

**UNITED  
NATIONS**



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-95-14 &  
14/2-R77-A  
Date: 15 March 2007  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mehmet Güney  
Judge Andréia Vaz  
Judge Theodor Meron  
Judge Wolfgang Schomburg

**Registrar:** Mr. Hans Holthuis

**Decision:** 15 March 2007

**PROSECUTOR**

v.

**Josip JOVIĆ**

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**JUDGEMENT**

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**The Office of the Prosecutor:**

Mr. Peter M. Kremer, QC

**Counsel for the Appellant:**

Mr. Krešimir Krsnik

711

1. The Appeals 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 (“Appeals Chamber” and “International Tribunal”, respectively), is seized of an appeal<sup>1</sup> by Josip Jović (“Appellant”) against the Judgement rendered by Trial Chamber III on 30 August 2006 convicting him for contempt in the case of *Prosecutor v. Josip Jović*, Case Nos. IT-95-14 & IT-95-14/2-R77 (“Trial Judgement”).

## I. INTRODUCTION

### A. Background

2. Prior to his election as President of the Republic of Croatia, Stjepan Mesić (“Witness”) provided a written statement for the Prosecution on 19 April 1997 and testified before the International Tribunal in *Prosecutor v. Blaškić*<sup>2</sup> from 16 to 19 March 1998.<sup>3</sup> Pursuant to an oral order of the Trial Chamber in that case, issued in private session on 16 March 1998 (“March 1998 Order”), the Witness’s testimony was delivered in closed session.<sup>4</sup>

3. From 27-30 November 2000, various articles appeared in the Croatian daily newspaper *Slobodna Dalmacija*, which disclosed the fact that the Witness had given confidential testimony before the International Tribunal and included excerpts of the Witness’s written statement to the Prosecution in April 1997.<sup>5</sup> At the time of the publications, the Appellant was editor-in-chief of *Slobodna Dalmacija*.<sup>6</sup>

4. On 1 December 2000, the Prosecution notified the Trial Chamber of the articles that had appeared in *Slobodna Dalmacija*.<sup>7</sup> On the same day, the Chamber issued an order (“December 2000 Order”) directing that “the publication of statements or testimonies of the witnesses 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

<sup>1</sup> Accused Josip Jović’s Notice of Appeal Pursuant to the Decision of 29 September 2006, 9 October 2006 (“Notice of Appeal”). The Appellant filed his original Notice of Appeal on 14 September 2006. On 29 September 2006, the Appeals Chamber granted the Prosecution’s motion to strike the notice for failure to comply with Rule 108 of the Rules and paragraph 1 of the Practice Direction on Formal Requirements for Appeals from Judgement, IT/201, 7 March 2002 (“Practice Direction on Formal Requirements of Appeals from Judgement”), and ordered the Appellant to re-file his Notice of Appeal. Decision on Prosecution Motion for Order Striking Notice of Appeal and Requiring Refiling, 29 September 2006, p. 3.

<sup>2</sup> *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14 (“*Blaškić*”).

<sup>3</sup> Trial Judgement, paras. 2-3.

<sup>4</sup> See *Blaškić*, Transcript of Proceedings, p. 7088 (16 March 1998) (private session).

<sup>5</sup> Trial Judgement, para. 3.

<sup>6</sup> *Ibid.*, para. 1.

<sup>7</sup> *Ibid.*, para. 4.

of the Tribunal”.<sup>8</sup> The Appellant received a copy of the December 2000 Order by fax on 1 December 2000.<sup>9</sup>

5. On 3 December 2000, *Slobodna Dalmacija* printed the December 2000 Order. It also published an excerpt of the 16 March 1998 private session proceedings in *Blaškić* wherein the Prosecution and Defence presented submissions before the Trial Chamber on whether the Witness should testify in closed session.<sup>10</sup>

6. On 6 December 2000, *Slobodna Dalmacija* published an article in which the Appellant stated: “[D]espite the Order from the Tribunal in 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”.<sup>11</sup> True to that statement, an excerpt of the 16 March 1998 closed session transcript was published in *Slobodna Dalmacija* that same day and between 7 and 29 December 2000, an additional 21 excerpts of the Witness’s closed session testimony were published in that newspaper.<sup>12</sup>

7. On 24 January 2006, at the request of the Prosecution following consultation with the Witness, the Appeals Chamber issued a decision in the *Blaškić* review case,<sup>13</sup> ordering that the protective measures granted to the Witness be lifted so that his actual name, the fact that he testified, his statements given to the Prosecution prior to the testimony, and the transcript of his closed session testimony could be referred to publicly and in open session.<sup>14</sup>

8. The Appellant was subsequently tried on 11 July 2006 on the basis of an indictment, originally filed on 29 August 2005 and amended on 15 June 2006, which charged him with one count of contempt of the Tribunal.<sup>15</sup> He was found guilty of contempt, punishable under Rule 77(A)(ii) of the Rules of Procedure and Evidence (“Rules”), for the disclosure of large portions of the Witness’s written statement and closed session testimony “in knowing violation of an order of a

<sup>8</sup> *Blaškić*, Order for the Immediate Cessation of Violations of Protective Measures for Witnesses, 1 December 2000, p. 1.

<sup>9</sup> Trial Judgement, p. 3; Transcript of Proceedings, pp. 69-70 (Trial, 11 July 2006).

<sup>10</sup> Trial Judgement, para. 5.

<sup>11</sup> *Ibid.*, para. 6.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Blaškić*, Case No. IT-9-14-R, Decision on Prosecution’s Motion for Variance of Protective Measures in the *Prosecutor v. Šešelj & Margetić* Case, 24 January 2006, p. 5.

<sup>14</sup> *See ibid.*; Trial Judgement, para. 8.

<sup>15</sup> First Amended Indictment, 14 June 2006 (“Indictment”), para. 14.

Chamber”, specifically the March 1998 and December 2000 Orders,<sup>16</sup> The Trial Chamber consequently imposed a fine of 20,000 Euros on the Appellant, payable within thirty days of the issuance of the Trial Judgement.<sup>17</sup>

### **B. The Appeal**

9. In his appeal, the Appellant challenges both his conviction and sentence.<sup>18</sup> He raises seven grounds of appeal, alleging errors of law invalidating the Trial Judgement and errors of fact resulting in a miscarriage of justice. The Appellant claims that the Trial Chamber erred in convicting him of a charge not alleged in the Indictment (Ground 1); in finding that the March 1998 Order applied to him (Ground 2); in concluding that he possessed the requisite *mens rea* for contempt (Ground 3); in determining that his publication of the protected information interfered with the Tribunal’s administration of justice (Ground 4); and in applying the December 2000 Order retroactively to his November 2000 publications (Ground 5). The Appellant also raises challenges to the jurisdiction of the International Tribunal and to the authority of the Prosecutor (Ground 6) and submits that his sentence should be reduced in the event that his conviction is not quashed on appeal (Ground 7). The Prosecution responds that all grounds of appeal raised by the Appellant should be dismissed.<sup>19</sup>

10. As a preliminary matter, the Appeals Chamber notes that the Appellant requests an oral hearing on his appeal.<sup>20</sup> In response, the Prosecution seeks judgement based on the written briefs alone in accordance with the expedited appeals procedure set out in Rule 116*bis* of the Rules for appeals under Rule 77(J) of the Rules.<sup>21</sup> The Appeals Chamber notes that the Appellant has presented no arguments in support of his request for an oral hearing and finds that such a hearing is not warranted on the facts of this particular case.

### **C. Standard of Review**

11. On appeal, the parties must limit their arguments to legal errors that invalidate the decision of the Trial Chamber and factual errors that have occasioned a miscarriage of justice within the

<sup>16</sup> Trial Judgement, para. 27.

<sup>17</sup> *Ibid.*, para. 27. The Appeals Chamber subsequently decided, upon the Appellant’s motion, that the payment of a fine, if any, would not be due before the Appeals Chamber had rendered its judgement. Decision on Motion of Josip Jović for Suspension of the Order on Payment of Fines, 29 September 2006, p. 3.

<sup>18</sup> Notice of Appeal; *Confidential* Appeal Brief of the Accused Josip Jović Pursuant to the Decision of 29 September 2006, 16 October 2006 (“Appeal Brief”); *Confidential* Reply of the Accused Josip Jović to Prosecution Brief in Response to Jović Appeal, 30 October 2006 (“Reply”).

<sup>19</sup> *Confidential* Prosecution Brief in Response to Jović Appeal, 26 October 2006 (“Prosecution Response Brief”), paras 1.1.

<sup>20</sup> Appeal Brief, para. 54.

scope of Article 25 of the Statute. The settled standard of review for appeals against judgements also applies to appeals against convictions for contempt.<sup>22</sup>

12. The Appeals Chamber reviews the Trial Chamber's findings of law to determine whether or not they are correct.<sup>23</sup> A party alleging an error of law must identify the alleged error, present arguments in support of its claim and explain how the error invalidates the decision.<sup>24</sup> An allegation of a legal error which has no chance of changing the outcome of a decision may be rejected on that ground.<sup>25</sup> Even if a party's arguments are insufficient to support the contention of error, however, the Appeals Chamber may conclude for other reasons that there is an error of law.<sup>26</sup>

13. When considering alleged errors of fact, the Appeals Chamber will determine whether no reasonable trier of fact could have reached the verdict of guilt beyond reasonable doubt.<sup>27</sup> In determining whether or not a Trial Chamber's finding was reasonable, the Appeals Chamber "will not lightly disturb findings of fact by a Trial Chamber".<sup>28</sup>

14. The Appeals Chamber recalls that an appeal is not a trial *de novo* and a party may not merely repeat on appeal arguments that did not succeed at trial, unless the party can demonstrate that the Trial Chamber's rejection of them constituted such error as to warrant the intervention of the Appeals Chamber.<sup>29</sup> Arguments of a party that do not have the potential to cause the impugned decision to be reversed or revised may be immediately dismissed by the Appeals Chamber and need not be considered on the merits.<sup>30</sup>

15. In order for the Appeals Chamber to assess the parties' arguments on appeal, the appealing party must provide precise references to relevant transcript pages or paragraphs in the Trial

<sup>21</sup> Prosecution Response Brief, para. 1.3. Rule 116bis(A) provides that an appeal from a decision rendered under Rule 77 "may be determined entirely on the basis of written briefs".

<sup>22</sup> *Prosecutor v. Ivica Marijačić & Markica Rebić*, Case No. IT-95-14-R77.2-A, Judgement, 27 September 2006 ("Marijačić & Rebić Appeal Judgement"), para. 15.

<sup>23</sup> *Ibid.*, para. 16; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Judgement, 22 March 2006 ("Stakić Appeal Judgement"), para. 9; *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Judgement, 17 September 2003 ("Krnojelac Appeal Judgement"), para. 10.

<sup>24</sup> *The Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Judgement, 28 February 2005 ("Kvočka Appeal Judgement"), para. 16; *Krnojelac Appeal Judgement*, para. 10.

<sup>25</sup> *Stakić Appeal Judgement*, para. 8; *Kvočka Appeal Judgement* para. 16; *Krnojelac Appeal Judgement*, para. 10.

<sup>26</sup> *Kvočka Appeal Judgement*, para. 16; *The Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-A, Judgement, 25 February 2004 ("Vasiljević Appeal Judgement"), para. 6; *Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-A, Judgement, 23 October 2001 ("Kupreškić Appeal Judgement"), para. 26.

<sup>27</sup> *Kvočka Appeal Judgement*, para. 18; *Prosecutor v. Dario Kordić & Mario Čerkez*, Case No. IT-95-14/2-A, Judgement, 17 December 2004, para. 18.

<sup>28</sup> *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement, 30 November 1999, para. 9; *Stakić Appeal Judgement*, para. 10; *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-A, Judgement, 21 July 2000, para. 37.

<sup>29</sup> *Stakić Appeal Judgement*, para. 11; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004 ("Blaškić Appeal Judgement") para. 13.

Judgement to which the challenges are being made.<sup>31</sup> Further, the Appeals Chamber has inherent discretion in selecting which submissions merit detailed reasoning in writing and may dismiss arguments which are evidently unfounded without providing detailed reasoning.<sup>32</sup>

## II. THE INDICTMENT (GROUND OF APPEAL 1)

16. Under his first ground of appeal, the Appellant argues that he was convicted on the basis of an invalid indictment, in that he was charged “exclusively with violation of the Order of the Trial Chamber in the *Blaškić* case from 01 December 2000” but was convicted of violating both the March 1998 Order and the December 2000 Order.<sup>33</sup>

17. The Appeals Chamber finds that this argument is unfounded. The Indictment expressly referred to the March 1998 Order, stating that “[f]rom 16 to 19 March 1998, the WITNESS testified at the Tribunal. It was in closed session, as ordered by the Trial Chamber after having heard the parties on the issue on 16 March 1998.”<sup>34</sup> It went on to set out the material facts relating to the breach of that order, including *Slobodna Dalmacija*’s publication of, *inter alia*, excerpts of the Witness Statement of 19 April 1997,<sup>35</sup> the fact that the Witness testified in closed session at the Tribunal<sup>36</sup> and excerpts of the transcripts of the Witness’s closed session testimony of March 1998.<sup>37</sup> It is clear that those material facts did not relate solely to the violation of the December 2000 Order; indeed, some of the charged acts and omissions were alleged to have occurred prior to the December 2000 Order.<sup>38</sup> Moreover, as the Prosecution points out in its Response Brief,<sup>39</sup> the penultimate paragraph of the Indictment provides:

13. As Editor-in-chief of *Slobodna Dalmacija* from 27 November 2000 to 29 December 2000, JOVIĆ knowingly and wilfully interfered with the administration of justice by publishing the identity of a protected ICTY witness, by publishing the fact that the witness testified in closed session at the Tribunal, and by publishing excerpts of that testimony, in whole or in part, and by directly violating the 01 December 2000 court order.<sup>40</sup>

18. That paragraph reiterates that the Appellant was charged with directly violating the December 2000 Order, *in addition to* other acts of contempt. Those other acts were allegedly contemptuous because of their violation of the closed session March 1998 Order; the absence of an

<sup>30</sup> *Stakić* Appeal Judgement, para. 11; *Blaškić* Appeal Judgement, para. 13; *Kupreškić* Appeal Judgement, para. 23.

<sup>31</sup> Practice Direction on Formal Requirements for Appeals, para. 4(b).

<sup>32</sup> *Stakić* Appeal Judgement, para. 13; *Vasiljević* Appeal Judgement, para. 12; *Kunarac* Appeal Judgement, para. 48.

<sup>33</sup> Appeal Brief, paras 9-11.

<sup>34</sup> Indictment, para. 3.

<sup>35</sup> *Ibid.*, para. 4.

<sup>36</sup> *Ibid.*, paras 4, 13.

<sup>37</sup> *Ibid.*, paras 8, 10, 11, 12.

<sup>38</sup> *Ibid.*, paras 4, 13.

<sup>39</sup> Prosecution Response Brief, para. 1.6.

express reference to that Order in paragraph 13 does not suggest that the Appellant was charged exclusively with violating the December 2000 Order.

19. Accordingly, the Appeals Chamber dismisses the Appellant's first ground of appeal.

### III. SCOPE OF THE MARCH 1998 ORDER (GROUND OF APPEAL 2)

20. In his second ground of appeal, the Appellant argues that the March 1998 Order was binding only on the parties in the *Blaškić* case.<sup>41</sup> Noting that the publicity of hearings is presumed under Article 20(4) of the Statute of the International Tribunal ("Statute"), he submits that the March 1998 Order was not expressly directed at non-parties and therefore was not binding on him.<sup>42</sup>

21. The Appeals Chamber finds that this argument is without merit. Article 20(4) of the Statute provides that hearings "shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence". The Rules, accordingly, distinguish between open sessions, which are held in public,<sup>43</sup> and closed sessions, which are not.<sup>44</sup> Rule 79 of the Rules expressly provides that a Trial Chamber "may order that the press and the public be excluded from all or part of the proceedings". The effect of a closed session order is to exclude the public, including members of the press, from the proceedings and to prevent them from coming into possession of the protected information being discussed therein. In such cases, the presumption of public proceedings under Article 20(4) of the Statute does not apply. The consequence of a closed session order "is that *all* information mentioned therein [...] is protected from the public",<sup>45</sup> and members of the public are not entitled to be in possession of it.

22. Thus, as the Appeals Chamber has previously held, an order that evidence be given in closed session "applies to all persons coming into possession of the protected information, given that Rule 79 is directed at the public in general, including the press, being present in court or not".<sup>46</sup> Should members of the public come into possession of the protected information, they are bound, pursuant to Rule 79, not to disclose it to other third parties. The Appellant has not provided any reason, in particular any cogent reasons, why it would be in the interests of justice to depart from the Appeals

<sup>40</sup> Emphasis added.

<sup>41</sup> Appeal Brief, para. 14.

<sup>42</sup> *Ibid.*, paras 12-15.

<sup>43</sup> Rule 78 of the Rules.

<sup>44</sup> Rule 79 of the Rules.

<sup>45</sup> See *Marijačić & Rebić* Appeal Judgement, para. 42.

<sup>46</sup> *Ibid.*, para. 24.

Chamber's prior holdings.<sup>47</sup> Moreover, Rule 77(A)(ii) "gives jurisdiction to the International Tribunal to hold in contempt any person who discloses information relating to proceedings before the International Tribunal in knowing violation of an order of a Chamber".<sup>48</sup>

23. The Appellant's second ground of appeal is therefore dismissed.

#### IV. *MENS REA* (GROUND OF APPEAL 3)

24. The Appellant asserts in his third ground of appeal that the Trial Chamber erred as a matter of law in identifying the *mens rea* element of contempt as "mere knowledge of the existence of an order" rather than the "knowing violation of an order".<sup>49</sup> He argues that the correct *mens rea* standard requires the Prosecution to establish that the accused knew that the order he violated was binding on him.<sup>50</sup> According to the Appellant, the Prosecution failed to so prove with regard to him.<sup>51</sup> On the contrary, he argues, the evidence at trial demonstrated that the Appellant had consulted Croatian legal experts whose advice "convinced him that he was not violating an order binding for him".<sup>52</sup> Furthermore, the Appellant claims that the Trial Chamber erred in denying his motion to call additional witnesses who were "in [a] position to clarify the legal advice obtained by the Accused at the time and therefore also his knowledge of the alleged violation of the Tribunal's Order, i.e. the lack of it".<sup>53</sup>

25. The Trial Chamber defined the *mens rea* of contempt under Rule 77(A)(ii) 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".<sup>54</sup> While it suggested that "[p]roof of actual knowledge of an order would clearly suffice to satisfy this element",<sup>55</sup> it went on to clarify that the requisite *mens rea* is established by an accused's knowledge both of the order and of his or her conduct in breach of it.<sup>56</sup>

26. Applying this standard, the Trial Chamber found that the Appellant had conceded at trial that he knew that his publication of the protected information was done in violation of the *Blaškić*

<sup>47</sup> See *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 March 2000, para. 107.

<sup>48</sup> *Ibid.*

<sup>49</sup> Appeal Brief, paras 16-17.

<sup>50</sup> See Appeal Brief, para. 18; see also *ibid.*, para. 22; Reply, para. 12.

<sup>51</sup> Appeal Brief, para. 18; Reply, para. 12.

<sup>52</sup> Appeal Brief, para. 22; see also *ibid.*, paras 19-20; Reply, para. 13.

<sup>53</sup> Reply, para. 13; see also Appeal Brief, para. 23.

<sup>54</sup> Trial Judgement, para. 20, quoting *Prosecutor v. Ivica Marijačić & Markica Rebić*, Case No. IT-95-14-R77.2, Judgement, 10 March 2006 ("*Marijačić & Rebić* Trial Judgement"), para. 18.

<sup>55</sup> *Ibid.* quoting *Marijačić & Rebić* Trial Judgement, para. 18.



December 2000 Order.<sup>57</sup> It further found that the Appellant's knowledge of the March 1998 Order was to be inferred from "the fact that the Accused had, since January or February 2000, possessed the closed session transcripts which clearly were confidential and which reflected the substance of Mr. Mesić's written statement".<sup>58</sup> It concluded therefore that the Appellant possessed the requisite *mens rea* with regard to the November and December 2000 publications in *Slobodna Dalmacija*.<sup>59</sup>

27. The Appellant does not challenge the Trial Chamber's conclusions that he knew of the March 1998 and December 2000 Orders. Instead, he reiterates the alternative *mens rea* definition that he advanced at trial, asserting that the Trial Chamber erred by finding the requisite *mens rea* where the Prosecution had failed to establish that the Appellant knew that orders were legally binding on him. The Appeals Chamber agrees with the Trial Chamber that knowledge of the legality of the Trial Chamber's order is not an element of the *mens rea* of contempt; to hold otherwise would mean that an accused could defeat a prosecution for contempt by raising the defence of a mistake of law.<sup>60</sup> The *mens rea* that attaches to contempt under Rule 77(ii) requires only knowledge of the facts that make the conduct of the accused illegal; that is, knowledge that the disclosure was in violation of an order of the Chamber. It is not a valid defence that one did not know that disclosure of the protected information in violation of an order of a Chamber was unlawful. As the Appeals Chamber has previously stated, where a person is subject to the International Tribunal's authority, that person must abide by its orders "regardless of his personal view of the legality of those orders".<sup>61</sup> Likewise, an accused may not raise a mistake of law as a defence to his knowing breach of an order of the International Tribunal on the ground that the mistake was founded on legal advice.

28. Thus, the Appeals Chamber finds that the Trial Chamber correctly rejected the Appellant's argument that the *mens rea* element of contempt requires that the alleged contemnor be proven to know that the order violated was directly binding on him. Moreover, in light of the foregoing, the Appeals Chamber finds that the Appellant has not shown that the Trial Chamber committed an error of law or abused its discretion by rejecting his oral request to call two additional witnesses, who were allegedly in a position to clarify the legal advice obtained by the Appellant and his knowledge of the binding nature of the Tribunal's orders. His argument in this regard is accordingly rejected, and his third ground of appeal is dismissed.

<sup>56</sup> *Ibid.*, para. 21.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*, para. 20 (internal footnote omitted).

<sup>59</sup> *Ibid.*, paras 21, 25.

<sup>60</sup> *See ibid.*, para. 21.

<sup>61</sup> *The Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-A-R77.4, Decision on Interlocutory Appeal on Kosta Bulatović Contempt Proceedings, 29 August 2005, para. 11 ("Bulatović Interlocutory Appeal Decision").

## V. INTERFERENCE WITH ADMINISTRATION OF JUSTICE (GROUND OF APPEAL 4)

29. In his fourth ground of appeal, the Appellant argues that the information he published was “already in the public domain at the time of publishing”.<sup>62</sup> He submits that following publication of the Witness’s statement and closed session testimony in the Croatian political weekly, *Globus*, “the information of matter was not confidential anymore, the protection granted by the Tribunal did not effectively exist anymore, and the Accused could not have violate[d] the measures existing in pure form, let alone cause any further harm to the Tribunal’s administration of justice”.<sup>63</sup> He argues further that the Witness “disclosed his identity himself, and did not oppose the publication of his testimony” and that he is “well protected and seeks publicity”.<sup>64</sup> Consequently, the Appellant asserts that the Trial Chamber erred in determining that his publication of the relevant information resulted in an interference with the International Tribunal’s administration of justice.<sup>65</sup>

30. As the Trial Chamber correctly recognized, the *actus reus* of contempt under Rule 77(A)(ii) is the disclosure of information relating to proceedings before the International Tribunal where such disclosure would be in violation of an order of a Chamber.<sup>66</sup> In such a case, “[t]he language of Rule 77 shows that a violation of a court order *as such* constitutes an interference with the International Tribunal’s administration of justice.”<sup>67</sup> Any defiance of an order of a Chamber *per se* interferes with the administration of justice for the purposes of a conviction for contempt.<sup>68</sup> No additional proof of harm to the International Tribunal’s administration of justice is required. Moreover, an order remains in force until a Chamber decides otherwise.<sup>69</sup> The fact that some portions of the Witness’s written statement or closed session testimony may have been disclosed by another third party does not mean that this information was no longer protected, that the court order had been *de facto* lifted or that its violation would not interfere with the Tribunal’s administration of justice. Consequently, the Appeals Chamber finds that the Appellant has not demonstrated that the Trial Chamber erred in finding that his publication of the Witness’s statement and closed session

<sup>62</sup> Appeal Brief, para. 26.

<sup>63</sup> *Ibid.*, para. 29.

<sup>64</sup> *Ibid.*, para. 33.

<sup>65</sup> *Ibid.*, paras 35-36.

<sup>66</sup> See Trial Judgement, para. 19; see also *Marijačić & Rebić* Appeal Judgement, para. 24.

<sup>67</sup> *Marijačić & Rebić* Appeal Judgement, para. 44 (emphasis added).

<sup>68</sup> *Ibid.*; see *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-R77.4, Contempt Proceedings Against Kosta Bulatović: Decision on Contempt of the Tribunal, 13 May 2005 (“Bulatović Trial Decision”), para. 17.

<sup>69</sup> *Marijačić & Rebić* Appeal Judgement, para. 45.

testimony interfered with the administration of justice by violating the March 1998 and December 2000 Orders.<sup>70</sup> The Appeals Chamber therefore dismisses the Appellant's fourth ground of appeal.

## VI. RETROACTIVE EFFECT OF ORDER (GROUND OF APPEAL 5)

31. Under his fifth ground of appeal, the Appellant notes that at paragraph 19 of the Trial Judgement, the Trial Chamber, referring to the March 1998 and December 2000 Orders, found that "the Accused's November 2000 publication of Mr. Mesić's written statement also violated the orders of the *Blaškić* Trial Chamber".<sup>71</sup> The Appellant asserts that this finding was erroneous in that it suggested that the November 2000 publication of the Witness's written statement in *Slobodna Dalmacija* violated the December 2000 Order.<sup>72</sup> He argues that the Trial Chamber impermissibly applied the December 2000 Order retroactively and erroneously concluded that he possessed the requisite *mens rea* for contempt, given that "he was surely not in a position to have knowledge and wilfulness to breach an order that did not exist".<sup>73</sup>

32. The Appeals Chamber agrees with the Appellant that the November 2000 publications could not have violated the December 2000 Order, as that Order had not yet been issued at the time of the publications. Whether the Trial Chamber's error in the last sentence of paragraph 19 was typographical, as the Prosecution contends, or substantive, as suggested by the Appellant, is immaterial as the Appellant has not established that this error had any impact on the Trial Judgement. As noted above, the Appellant has not demonstrated that the Trial Chamber erred in finding that the November 2000 publications violated the March 1998 Order or in finding that the December 2000 publications violated the March 1998 and December 2000 Orders. Thus, to the extent that the Trial Chamber found that the November 2000 publications violated the December 2000 Order, this error in no way calls into question the Trial Chamber's conclusion that the Prosecution established beyond reasonable doubt that the Accused is guilty of contempt for violating both the March 1998 and December 2000 Orders.

33. The Appellant's fifth ground of appeal is therefore dismissed.

<sup>70</sup> The Appeals Chamber further notes with regard to the Appellant's argument that the Witness disclosed his own identity that the Trial Chamber did not consider the original charge against the Appellant insofar as it related to "publishing the identity of a protected ICTY witness" and "publishing the fact that the witness testified in closed session at the Tribunal". See Trial Judgement, para. 10. The Appellant's arguments relating to the publication of the identity of the Witness are therefore moot.

<sup>71</sup> Trial Judgement, para. 19.

<sup>72</sup> Appeal Brief, paras 37-41.

<sup>73</sup> *Ibid.*, para. 39; see also *ibid.*, para. 38.

## VII. JURISDICTION OF THE TRIBUNAL AND AUTHORITY OF PROSECUTOR (GROUND OF APPEAL 6)

34. In his sixth ground of appeal, the Appellant challenges the personal and subject-matter jurisdiction of the International Tribunal to try him for contempt.<sup>74</sup> The Appeals Chamber recalls that pursuant to Rule 77, the International Tribunal possesses inherent authority to deal with conduct interfering with its administration of justice.<sup>75</sup> Thus, “[i]t has [...] been explicitly held that the International Tribunal has both the subject matter and personal jurisdiction to prosecute contempt”.<sup>76</sup> In support of his claim on appeal, the Appellant merely states that he incorporates his arguments at trial. The Appeals Chamber recalls that an “appeal is not a *trial de novo* and a party may not repeat on appeal arguments that did not succeed at trial, unless that party can demonstrate that rejecting them constituted such error as to warrant the intervention of the Appeals Chamber”.<sup>77</sup> As the Appellant has failed to demonstrate any error in the Trial Chamber’s rejection of his arguments,<sup>78</sup> this sub-ground of appeal falls to be rejected.

35. The Appellant also challenges the authority of the Prosecution to prosecute the case, on grounds that it was not directed to do so by the competent Chamber as required by Rule 77(D).<sup>79</sup> Arguing that “in the present case only the initiative for investigation, and no initiative for prosecution of contempt existed”, he asserts that “[a]s there was no authority of the Prosecution to prosecute against Mr. Jović, the decision rendered in these proceedings, by a Chamber which did not issue the allegedly violated decision, cannot be valid”.<sup>80</sup>

36. The Appeals Chamber finds that this argument is without merit. Rule 77(D)(i) provides in relevant part that that where a Chamber has directed the Prosecutor to investigate a potential matter of contempt with a view to preparing and submitting an indictment for contempt and “the Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber

<sup>74</sup> The Appeals Chamber recalls that on 2 March 2006, it rejected the Appellant’s preliminary motion filed pursuant to Rule 72(B)(i) of the Rules challenging the jurisdiction of the International Tribunal, but held that its decision did not preclude the Appellant from raising any argument rejected by the Trial Chamber when appealing the Trial Chamber’s Judgment against him. See *Prosecutor v. Josip Jović*, Case No. IT-95-14 & 14/2-R77-AR72.1, Decision on Interlocutory Appeal Challenging the Jurisdiction of the Tribunal, 2 March 2006, paras 5-6.

<sup>75</sup> See *Marijačić & Rebić Appeal Judgement*, para. 23; see also *Prosecutor v. Beqa Beqaj*, Case No. IT-03-66-T-R77, Judgment on Contempt Allegations, 27 May 2005 (“*Beqaj Contempt Judgement*”), para. 9; *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR77, Judgment on Appeal by Anto Nobile Against Finding of Contempt, 30 May 2001, para. 30; *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A-R77, Judgment on Allegations of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000, para. 13.

<sup>76</sup> See *Marijačić & Rebić Appeal Judgement*, para. 23; see also *Beqaj Contempt Judgement*, para. 9.

<sup>77</sup> See *Marijačić & Rebić Appeal Judgement*, para. 17.

<sup>78</sup> See *supra*, para. 14.

<sup>79</sup> Appeal Brief, 43, 46.

<sup>80</sup> *Ibid.*, paras 45, 47.

may [...] direct the Prosecutor to prosecute the matter". In this case, Trial Chamber I, which was then seized with the matter, directed the Prosecution to investigate the matter on 1 June 2005.<sup>81</sup> On 12 September 2005, the Confirming Judge, who was so designated by the President of the International Tribunal, confirmed the Indictment against the Appellant and ordered that "the Prosecution is authorised to prosecute this matter, under Rule 77(D)(i)".<sup>82</sup> While Rule 77(D)(i) provides that a "Chamber" may direct the Prosecutor to prosecute a person for contempt, it does not preclude a Confirming Judge from authorizing the Prosecution to prosecute on behalf of the Trial Chamber that is seized with the matter.<sup>83</sup> The second sub-ground of ground six of the Appellant's appeal is accordingly rejected.

### VIII. SENTENCING (GROUND OF APPEAL 7)

37. In his final ground of Appeal, the Appellant argues that the Trial Chamber erred in failing to take into account several mitigating circumstances in the determination of his sentence. More specifically, he claims that the Trial Chamber failed to consider that: (1) the Appellant was convinced that his actions were not prohibited; (2) dramatic headlines and expressions are inherent to journalism and the Appellant sought only to do his job well and attract readership to his newspaper; (3) no real interference with justice occurred, particularly as the Witness is not someone with whom other protected witnesses would identify and therefore be deterred from testifying by the Appellant's publications; and (4) the Appellant is an individual of modest financial conditions.<sup>84</sup> For these reasons, the Appellant argues that his sentence is highly excessive.<sup>85</sup>

38. The Appeals Chamber recalls that Trial Chambers are vested with broad discretion in determining an appropriate sentence.<sup>86</sup> In general, the Appeals Chamber will not revise a sentence unless an appellant demonstrates that the Trial Chamber committed a discernible error in exercising its discretion or failed to follow the applicable law.<sup>87</sup>

<sup>81</sup> Trial Judgement, para. 24 and footnote 104, citing *Prosecutor v. Tihomir Blaškić and Prosecutor v. Dario Kordić & Mario 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 noted that citing this order was appropriate for the just resolution of the case but declined to lift its confidential status. The *ex parte* status of the order had already been lifted on 30 June 2006. Decision on Prosecution's Motion to Lift Confidential and *Ex Parte* Status of an Order, 30 June 2006.

<sup>82</sup> Decision on Review of Indictment and Order for Non-Disclosure, 12 September 2005.

<sup>83</sup> Cf. Rule 47(F) of the Rules.

<sup>84</sup> Appeal Brief, paras 48-53; Reply, paras 25-27.

<sup>85</sup> Appeal Brief, para. 53.

<sup>86</sup> *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-94-21-A, Judgement, 20 February 2001 ("Čelebići Appeal Judgement"), para. 717.

<sup>87</sup> *Marijačić & Rebić* Appeal Judgement, para. 53; Bulatović Interlocutory Appeal Decision, para. 58.

39. While good faith or reliance on the advice of counsel are factors that may be considered in mitigation, the Appellant has not demonstrated that the Trial Chamber erred in declining to consider them in this case. As the Trial Chamber observed, “not everybody was telling [the Accused] that there was no violation [of the orders of the Tribunal]”.<sup>88</sup> Indeed, Professor Ivo Josipović stated in the 6 December 2000 edition of *Slobodna Dalmacija* that “viewed from a formal and legal point of view, this Tribunal has the competence for such conduct”.<sup>89</sup> In these circumstances, the Appeals Chamber is not satisfied that the Trial Chamber committed a discernible error by failing to take into account the Appellant’s asserted belief that his actions were not legally prohibited or the legal advice that he allegedly received in support of that belief as a mitigating factor.

40. Likewise, the Appellant has not demonstrated that the Trial Chamber committed a discernible error by failing to consider in mitigation that “dramatic headlines and dramatic expressions are inherent to newspaper publishing”<sup>90</sup> and that the Appellant’s aim was to do his job well and attract readership<sup>91</sup>. That the publication of protected information may make for dramatic journalism and attract readers does not diminish responsibility for such publication in knowing violation of an order of the Trial Chamber.

41. In addition, as the Prosecution rightly points out, the Trial Chamber considered the Witness’s implicit assertions that at least some of the protective measures were unnecessary, as a factor in mitigation. The Appellant has not shown that the Trial Chamber committed a discernible error by failing to consider in further mitigation his unsupported claim that his actions would be unlikely to deter other potential witnesses from giving evidence before the International Tribunal.

42. Finally, the Appeals Chamber is not satisfied that the Trial Chamber committed a discernible error in failing to take into account the Accused’s asserted modest financial conditions. The Appellant has failed to identify any evidence in the record that would support his assertions, let alone demonstrate that the Trial Chamber abused its discretion by failing to take those allegedly modest financial conditions into account as a mitigating factor.<sup>92</sup> The Appeals Chamber notes that it was the responsibility of the Appellant and his Counsel to make sufficient submissions at trial on his financial situation and its relevance to the issue of sentencing.<sup>93</sup>

<sup>88</sup> Trial Judgement, para. 16 (internal quotation marks omitted).

<sup>89</sup> *Ibid.*

<sup>90</sup> Appeal Brief, para. 50.

<sup>91</sup> *Ibid.*, para. 51.

<sup>92</sup> Contrary to the Appellant’s argument in reply, the documents attached as annexes to his confidential motions for postponement of trial do not provide evidence of his financial resources, limited or otherwise.

43. As the Appellant has failed to demonstrate that the Trial Chamber ventured outside of its discretionary framework in imposing sentence, his seventh ground of appeal is dismissed.<sup>94</sup>

44. Nevertheless, the Appeals Chamber considers, *proprio motu*, that it is in the interests of justice in this case to allow the Appellant to make payment of the fine imposed by the Trial Chamber in instalments. As the Appeals Chamber has previously held, an appellant should not be disadvantaged by the inadvertence of Counsel in failing to make sufficient submissions at trial with respect to the financial situation of the appellant.<sup>95</sup>

## IX. DISPOSITION

45. For the foregoing reasons, **THE APPEALS CHAMBER**, unanimously,

**PURSUANT** to Article 25 of the Statute and Rules 77, 77*bis*, 116*bis*, 117 and 118 of the Rules;

**NOTING** the respective written submissions of the Parties;

**DISMISSES** the grounds of appeal filed by Appellant Josip Jović;

**AFFIRMS** the imposition of a fine of twenty thousand (20,000) Euros on the Appellant, payable to the Registrar of the International Tribunal within thirty days of the date of this Judgement; however

**ALLOWS**, *proprio motu*, for the Appellant, if he so wishes, to pay the fine in equal instalments of five thousand (5,000) Euros each by 30 March 2007, 29 June 2007, 28 September 2007 and 28 December 2007;

**INSTRUCTS** the Registrar of the International Tribunal to take the necessary measures to enforce the sentence, and, if need may be;

**ORDERS** the competent authorities of the Republic of Croatia to co-operate with and assist the Registrar pursuant to Article 29 of the Statute in the enforcement of sentence.

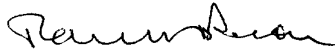
<sup>93</sup> See *Marijačić & Rebić* Appeal Judgement, para. 55.

<sup>94</sup> See *ibid.*, para. 53; *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006, para. 8; *Čelebići* Appeal Judgement, para. 725.

<sup>95</sup> See *Marijačić & Rebić* Appeal Judgement, para. 55.

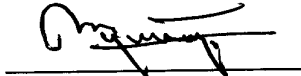
Done in English and French, the English text being authoritative.

Dated the 15th day of March 2007, At The Hague, The Netherlands.



Judge Fausto Pocar


Presiding



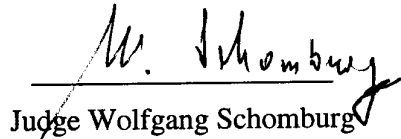
Judge Mehmet Güney



Judge Andréia Vaz



Judge Theodor Meron



Judge Wolfgang Schomburg

**[Seal of the International Tribunal]**