December 2000, the Prosecution filed two additional notices, on 18 December 2000³⁶ and 9 January 2001,³⁷ of the potentially contemptuous publications.

8. The Appeals Chamber lifted the protective measures applicable to Mr. Mesić on 24 January 2006, ordering that “Mesić’s actual name, the fact that Witness Mesić testified, his statements to the Prosecution, as well as his testimony transcripts in [the *Blaškić*] case, may be referred to publicly and in open session.”³⁸

Allegations

9. The Prosecution charges the Accused with contempt for “publishing the identity of a protected ICTY witness,” for “publishing the fact that the witness testified in closed session at the Tribunal,” for “publishing excerpts of that testimony, in whole or in part,” and for “directly

³³ *Ibid.*

³⁴ See Prosecution Exhibit 11, tabs 9-29.

³⁵ *Blaškić, Ex Parte* and Under Seal Notice of Breach of Trial Chamber’s Order for the Immediate Cessation of Violations of Protective Measures for Witnesses Dated 1 December 2000, 8 December 2000, p. 4. Although the document quoted here was filed *ex parte* and under seal, the Trial Chamber considers that lifting the *ex parte* and sealed status of the quoted excerpt is appropriate for the just resolution of this case. The Chamber declines to lift the *ex parte* and sealed status of portions of the document not quoted in this Judgement.

³⁶ See *Blaškić, Ex Parte* and Under Seal Notice of Additional Breaches of Trial Chamber’s Order for the Immediate Cessation of Violations of Protective Measures for Witnesses Dated 1 December 2000, 18 December 2000 (dated 15 December 2000). Although the document cited here was filed *ex parte* and under seal, the Trial Chamber considers that citing the document is appropriate for the just resolution of this case. The Chamber declines to lift the *ex parte* and sealed status of the document.

³⁷ See *Blaškić, Ex Parte* and Under Seal Notice of Further Breaches of the Trial Chamber’s Order for the Immediate Cessation of Violations of Protective Measures for Witnesses Dated 1 December 2000, 9 January 2001. Although the document cited here was filed *ex parte* and under seal, the Trial Chamber considers that citing the document is appropriate for the just resolution of this case. The Chamber declines to lift the *ex parte* and sealed status of the document.

violating the 01 December 2000 court order.”³⁹ In its written submissions, the Prosecution alleged that the Accused violated three orders issued by the *Blaškić* Trial Chamber: (1) the written order, filed 10 June 1997, forbidding “the accused [Mr. Blaškić], his counsels and their representatives” from disclosing the “name[s] of the witnesses residing in the territory of the former Yugoslavia or any information which would permit them to be identified”,⁴⁰ (2) the oral order, issued 16 March 1998 in private session, that Mr. Mesić’s testimony be given in closed session,⁴¹ and (3) the written order, filed 1 December 2000, which noted that *Slobodna Dalmacija* had published the statements or testimony transcripts of a witness whose evidence was under protective measures, and ordered that “the publication of statements or testimonies of the witness concerned . . . shall cease immediately”.⁴²

10. Despite the Prosecution’s written averments that the Accused violated all three of the orders above, at trial the Prosecution effectively withdrew its allegation concerning the first order. Counsel for the Prosecution stated that he would “present evidence that Jović’s acts violated two court orders. The first order is the *Blaškić* Trial Chamber’s oral order[] in March 1998, that Mesić’s testimony was to occur in closed session The second order, of course, is the cease and desist order directed specifically at *Slobodna Dalmacija*”.⁴³ This decision to drop the allegation that the Accused violated the 10 June 1997 written order seems prudent: that order was directed only to “the accused [Mr. Blaškić], his counsels and their representatives”, and the Accused belongs to none of those categories. In addition, at trial the Prosecution did not substantively pursue the Indictment’s allegation that the Accused improperly identified Mr. Mesić as a witness in the *Blaškić* case, perhaps because the Accused proffered exhibits which make it plain that Mr. Mesić acknowledged his role as a witness before publication of the relevant *Slobodna Dalmacija* articles.⁴⁴ The Trial

³⁸ *Blaškić*, Decision on Prosecution’s Motion for Variance of Protective Measures in the *Prosecutor v. Šešelj & Margetić* Case, 24 January 2006, p. 5.

³⁹ First Amended Indictment, para. 13.

⁴⁰ *Blaškić*, Decision of Trial Chamber I on the Requests of the Prosecutor of 12 and 14 May 1997 in Respect of the Protection of Witnesses, 10 June 1997 (dated 6 June 1997), p. 7. See First Amended Indictment, paras. 4, 13; Prosecution’s Pre-Trial Brief, paras. 1, 4, 15, 34-36.

⁴¹ See First Amended Indictment, paras. 8, 10-13; Prosecution’s Pre-Trial Brief, paras. 1, 9, 11-13, 15, 37-39.

⁴² *Blaškić*, Order for the Immediate Cessation of Violations of Protective Measures for Witnesses, 1 December 2000, p. 1. See First Amended Indictment, paras. 8, 10-13; Prosecution’s Pre-Trial Brief, paras. 9, 11-13, 15, 40-42.

⁴³ Transcript of Proceedings, p. 36 (Trial, 11 July 2006).

⁴⁴ See Confidential Motion of the Accused Josip Jović for Leave to File Additional Witness and Exhibit List, 11 July 2006, Annex C (article in 23 March 1998 edition of *Feral Tribune* titled “Yes, I will go to The Hague again!” Question: “So, were you a witness in the process against general Blaskic?” Answer: “Yes. I took part in that process, I was a witness, and I testified about circumstances familiar to me, but which I can’t explain more detailly [*sic*].” Question: “Back to the Blaskic case – so, you’re not allowed to publically [*sic*] announce the details of your testimony?” Answer: “Yes, that’s right. Nor can I or anyone else bring out anything from that testimony [*sic*], for it was – as I said – a closed conference.”); Annex E (article in 23 March 1998 edition of *Vjesnik*: “On Sunday Stipe Mesić confirmed to the Croatian television that he had testified as the protected witness of the charges in the process

Chamber accordingly will not consider the charge against the Accused so far as it relates to “publishing the identity of a protected ICTY witness” and “publishing the fact that the witness testified in closed session at the Tribunal”.⁴⁵

Applicable Law

11. Despite the fact that there is “no mention in the Tribunal’s Statute of its power to deal with contempt”, as “an international criminal court, the Tribunal possesses the inherent power to deal with conduct which interferes with its administration of justice.”⁴⁶ Contempt of the Tribunal is described in Rule 77(A) of the Rules of Procedure and Evidence (the “Rules”), which provides:

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

- (i) being a witness before a Chamber, contumaciously refuses or fails to answer a question;
- (ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber;
- (iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber;
- (iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness; or
- (v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber.

against general Blaškić last week.”). *See also* Annex F (interview with Carla Del Ponte, Prosecutor of the Tribunal, in 7 April 2000 edition of *Jutarnji List*: Question: “What do you think about this government?” Answer: “I think it’s great, your president [President Mesić] is a big friend of our court. He was a very important witness on [*sic*] one of our trials”). Although the document quoted here was marked “confidential” when filed, the Trial Chamber considers that lifting the confidentiality of the quoted excerpts is appropriate for the just resolution of this case. The Chamber declines to lift the confidentiality of portions of the document not quoted in this Judgement.

⁴⁵ First Amended Indictment, para. 13.

⁴⁶ *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR77, Judgment on Appeal by Anto Nobile Against Finding of Contempt, 30 May 2001, para. 30 (*citing Prosecutor v. Tadić*, Case No. IT-94-1-A-R77, Judgment on Allegations of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000, para. 13). *See also Prosecutor v. Milošević*, Case No. IT-02-54-A-R77.4, Decision on Interlocutory Appeal on Kosta Bulatović Contempt Proceedings, 29 August 2005, para. 21 (“Contempt proceedings are part of the inherent authority of any Chamber at this Tribunal to protect the integrity of its own proceedings.”).

Although the Rule enumerates specific acts of contempt, “the formulations in Rule 77 of various situations which amount to contempt do not limit the Tribunal’s inherent jurisdiction to punish for contempt.”⁴⁷ With respect to Rule 77(A)(ii), the

knowing and wilful interference with the administration of justice is a consequence of the disclosure of information relating to Tribunal proceedings in knowing violation of an order of a Chamber. There is therefore no additional requirement for the Prosecution to prove that such interference actually occurred. Thus, proof of the *actus reus* and *mens rea* elements of this form of commission of contempt is sufficient to convict an individual of contempt.⁴⁸

12. The Prosecution has charged the Accused with Contempt of the Tribunal under Rule 77(A), which concerns the Tribunal’s general power to punish acts of contempt, and Rule 77(A)(ii), which refers specifically to the Tribunal’s power to punish anyone who “discloses information relating to those proceedings in knowing violation of an order of a Chamber”.⁴⁹ Given that the instances of contempt alleged here are said to have been knowing violations of the *Blaškić* Trial Chamber’s orders, Rule 77(A)(ii) more specifically applies to the circumstances of the case and will therefore frame the legal discussion below.⁵⁰

13. As this Trial Chamber has noted, “where the content of a written witness statement is largely the same as the content of oral testimony given in closed session, that content must also be considered protected by the terms of the closed session order, or the protection granted would be ineffectual.”⁵¹

14. As is the case for any charged crime, the Prosecution must prove each element of an offence beyond reasonable doubt before the Trial Chamber can convict an accused of contempt.⁵²

⁴⁷ *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR77, Judgment on Appeal by Anto Nobile Against Finding of Contempt, 30 May 2001, para. 39.

⁴⁸ *Marijačić and Rebić*, para. 19 (citations omitted).

⁴⁹ See First Amended Indictment, para. 14 (“Jović committed: Count 1: Contempt of the Tribunal, punishable under the Tribunal’s inherent power, Rule 77(A), and Rule 77(A)(ii)”) (emphasis omitted); Prosecution’s Pre-Trial Brief, para. 16.

⁵⁰ See *Prosecutor v. Marijačić and Rebić*, Case No. IT-95-14-R77.2, Decision on Prosecution’s Motions to Amend the Indictment, 7 October 2005, para. 36 (“The Prosecution has provided no explanation, nor any distinct factual basis for its proposed addition of Rule 77(A). If, as appears to be the case, the Prosecution is alleging the commission of contempt under [] Rule 77(A) on the basis of the same facts as for the commission of contempt under Rule 77(A)(ii), the addition of a specific reference to Rule 77(A) is unnecessary. As [a] form of commission of the crime of contempt articulated in Rule 77(A), Rule 77(A)(ii) incorporates the general language and requirements of Rule 77(A).”).

⁵¹ *Ibid.*, para. 27.

Submissions

15. In his opening remarks at trial, counsel for the Prosecution stated that “this is one of the simpler contempt cases . . . and at the same time it’s one of the [most] egregious”.⁵³ According to the Prosecution, the “four November editions [of *Slobodna Dalmacija*] published Mesić’s witness statement”, and the “December editions published his closed session testimony”.⁵⁴ With regard to the December publications, counsel for the Prosecution stated,

The first excerpt of Mesić’s closed session testimony is published in the interior pages of that issue [6 December 2000], and each and every day, for 22 days thereafter, the evidence will show that Jovic and *Slobodna Dalmacija* publish[ed] the complete transcripts of Mesić’s closed session testimony, and on top of each of these articles [it] states very clearly that the witness testified secretly. And not only do the interior pages of these issues publish the transcripts but the front pages of the ensuing issues continue to flaunt the direct and open challenge to the Tribunal.⁵⁵

The Accused, said the Prosecution, “clearly, intentionally, and repeatedly violated the orders of this Tribunal and as such [] interfered with the administration of justice and was in contempt of this Tribunal”.⁵⁶

16. The Accused, according to his counsel, “did not knowingly and wilfully violate any orders of this Tribunal.”⁵⁷ At trial, the Accused primarily offered a defence of mistake of law: he did not believe that he was bound by the Trial Chamber’s orders, and therefore cannot be held in contempt of the Tribunal. As the Accused testified,

[W]e stopped publishing the documents [after receipt of the 1 December 2000 order] in order to obtain the legal opinion in the Republic of Croatia and to decide, based on that legal opinion, whether we should feel bound by the order. . . . We informed the legal office of our paper and we also sent an inquiry to the general attorney’s office. They had also received the order.

Q. You want to say that the order was also sent to the public prosecutor’s office in Croatia?

A. Yes, and to the Ministry of Justice as well. The public prosecutor’s office or the general attorney’s office produced a written statement in reaction to that order wherein they established that the protective measures involved were addressed at the identity of the

⁵² See, e.g., *ibid.*, para. 16.

⁵³ Transcript of Proceedings, p. 32 (Trial, 11 July 2006).

⁵⁴ See *ibid.*

⁵⁵ *Ibid.*, p. 35.

⁵⁶ *Ibid.*, p. 36.

⁵⁷ *Ibid.*, p. 37.

witness only and not at the contents of his testimony. They concluded that Slobodna Dalmacija had not violated these orders by publishing the transcripts.⁵⁸

* * *

We also sought the opinion of the government of the Republic of Croatia. The government stated that as far as this case involving the issuance of the order was concerned, the public prosecutor's office was competent to deal with this. The then-Deputy Minister and the head of the office of the Republic of Croatia for Cooperation with ICTY, Mr. Goran Granic, stated that this was not the matter within the jurisdiction of the ICTY and that the general public was entitled to know it all.⁵⁹

As Defence counsel argued, Contempt of the Tribunal requires

a knowing violation. Mr. Jovic is a journalist; he's not a lawyer. That's why he asked around. He did his best. He refrained from publishing for six days. He asked around and everybody was telling him that there was no violation at all. If he'd been told that he was in violation, he wouldn't have published, but the public prosecutor told him he was not in breach of any laws or regulations and was also clearly told that this was nothing for the ICTY. This was not a matter under ICTY jurisdiction and he was not doing anything that could have been viewed as impermissible. And that is why the witness decided to publish this eventually.⁶⁰

It should be noted, however, that not "everybody was telling [the Accused] that there was no violation at all." An item in the 6 December 2000 edition of *Slobodna Dalmacija* synthesised the opinion of Professor Ivo Josipović, described by the Accused as a "renowned legal expert",⁶¹ as follows: "This is the first case in which the International Criminal Tribunal addresses the media through a separate order in any state. If viewed from a formal and legal point of view, this Tribunal has the competence for such conduct. However, every decision delivered by the Tribunal, including this one, is a subject of criticism and further investigation."⁶² When asked by the Presiding Judge

⁵⁸ *Ibid.*, p. 70.

⁵⁹ *Ibid.*, pp. 75-76.

⁶⁰ *Ibid.*, p. 84.

⁶¹ *Ibid.*, p. 91.

⁶² Prosecution Exhibit 11, tab 8. *See also* Transcript of Proceedings, p. 138 (Trial, 11 July 2006):

Q. Mr. Jovic I'm going to read to you a passage And the article is entitled: "The President needs the international tribunal" "This is the first case in which the International Criminal Tribunal addresses the media through a separate order in any state. If viewed from a formal and legal point of view this Tribunal has the competence for such conduct. However, every decision delivered by the Tribunal, including this one, is a subject of criticism and further investigation. The Tribunal should change its decision in the case of expiry of reasons why some materials have been declared confidential."

Do you see that?

A. Yes, I do.

Q. "The Tribunal should change its decision."

* * *

Q. The point being: He's not saying that you should do this; he's saying that the Court is obligated to make this change, isn't he? I need –

A. Yes, that's what he says.

Q. Thank you very much.

why he had resumed publishing the closed session transcripts after receiving the 1 December 2000 order to stop, the Accused answered,

Because based on everything that I have said so far, I was misled into believing something that was erroneous. I had received contradictory instructions and interpretations. I was not certain, nor indeed am I now, whether the ICTY can issue orders to me that affect my right to enjoy freedom in informing my readership.⁶³

* * *

JUDGE ROBINSON: Did you not accompany your publication with a statement that you knew that the publication was in violation of the order of the Tribunal but you would publish nonetheless?

THE WITNESS: [Interpretation] Quite obviously. But I stated the reasons that led me to start publishing. I was by no means clear whether ICTY had the power to issue to me such an order;⁶⁴

* * *

It's quite obvious, I flouted the order. But what is not clear is as a citizen of the Republic of Croatia am I duty-bound to follow that order.⁶⁵

When asked about this contention on cross-examination, the Accused stated,

At the time I had received assurances and I believed that this order was not directly in relation to me as a citizen of the Republic of Croatia. I believed that this order could only be enforced through the Croatian judiciary.⁶⁶

* * *

[M]y understanding was not that we had to implement that order directly without appropriate decisions from the Croatian judiciary and its bodies. . . . I did not mean to knowingly violate that order, as you claim. I was waiting. I may have erred, but I was waiting for a certain procedure within Croatia to kick in. But then I also received the interpretations that I have already elaborated on.⁶⁷

17. In responding to this submission, counsel for the Prosecution stated that the *Blaškić* Trial Chamber had issued its orders, and the Accused was

not entitled to get an opinion from Greenland or the United States or anywhere else to say that that's wrong. . . . And what you're entertaining, I would submit, Your Honour, is that

⁶³ Transcript of Proceedings, p. 87 (Trial, 11 July 2006).

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*, p. 88.

⁶⁶ *Ibid.*, p. 126.

⁶⁷ *Ibid.*, p. 127.

[an accused] has a right to get a second opinion from another legal entity to question the validity of your court orders, and that can't be.⁶⁸

* * *

[I]f you, as a Chamber, allow third parties, such as newspapers, to second-guess an order of a Trial Chamber, I would submit you're opening a door to watering down your ability to control these proceedings. We ask witnesses to come here and testify under life-threatening conditions. And they do so because we assure them that we can guarantee their confidentiality when we testify in closed session. And that's a decision that you, as Judges, have to make after hearing the arguments of the parties. And those decisions are not going to be perfect, but those decisions have to be respected. They have to be sacrosanct. And if you deviate from that policy, we cannot rightfully ask witnesses to come in and look them in the eye and tell them that our guarantees of confidentiality, even when ordered by a Court, will be backed up by this Tribunal.⁶⁹

* * *

[Y]ou cannot allow a third party such as a newspaper to forum shop for a different legal opinion to avoid the force and effect of a Court order It's the law and the Court's order that matters, and ignorance of the law is not a defence.⁷⁰

18. In addition to offering the defence described above, the Accused also stated at trial that the November/December 2000 disclosure of Mr. Mesić's involvement in the *Blaškić* trial neither impeded the just administration of that trial, which had concluded in April 2000,⁷¹ nor posed any danger to Mr. Mesić, who was by November 2000 serving as President of the Republic of Croatia and thus presumably well protected.⁷² The Accused also asserted a right as a journalist to freedom of expression, which he described as a "right to enjoy freedom in informing [his] readership."⁷³ "There is something called the UN declaration of human rights," he said, "founders of this very Tribunal guaranteeing to all the freedom to spread and publish information. There is the European Union Convention on Human Rights which addresses the same entitlements with no interference from the authorities. That is stated unequivocally."⁷⁴ He continued, "As a journalist, I am not part

⁶⁸ *Ibid.*, p. 74.

⁶⁹ *Ibid.*, pp. 143-144.

⁷⁰ *Ibid.*, pp. 144-145.

⁷¹ See *ibid.*, p. 97 ("The trial was closed and a judgement was rendered for Mr. Blaskic. With the publication of these documents, we could in no way affect the administration of justice in these proceedings."). See also *Blaškić*, Judgement, 20 April 2000.

⁷² See Transcript of Proceedings, pp. 97-98 (Trial, 11 July 2006) ("Mr. Mesic has now entered his second term of office, which in Croatia lasts five years, and he's probably the most protected person in the Republic of Croatia. The publishing of these transcripts could not pose any physical threat to him.").

⁷³ *Ibid.*, p. 87.

⁷⁴ *Ibid.*, p. 88.

of the judicial mechanism; I am part of the public domain, and I cannot protect any judicial secrets from myself.”⁷⁵

Discussion

19. The *actus reus* of Contempt of the Tribunal under Rule 77(A)(ii) is “the physical act of disclosure of information relating to proceedings before the Tribunal, when such disclosure would breach an order of a Chamber.”⁷⁶ There is no doubt that the Accused published transcripts which, on the face of it, violated both the 16 March 1998 oral order, which provided for Mr. Mesić to testify in closed session and thus rendered those transcripts confidential, and the 1 December 2000 written order, which directed *Slobodna Dalmacija* to stop publishing confidential material. The Accused’s December 2000 disclosures in violation of these orders are clear from both the *Slobodna Dalmacija* articles⁷⁷ and the Accused’s admissions at trial.⁷⁸ At the same time, the Trial Chamber has compared Mr. Mesić’s written statement with his closed session testimony and finds that the content of his written witness statement is largely the same as the content of his oral testimony given in closed session. Accordingly, the Accused’s November 2000 publication of Mr. Mesić’s written statement also violated the orders of the *Blaškić* Trial Chamber.⁷⁹

20. The dispute at trial focused on the *mens rea* of contempt under Rule 77(A)(ii), which this Trial Chamber has described as “the knowledge of the alleged contemnor of the fact that his disclosure of particular information is done in violation of an order of a Chamber. Proof of actual knowledge of an order would clearly suffice to satisfy this element, and actual knowledge may be inferred from a variety of circumstances.”⁸⁰ By this standard, the Accused certainly possessed the requisite mental state with regard to the December 2000 publication of Mr. Mesić’s closed session testimony, as the Accused conceded knowledge of the orders regarding the confidentiality of that

⁷⁵ *Ibid.*, p. 90.

⁷⁶ *Marijačić and Rebić*, para. 17.

⁷⁷ *See, e.g.*, Prosecution Exhibit 11, tab 8 (“*Exclusive*[:] Transcript of the Secret Testimony of the Protected Witness Stjepan Mesić before the Tribunal in The Hague in March 1998 in the Proceedings Against Tihomir Blaškić”).

⁷⁸ *See, e.g.*, Transcript of Proceedings, p. 88 (Trial, 11 July 2006) (“It’s quite obvious, I flouted the order.”).

⁷⁹ *See Marijačić and Rebić*, para. 27 (“[W]here the content of a written witness statement is largely the same as the content of oral testimony given in closed session, that content must also be considered protected by the terms of the closed session order, or the protection granted would be ineffectual.”).

⁸⁰ *Ibid.*, para. 18. *See also Prosecutor v. Milošević*, Case No. IT-02-54-R77.4 (Contempt Proceedings Against Kosta Bulatović), Decision on Contempt of the Tribunal, 13 May 2005, para. 17 (“Where the issue is one of compliance with an order of the court, the ‘knowledge’ required is knowledge of the making of the order requiring that the Respondent should answer.”).

evidence.⁸¹ Additionally, the Accused's knowledge that the November 2000 articles disclosed Mr. Mesić's protected witness statement can be inferred from the fact that the Accused had, since January or February 2000,⁸² possessed the closed session transcripts which clearly were confidential and which reflected the substance of Mr. Mesić's written statement.

21. At trial, the Accused implicitly proposed an alternative standard for *mens rea*, by which one possesses the requisite state of mind not simply by knowingly violating a Tribunal directive, but specifically by violating a directive which one subjectively knows applies to oneself as a matter of law. The Accused stated, for example, that he "[q]uite obviously" violated the *Blaškić* Chamber's 1 December 2000 order but "was by no means clear whether ICTY had the power to issue to [him] such an order".⁸³ In other words, the Accused knew that the Tribunal had ordered him not to publish protected material, but did not know that he was under a legal obligation to comply. Such an error in law is no answer to this charge. Even assuming that the Accused genuinely was unsure whether he was bound by the Tribunal's orders, that he believed he had to wait for the Croatian courts to act and that he was meanwhile advised by Croatian legal authorities that he was free to ignore the orders, it is settled that a person's misunderstanding of the law does not excuse a violation of it. *Mens rea* is established by an accused's knowledge of an order and his or her conduct in breach of it. In two other contempt cases, for example, this Trial Chamber rejected the argument that an erroneous legal interpretation of the Tribunal's orders is a valid defence to a charge of disobeying such orders.⁸⁴ Additionally, the Appeals Chamber has stated that, where a

⁸¹ At trial, the Accused acknowledged receiving the 1 December 2000 order by fax on the day it was issued. See Transcript of Proceedings, pp. 69-70 (Trial, 11 July 2006) ("I received the order on the 1st of December, 2000 through a fax machine."). In addition, the Accused's knowledge of the 16 March 1998 oral order can be inferred from the fact that the December 2000 editions of *Slobodna Dalmacija* which reprinted the closed session transcripts indicated that the material was "secret". Cf. *Marijačić and Rebić*, para. 37 (The Accused "published extracts of the witness statement, describing this material as 'secret,' regardless. He thus published deliberately in defiance of an order that was brought to this attention.").

⁸² See Transcript of Proceedings, pp. 61-62 (Trial, 11 July 2006):

A. I received a set of three CDs. When we opened the parcel, we realised one of these was in Croatian and it was Stjepan Mesić's testimony in the Blaskić case. A second CD was the same thing in English. And a third CD contained the web page that you spoke about, the ICTY web page displaying information on a session where it was decided that Mesić would be awarded the status of a protected witness.

* * *

JUDGE BONOMOY: Can we clarify when this was?

MR. KRSNIK: [Interpretation] That was my next question.

THE WITNESS: [Interpretation] This was in January, possibly February, 2000. I'm afraid I can't be more specific.

⁸³ *Ibid.*, p. 87.

⁸⁴ See *Marijačić and Rebić*, para. 39 ("Chambers have the power under the Statute to exclude the press and public from Tribunal proceedings Individuals, including journalists, cannot then decide to publish information in defiance of such an order, on the basis of their own assessment of the public interest in that information."); *Prosecutor v. Milošević*, Case No. IT-02-54-R77.4 (Contempt Proceedings Against Kosta Bulatović), Decision on Contempt of the Tribunal, 13 May 2005, para. 16 ("Since the Chamber had made an order which it considered to be within its powers and appropriate in the circumstances, the Respondent was bound to answer the questions put by the Prosecutor,

person is subject to the Tribunal's authority, the person must abide by its orders "regardless of his personal view of the legality of those orders."⁸⁵ In this case, the Accused was subject to the *Blaškić* Trial Chamber's orders,⁸⁶ which were each a proper exercise of that Chamber's authority.⁸⁷ The Accused might have been "misled [by parties unconnected to the Tribunal] into believing something that was erroneous",⁸⁸ namely, that the *Blaškić* Chamber's orders did not bind him, but that did not give him license to violate the orders. If mistake of law were a valid defence in such cases, orders would become suggestions and a Chamber's authority to control its proceedings, from which the power to punish contempt in part derives, would be hobbled. Further, a Tribunal unable to guarantee the confidentiality of protected witnesses' identities or testimony would become less able to hear the often pivotal evidence that such witnesses provide, as those doubtful of the Tribunal's ability to protect information likely would decline to testify. That would in turn impair the ability of the Tribunal to perform its function of justly adjudicating alleged crimes committed in the territory of the former Yugoslavia.⁸⁹ For these reasons, the Accused's primary defence is rejected.

22. His other arguments are likewise unavailing. The fact that the *Blaškić* trial had been concluded by the time the Accused published the protected material is irrelevant, as protective measures for witnesses do not expire at the end of trial. On the contrary, Rule 75(F)(i) provides that, "[o]nce protective measures have been ordered in respect of a victim or witness . . . , such protective measures shall continue to have effect *mutatis mutandis* in any other proceedings . . . unless and until they are rescinded, varied or augmented" by a Chamber of the Tribunal. This is for good reason, given that the dangers which often warrant protective measures do not necessarily

whatever his views of that order and the propriety of proceeding in the absence of the Accused. It is no excuse for refusing to answer questions in court for a witness to claim that he disagrees with a procedural decision made which has led to his being examined.").

⁸⁵ *Prosecutor v. Milošević*, Case No. IT-02-54-A-R77.4, Decision on Interlocutory Appeal on Kosta Bulatović Contempt Proceedings, 29 August 2005, para. 11.

⁸⁶ *See, e.g., Marijačić and Rebić*, para. 28 ("[W]hen a Chamber orders that testimony be given in closed session, rendering everything that transpires confidential, such an order applies to all persons coming into possession of the protected information.").

⁸⁷ *See, e.g., ibid.* ("The Tribunal is an international judicial institution, established by the Security Council under Chapter VII of the Charter of the United Nations. Its Statute was adopted by the Security Council and Article 20 imposes a duty upon Chambers to ensure that trials at the Tribunal are fair and expeditious and that proceedings are conducted in accordance with the Rules, with full respect for the rights of the accused and due regard for the protection of victims and witnesses. In fulfilment of this duty, Rule 54 provides that Chambers may issue all necessary orders . . . , and no limitation is placed upon those who may be the subject of those orders.").

⁸⁸ Transcript of Proceedings, p. 87 (Trial, 11 July 2006).

⁸⁹ *Cf. Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR77, Judgment on Appeal by Anto Nobile Against Finding of Contempt, 30 May 2001, para. 36 ("Both the purpose and the scope of the law of contempt to be applied by this Tribunal is to punish conduct which tends to obstruct, prejudice or abuse its administration of justice in order to ensure that its exercise of the jurisdiction which is expressly given to it by its Statute is not frustrated and that its basic judicial functions are safeguarded.").

abate when a trial ends, and limiting witness protection to the duration of trial would likely result in fewer witnesses agreeing to testify and a consequently diminished ability of the Tribunal to function properly. Additionally, the possibility that President Mesić is better protected than other witnesses is not dispositive: the act of wilfully violating an order itself impedes the administration of justice⁹⁰ as, regardless of how well protected a witness may be, it is for the Tribunal alone to amend or withdraw the orders it issues.⁹¹

23. The Accused also is mistaken in asserting that, as a journalist, he has the right to violate the Chamber's orders. It is undeniable that legal instruments relevant to the work of this Tribunal protect freedom of expression.⁹² But it is equally undeniable that, as the Presiding Judge noted at trial, "all the instruments to which [the Accused] refer[red] on freedom of the press have qualifications in relation to court proceedings."⁹³ As the instruments provide, a court's restriction of press freedom is permissible if authorised by law and necessary for the maintenance of an interest such as "the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."⁹⁴ With respect to the case at hand, Article 20(4) of the Statute of the Tribunal authorises a Trial Chamber "to close the proceedings in accordance with [the Tribunal's] rules of procedure

⁹⁰ See, e.g., *Marijačić and Rebić*, para. 19 (The "knowing and wilful interference with the administration of justice is a consequence of the disclosure of information relating to Tribunal proceedings in knowing violation of an order of a Chamber. There is therefore no additional requirement for the Prosecution to prove that such interference actually occurred.") (citations omitted).

⁹¹ See, e.g., *ibid.*, para. 44 ("Once protective measures are granted to any witness their effect cannot depend upon the assessment by third parties of the degree of vulnerability of a particular witness.").

⁹² See Convention for the Protection of Human Rights and Fundamental Freedoms, art. 10(1) ("Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. . . ."); International Covenant on Civil and Political Rights, art. 19(2) ("Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."); Universal Declaration of Human Rights, art. 19 ("Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.").

⁹³ Transcript of Proceedings, p. 89 (Trial, 11 July 2006).

⁹⁴ Convention for the Protection of Human Rights and Fundamental Freedoms, art. 10(2). See also *ibid.* ("The exercise of these freedoms [of expression], since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."); International Covenant on Civil and Political Rights, art. 19(3) ("The exercise of the rights provided for in paragraph 2 of this article [freedom of expression] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals."); Universal Declaration of Human Rights, art. 29(2) ("In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.").

and evidence”,⁹⁵ and making certain evidence confidential is an act which, for reasons already discussed, protects otherwise vulnerable witnesses and maintains the Tribunal’s ability to hear testimony crucial to the performance of its duties. Accordingly, the orders at issue in this case were valid limitations of the Accused’s right to free expression. Notably, in a previous case this Trial Chamber rejected the argument now advanced: “Chambers have the power under the Statute . . . to prohibit the press from publishing protected material. Individuals, including journalists, cannot then decide to publish information in defiance of such an order, on the basis of their own assessment of the public interest in that information.”⁹⁶ This rule is found in the jurisprudence of other courts, including the European Commission of Human Rights⁹⁷ and the Supreme Court of the United States.⁹⁸ While in some jurisdictions there is an exception to the rule in respect of orders which are “transparently invalid”,⁹⁹ it is clear that the *Blaškić* Trial Chamber’s orders cannot be so characterised. Moreover, the Accused was free to request clarification or modification of the orders from the Tribunal but chose not to do so:¹⁰⁰ as the Accused stated in *Slobodna Dalmacija*, “[D]espite the Order from the Tribunal . . . , we decided, notwithstanding the risk, to publish instalments of the whole contents of Mesić’s mysterious testimony”.¹⁰¹ Having chosen to ignore

⁹⁵ The International Covenant on Civil and Political Rights even has a provision which specifically authorises excluding the press and public from all or part of a trial – which is tantamount, in the language of the Tribunal, to ordering a closed session – where, among other reasons, “publicity would prejudice the interests of justice”. See International Covenant on Civil and Political Rights, art. 14(1) (“ . . . The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”).

⁹⁶ *Marijačić and Rebić*, para. 39.

⁹⁷ See, e.g., *Times Newspapers Ltd. and Neil v. United Kingdom*, App. No. 18897/91 (1992), 15 E.H.R.R. CD49, p. 9 (“It is for the courts, and not for third parties, to decide whether, balancing competing public and private interests including those of third parties, confidentiality should continue to be preserved at any particular time.”).

⁹⁸ See, e.g., *Howat v. Kansas*, 258 U.S. 181, 189 (1922) (“It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished.”).

⁹⁹ See *United States v. Cutler*, 58 F.3d 825, 832 (2d Cir. 1995) (To “invoke the ‘transparently invalid’ ‘exception,’ [] a defendant must make some ‘good faith effort to seek emergency relief from the appellate court’.”) (internal quotation marks and citations omitted).

¹⁰⁰ Cf. *ibid.* (In the United States, “[u]nder the collateral bar doctrine, a party may not challenge a district court’s order by violating it. Instead, he must move to vacate or modify the order, or seek relief in this Court. If he fails to do either, ignores the order, and is held in contempt, he may not challenge the order unless it was transparently invalid or exceeded the district court’s jurisdiction.”).

¹⁰¹ Prosecution Exhibit 11, tab 8. See also *Marijačić and Rebić*, para. 36 (noting that, when asked in a newspaper interview whether certain documents published in the accused’s newspaper were protected by order of the Tribunal, the accused answered, “They are protected documents and I am aware of the possible consequences of them being revealed to the public. . . . If the OTP wishes to initiate proceedings against me, I am at their disposal, even at the cost of being punished”.); *Times Newspapers Ltd. and Neil v. United Kingdom*, App. No. 18897/91 (1993), 15 E.H.R.R. CD49, p. 7 (“Although the applicants were advised that the Government’s view of the law of contempt was wrong, the Commission finds nevertheless that the applicants were fully aware of the risks involved in publishing such material and chose deliberately to do so”).

valid orders applicable to him, the Accused cannot now invoke the principle of freedom of expression to excuse his conduct.

24. In his Separate Opinion of 20 June 2006 in a related case,¹⁰² Judge Bonomy invited the Prosecution to explain in the course of this trial why the Accused was not indicted until 2004 for conduct in 2000 and why, indeed, he was not indicted until several months after the indictment of other journalists in respect of whom the allegations related to 2004. At trial, the Prosecution reminded the Trial Chamber that the Indictment was filed in 2005.¹⁰³ In fact, this occurred in August 2005, shortly after the Office of the Prosecutor was directed, on 1 June 2005, to investigate the matter.¹⁰⁴ Prior to 1 June 2005, Trial Chamber I had itself remained seized of the case. This Trial Chamber notes that the Accused quite rightly takes no point about the lapse of time adversely affecting his right to a fair hearing. The circumstances presented to the Chamber demonstrate that his ability to present his defence fully has not been unfairly prejudiced.

25. In sum, none of the Accused's defences refutes the Prosecution's showing that the Accused committed the *actus reus*, and possessed the *mens rea*, of Contempt of the Tribunal as described in Rule 77(A)(ii). The Prosecution therefore has demonstrated beyond reasonable doubt that the Accused is guilty of contempt for violating both the 16 March 1998 and 1 December 2000 orders.

Penalty

26. As in *Prosecutor v. Marijačić and Rebić*, the "most important factors to be taken account of in determining the appropriate penalty in this case are the gravity of the contempt and the need to deter repetition and similar conduct by others."¹⁰⁵ There is one significant mitigating factor in this case, however: Mr. Mesić's public acknowledgements that he had both produced a written

¹⁰² See *Prosecutor v. Šešelj et al.*, Case No. IT-95-14-R77.5, Separate Opinion of Judge Bonomy in the Motion for Leave to Withdraw the Indictments Against Stjepan Šešelj, Domagoj Margetić, and Marijan Križić, 20 June 2006.

¹⁰³ See Transcript of Proceedings, p. 145 (Trial, 11 July 2006).

¹⁰⁴ See *Prosecutor v. Blaškić* and *Prosecutor v. Kordić and Čerkez*, Case Nos. IT-95-14 and IT-95-14/2-R77, Confidential and *Ex Parte* Order Directing the Prosecutor to Investigate Incidents of Contempt, 1 June 2005 (dated 31 May 2005). The Trial Chamber considers that citing this document is appropriate for the just resolution of this case, but declines to lift the confidentiality of the document. The Trial Chamber already has lifted the *ex parte* status of this document. See Decision on Prosecution's Motion to Lift Confidential and *Ex Parte* Status of an Order, 30 June 2006.

¹⁰⁵ *Marijačić and Rebić*, para. 46. At the very end of trial, counsel for the Prosecution attempted to make oral submissions regarding aggravating and mitigating factors applicable to this case. See Transcript of Proceedings, p. 151 (Trial, 11 July 2006). The Trial Chamber instructed him to make a submission in writing, which he said he would do but in fact did not do. The Chamber considers that, despite the absence of such a submission, it has enough information to determine an appropriate sentence.

statement for, and testified as a witness in, the *Blaškić* case,¹⁰⁶ which can be interpreted as implicit assertions by a protected witness that at least some of the protective measures were no longer necessary. However, there is no evidence that Mr. Mesić ever disclosed the content of his protected evidence, and it is in any event for the Tribunal alone to lift its protective measures. Notwithstanding this factor in mitigation, the contemptuous behaviour here was particularly egregious: the Accused published a protected witness's evidence and, after being ordered to cease disclosing confidential material, compounded this contempt by publishing, in each of 22 consecutive newspaper editions, the transcripts of the witness's closed session testimony. The editions acknowledged – in fact, boasted – that the transcripts were “secret”.¹⁰⁷ The utter disregard with which the Accused treated the *Blaškić* Trial Chamber's orders is undeniable. The Accused's actions not only were contemptuous, but also undermined the Tribunal's ability to safeguard the evidence of a protected witness. As this Trial Chamber stated in *Marijačić and Rebić*, “[a]ny deliberate conduct which creates a real risk that confidence in the Tribunal's ability to grant effective protective measures would be undermined amounts to a serious interference with the administration of justice. Public confidence in the effectiveness of such orders is absolutely vital to the success of the work of the Tribunal.”¹⁰⁸ To minimize that risk and “discourage this type of behaviour”,¹⁰⁹ it is “incumbent upon this Trial Chamber to take such steps as it can to try to ensure that there is no repetition of such conduct”.¹¹⁰ In *Marijačić and Rebić*, which involved two accused found guilty of publishing a single newspaper article in violation of a Tribunal order, this Trial Chamber imposed a fine of 15,000 euros on each accused.¹¹¹ Considering the grossly disrespectful and repeated nature of the Accused's conduct and the need to deter such behaviour, but also the factor in mitigation and all the other circumstances of this case, a fine of 20,000 euros is appropriate.

¹⁰⁶ See *supra* notes 17, 44.

¹⁰⁷ See Prosecution Exhibit 11, tab 8. See also *Marijačić and Rebić*, para. 33 (“The article by Marijačić on page 6 of the newspaper repeatedly names the Witness and states that he testified ‘secretly’ before the Tribunal.”).

¹⁰⁸ *Marijačić and Rebić*, para. 50.

¹⁰⁹ *Ibid.*, para. 51.

¹¹⁰ *Ibid.*

¹¹¹ See *ibid.*, para. 52.

Disposition

27. For the reasons above, pursuant to the Statute of the Tribunal and Rules 77 and 77 *bis*, the Trial Chamber hereby:

FINDS the Accused, Mr. Josip Jović, **GUILTY** of Contempt of the Tribunal, punishable under Rule 77(A)(ii);

IMPOSES a fine of twenty thousand euros (€ 20,000); and

ORDERS Mr. Jović to pay the full amount of the fine to the Registrar of the Tribunal within 30 days of this Judgement.

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

Judge Patrick Robinson, Presiding

Judge O-Gon Kwon

Judge Iain Bonomy

Dated this thirtieth day of August 2006.
At The Hague,
The Netherlands.

[Seal of the Tribunal]