

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

(IT 95-14 & 14/2 R77)

JOSIP JOVIĆ

JOSIP JOVIĆ*Convicted of contempt of the Tribunal in the Prosecutor v. Tihomir Blaškić case for disclosing information in direct violation of a court order*Former editor-in-chief of *Slobodna Dalmacija*, a Croatian daily newspaper.

- Sentenced with a fine of 20,000 euros

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

- As editor-in-chief of *Slobodna Dalmacija*, Josip Jovic disclosed the identity and testimony of a protected witness, Stjepan Mesić (current President of Croatia), who testified in the Tihomir Blaškić case.
- Josip Jovic continued to publish extracts from the transcript of the testimony given by the witness in closed session after he was ordered by the Tribunal to stop and abstain in the future from publishing either the statements or testimony of the witness in question or of any other protected witness.

Indictment	9 September 2005
Arrested	28 September 2005, by the Croatian police
Initial appearance	14 October 2005, pleaded not guilty
Trial Chamber Judgement	30 August 2006, sentenced to pay a fine of 20,000 euros
Appeals Chamber Judgement	15 March 2007, sentence affirmed

STATISTICS

Trial days	1
Witnesses called by Prosecution	0
Witnesses called by Defence	1
Exhibits	14

TRIAL	
Commenced	11 July 2006
Closing arguments	11 July 2006
Trial Chamber III	Judge Patrick Robinson (presiding), Judge O-Gon Kwon, Judge Iain Bonomy
Counsel for the Prosecution	David Akerson, Salvatore Cannata
Counsel for the Defence	Krešimir Krsnik
Judgement	30 August 2006

APPEAL	
Appeals Chamber	Judge Fausto Pocar (presiding), Judge Mehmet Güney, Judge Andréia Vaz, Judge Theodor Meron and Judge Wolfgang Schomburg
Counsel for the Prosecution	Peter M. Kremer
Counsel for the Defence	Krešimir Krsnik
Judgement	15 March 2007

RELATED CASES <i>by geographical area</i>	
BLAŠKIĆ (IT-95-14) "LAŠVA VALLEY"	

INDICTMENT AND CHARGES

In accordance with Rule 77 of its Rules of Procedure and Evidence, the Tribunal can conduct proceedings for contempt of court. The ICTY's jurisdiction in respect of contempt is not expressly outlined in the Statute. However, it is firmly established that the Tribunal possesses an inherent jurisdiction, deriving from its judicial function, to ensure that its exercise of the jurisdiction expressly given to it by the Statute is not frustrated and that its basic judicial functions are safeguarded. As an international criminal court, the Tribunal possesses this inherent power to deal with conduct interfering with its administration of justice. Such interference may be by way of conduct which obstructs, prejudices or abuses the Tribunal's administration of justice. Those who knowingly and wilfully interfere with the Tribunal's administration of justice in such a way may, therefore, be held in contempt of the Tribunal.

The indictment against Josip Jović for contempt was confirmed on 9 September 2005. On 19 May 2006, the Prosecution submitted a motion requesting a modification and joinder of indictments against Stjepan Šešelj and Domagoj Margetić, and Marijan Križić (all three of whom had also been indicted for contempt of the Tribunal in the course of 2005) and the indictment against Josip Jović. In its decision of 31 May 2006, the Trial Chamber granted a joinder of the cases against Stjepan Šešelj, Domagoj Margetić and Marijan Križić. It rejected the motion to join the indictment against Josip Jović to the other two indictments. On 20 June 2006, the Chamber granted the Prosecutor's motion of 15 June 2006 to withdraw the indictments against Stjepan Šešelj, Domagoj Margetić and Marijan Križić.

On 15 June 2006, the Prosecutor filed an amended indictment against Josip Jović. This indictment alleges that from 27 to 30 November 2000, the accused, in his capacity as the editor-in-chief of *Slobodna Dalmacija*, a Croatian daily newspaper, disclosed the identity of Stjepan Mesić (current President of Croatia), who had been a protected witness at the Tribunal. The paper also published extracts of Stjepan Mesić's testimony given on 19 April 1997. On 1 December 2000, a Duty Judge granted the Prosecutor's motion and ordered the accused to stop and abstain in the future from publishing either the statements or testimony of the witness in question or of any other protected witness. Two days later, Josip Jović published the order and an editorial criticising it, along with extracts from the transcript of the testimony given by the witness in closed session. Josip Jović continued publishing these extracts daily until 29 December 2000.

Josip Jović is charged with:

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

PRE-TRIAL PROCEEDINGS

The accused did not appear voluntarily for his initial appearance scheduled on 26 September 2005. He was arrested by the Croatian police on 28 September in Split, southern Croatia, and he appeared before the Tribunal on 14 October 2005. He was released after his initial appearance and ordered to return for trial.

TRIAL

The trial of Josip Jović was initially scheduled for 3 July 2006. The accused did not appear in court and the trial was therefore postponed and held on 11 July 2006. The Prosecution submitted evidence and called no witnesses. The Defence examined one witness, the accused himself.

TRIAL CHAMBER JUDGEMENT

In November and December 2000, Josip Jović was the editor-in-chief of *Slobodna Dalmacija*, a Croatian daily newspaper. During that period, *Slobodna Dalmacija* published a number of articles related to Stjepan Mesić, the President of Croatia, as well as his testimony in closed session before this Tribunal in March 1998 in the *Blaškić* trial.

The first article was published on 27 November 2000 on the front page of *Slobodna Dalmacija*. It claimed to contain Stjepan Mesić's testimony before the Tribunal in the *Blaškić* trial. In fact it contained excerpts from a written statement which Stjepan Mesić provided to the Prosecution one year prior to his testimony in the *Blaškić* trial. Similar articles were published by the newspaper on 28, 29 and 30 November 2000.

On 1 December 2000, the Prosecution brought these articles to the attention of the *Blaškić* Trial Chamber, which that day, issued an order in the following terms: “the publication of statements or testimonies of the witness concerned, and generally, of any protected witness, shall cease immediately ... Any publication of these statements or testimonies, shall expose its author(s) and those responsible to be found in contempt of the Tribunal”. Within the terms of the order the Registrar was requested to send the order by telefax to *Slobodna Dalmacija* as soon as practicable. Josip Jović acknowledged at trial that he received the order on 1 December 2000.

On 3 December 2000, *Slobodna Dalmacija* printed this cease and desist order of 1 December 2000, describing it as “arrogant” and “aggression on a legal state”. The next day, the newspaper’s front page article quoted Josip Jović as saying “he would take a decision on further publication of the texts ‘after studying all the legal aspects of the ban.’”

On 6 December 2000, Josip Jović announced on the front page of his newspaper “*Slobodna Reveals The Hague Secret*”. It expressly stated: “*Exclusive: Transcript of the Secret Testimony of the Protected Witness Stjepan Mesić*” and contained an excerpt of Stjepan Mesić’s closed session testimony. In an accompanying article, Josip Jović wrote of his reasons for choosing to publish the testimony and stated: “Despite 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 Stjepan Mesić’s mysterious testimony given before the Tribunal in The Hague from 16 to 19 March 1998”. Between 7 and 29 December 2000, *Slobodna Dalmacija* published 21 additional excerpts of Stjepan Mesić’s closed session testimony.

The Trial Chamber explained that an oral order that a witness shall testify in closed session renders everything that transpires within the session confidential and applies to all persons coming into possession of protected information. In addition, 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. The Trial Chamber found that Josip Jović’s act of publishing transcripts violated both the oral order for Stjepan Mesić to testify in closed session and the 1 December 2000 cease and desist order.

The Trial Chamber was convinced that Josip Jović had knowledge of the cease and desist order dated 1 December 2000 by his testimony that since early 2000, he possessed (and went on to publish) transcripts of that testimony, which were marked “closed session,” as well as transcripts of counsel’s submissions as to the need for closed session, which were marked “private session”.

The Defence for Josip Jović submitted that although Josip Jović knew the Tribunal had ordered him not to publish protected material, he did not believe that he was bound by the Tribunal’s orders, and therefore could not be held in contempt of the Tribunal. Even assuming Josip Jović was genuine as to his mental state, the Trial Chamber stressed that an error in law was no answer to this charge.

The Trial Chamber found Defence Counsel’s argument irrelevant that the *Blaškić* trial had concluded by the time Josip Jović published the protected material, as protective measures for witnesses continue after the conclusion of trial.

Finally, the Trial Chamber found that Josip Jović was unable to invoke the principle of freedom of the press to excuse his conduct. 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 the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.” In light of Article 20(4) of the Statute of the Tribunal, which authorises a Trial Chamber to order that certain evidence be confidential, The Trial Chamber explained that the orders at issue in this case were valid limitations of Josip Jović’s right to publish information about Tribunal proceedings.

In conclusion, the Trial Chamber found beyond reasonable doubt that Josip Jovic committed the offence of Contempt of the Tribunal as described in Rule 77(A)(ii) for violating both the 16 March 1998 closed session and the 1 December 2000 cease and desist orders.

The Trial Chamber took into consideration the mitigating factor of Stjepan Mesić’s public acknowledgements that he had produced a written statement for, and testified as a witness in, the *Blaškić* case. This could be interpreted as his implicit assertion that the protective measures were no

longer necessary. Nevertheless, the contemptuous behaviour in Josip Jović's case was particularly egregious: Josip Jović 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 while boasting that the transcripts were "secret". He treated the orders of the *Blaškić* Trial Chamber with utter disregard. His actions not only were contemptuous, but also hindered the Tribunal's ability to safeguard the evidence of a protected witness and risked undermining confidence in the Tribunal's ability to grant effective protective measures.

On 30 August 2006, Trial Chamber rendered its judgement, convicting Josip Jović with:

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

Sentence: Fine of 20,000 Euros, to be paid within 30 days of the judgement to the Registrar of the Tribunal.

APPEALS CHAMBER JUDGEMENT

On 14 September 2006, Josip Jović filed a notice of appeal of the judgement. On 18 September 2006, the Prosecution filed a motion to strike the notice of appeal and require a re-filing, stating that the notice of appeal does not fulfil the requirements as set out in Rule 108 of the Rules of Procedure and Evidence.

On 29 September 2006, the Appeals Chamber decided "that the payment of a fine, if any, shall not be due before the Appeals Chamber has rendered its decision." On the same date, the Appeals Chamber decided in its "Decision on prosecution motion for order striking notice of appeal and requiring re-filing" that Josip Jović must re-file his Notice of Appeal within 10 days of same decision and to file his appeal brief "within one week of the re-filing of the Notice of Appeal." On 9 October 2006, Josip Jović re-filed his notice of appeal.

On 15 March 2007, the Appeals Chamber rendered its judgement dismissing all seven grounds of appeal by Josip Jović and ordered him to pay a fine of 20,000 euros.