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Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

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TRIAL CHAMBER

The Hague, 7 February 2007

PROSECUTOR V. DOMAGOJE MARGETIĆ SUMMARY OF JUDGEMENT

Please find below the summary of the judgement today read out by Judge Orić:

The Trial Chamber is sitting today to deliver its judgement in the case Prosecutor v. Domagoj Margetić.

For the purposes of this hearing, the Trial Chamber will briefly summarize its findings. We emphasize that this is a summary only, and that the authoritative account of the Chamber's findings is to be found in the written Judgement, which will be made available at the end of this session.

Mr Margetić was born on the 9th of January 1974 in Zagreb, Croatia. He is a free-lance journalist who has been the editor-in-chief of two Croatian publications.

Mr Margetić stood trial for contempt of this Tribunal pursuant to Rule 77 of the Tribunal's Rules of Procedure and Evidence. He is charged with having published on the internet a complete confidential witness list containing the names of witnesses who testified in the case Prosecutor v. Blaškić, among them a high number of protected witnesses. He is also charged with authoring accompanying articles which revealed the identities of a high number of witnesses from the witness list. All articles were also published on other websites and hyperlinked to the website of Mr Margetić.

Mr Margetić was previously an accused in another contempt case, but the indictment against him was withdrawn before trial. In the proceedings of this previous case, the witness list - at issue in the instant case - had then been disclosed to Mr Margetić pursuant to the Tribunal's Rules of Procedure and Evidence.

In the instant case, the trial was held in two sessions, on the 30th of November and on the 8th of December 2006. Mr Margetić appeared as a witness in his own case.

As a preliminary matter, the Trial Chamber notes that the Tribunal has the inherent power to prosecute and punish conduct which interferes with the administration of justice and therefore rejects the challenge of jurisdiction raised by the Defence.

As another preliminary matter, the Trial Chamber notes Mr. Margetić's claim that he published the witness list because he considered himself as an investigative journalist. The Trial Chamber states the following: Journalists are free to report and comment on all proceedings before the Tribunal, including the testimony of witnesses. However, they are under an obligation to respect the Tribunal's orders and protective measures granted to witnesses.

The Prosecution alleges that by publishing the witness list, Mr Margetić has violated protective measures orders, interfered with witnesses and thereby has knowingly and wilfully interfered with the administration of justice and is in contempt of the Tribunal pursuant to Rule 77(A) of the Rules.

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Rule 77(A) provides for various types of conduct constituting contempt of the Tribunal, among them “disclosing information in violation of an order by a Chamber” and “threatening, intimidating, causing injury to, offering bribes or otherwise interfering with witnesses or potential witnesses”. In general terms, Rule 77(A) provides that the Tribunal may hold in contempt those who knowingly and wilfully interfere with the administration of justice.

There was no dispute that Mr Margetić actually published the witness list on the internet. Neither was it in dispute that the Blaškić Trial Chamber had issued 48 oral orders and three written orders assigning pseudonyms to 48 witnesses on the list and granting that the testimony of 21 of these witnesses be given in closed session. These orders rendered the names and identities of the respective witnesses confidential.

The Defence argued that Mr Margetić did not violate these protective measures orders because, at the time when he published the witness list, it was no longer a confidential document.

The witness list was admitted into evidence in another case, namely the case Prosecutor v. Jović, shortly before Mr Margetić published it. On the 3rd of July 2006, the Jović Trial Chamber granted a Prosecution motion to admit into evidence several documents, one of which was the witness list. The Defence’s argument is that by admitting the witness list into evidence in the Jović case, it became a public document.

All documents that the Jović Trial Chamber admitted into evidence in early July, including the witness list, were listed in an Annex to the Prosecution motion. This Annex contained no indication as to the public or confidential status of the documents listed therein.

On the 21st of August 2006 - that is seven weeks after the Jović Chamber had admitted the witness list as an exhibit without specifying its status - the Prosecution filed another motion with regard to the witness list. It raised the concern that the confidential status of the witness list was not expressly indicated and that the court records do not mention that the witness list is a confidential document. One day later, the Jović Trial Chamber ordered Registry to assign a new exhibit number to the witness list and rename it as confidential.

The Defence argues that up until this last order of the Jović Trial Chamber - that is until the 22nd of August 2006 - the witness list was in the public domain and that Mr Margetić performed an allowable action when he published it.

The Trial Chamber notes that the witness list was from the outset a confidential document and never lost its status as such. The Jović Trial Chamber did not reverse the confidential status of the document when it admitted it into evidence without referring to its status. In particular, the decision of the Jović Trial Chamber did not have the effect of rescinding all the protective measure orders issued in the Blaškić case. Rather, Rule 75(F)(i) of the Rules provides that, once protective measures have been ordered in respect of certain witnesses, they continue to apply *mutatis mutandis* in other proceedings until they are rescinded, varied or augmented in accordance with the procedure in that Rule. In order to rescind protective measures, an *actus contrarius* is necessary.

An application for the rescission of these protective measures has, however, not been submitted either to the Blaškić Chamber during the review proceedings or any other Chamber.

The protective measure orders issued by the Blaškić Trial Chamber have therefore not been reversed and the witness list at no time became a public document.

The Trial Chamber finds that Mr Margetić disclosed information, namely the identities of protected witnesses, in violation of orders issued by the Blaškić Chamber.

Mr Margetić also met the relevant mental element requirements when he published the witness list. The Prosecution sent notification of confidentiality to Mr Margetić both through post and email. In a letter addressed to Mr Margetić, dated 6th of April 2006, the Accused was warned that the material disclosed to him - which included the witness list - was subject to non-disclosure orders. An electronic version of the letter was also sent by email. Furthermore, the witness list itself was clearly marked as “confidential”.

The Trial Chamber does not accept Mr Margetić’s claim that he did not receive the letter or the email and that the confidential material arrived unaccompanied by the letter. It also rejects the Defence argument that Mr Margetić believed that the witness list was or became a public document. To the contrary, in the accompanying articles, Mr Margetić repeatedly emphasized that he was publishing confidential information.

It was submitted that Mr Margetić found on the internet a decision of the Jović Trial Chamber which declared the witness list to be a public document and which was allegedly dated 11th July of 2006. In fact, there was no such decision of the Jović Trial Chamber on the 11th of July. Furthermore, in the 3rd July decision of the Jović Chamber, the witness list is not explicitly mentioned and nothing is said about the public status of admitted exhibits.

It was the decision of the 22nd of August that publicly mentioned the status of the witness list for the first time. The Trial Chamber concludes that Mr. Margetić only became aware of the questions about the status of the witness list after he had published it. Indeed, Mr Margetić did not refer to the purported decision of the Jović Trial Chamber any earlier than in September 2006. The contention that Mr Margetić believed that the witness list, at the time he published it, was a public document is therefore not credible.

By publishing the witness list, Mr Margetić also interfered with witnesses. The fact that Mr Margetić committed contempt by disclosing information in violation of an order described in Rule 77(A) sub-Rule (ii) does not preclude that he at the same time committed contempt by interfering with witnesses as described in Rule 77(A) sub-Rule (iv). The two sub-Rules differ with respect to the interests they seek to protect. Rule 77(A) sub-Rule (ii) focuses on the disrespect of judicial orders, not necessarily with respect to witnesses. Rule 77(A) sub-Rule (iv) focuses on witnesses, not necessarily protected by any judicial orders.

Rule 77(A) sub-Rule (iv) gives a non-exhaustive list of possible forms of contempt of court which relate to witnesses, among them threatening and intimidating witnesses. It also provides for the conduct of “otherwise interfering with witnesses”. The indictment does not allege that Mr Margetić threatened or intimidated witnesses, but that he otherwise interfered with witnesses.

The Trial Chamber notes that conduct constitutes “otherwise interfering with witnesses” if, such conduct is likely to have the result of dissuading witnesses or potential witnesses from cooperating with the Tribunal, of influencing the nature of their evidence or of exposing witnesses or potential witnesses to threats, intimidation or injury by a third party.

The Trial Chamber considers that it is likely that witnesses on the witness list will be dissuaded from giving evidence in the future due to the publication of their names by Mr Margetić. The Trial Chamber heard evidence that three witnesses whose names had been disclosed would be reluctant to testify before the Tribunal in the future because of fears for their safety. The Trial Chamber finds that it is also likely that other individuals on the list will be dissuaded from future cooperation with the Tribunal or, should they give further testimony, that this testimony will be influenced. The disclosure of their identities allows other individuals to identify the witnesses, making it likely that these witnesses will be exposed to threats, intimidation or injury.

Mr Margetić therefore interfered with witnesses when he published the witness list. The Trial Chamber is also satisfied that Mr Margetić knew that he was interfering with witnesses,

that many of the witnesses were protected because of their vulnerability and that it was likely that they would be dissuaded from future cooperation with the Tribunal, that their testimony would be influenced or that they would be exposed to threats and intimidation.

As Mr Margetić committed contempt by disclosing information in violation of an order and by interfering with witnesses, pursuant to the two sub-Rules, he also committed contempt pursuant to the general Rule 77(A). Rule 77(A) as such does not contain any legal elements distinct from the sub-Rules. Rather, the sub-Rules of Rule 77 are non-exhaustive examples of conduct constituting contempt of the Tribunal.

The Trial Chamber therefore finds that Mr Margetić has committed contempt of the Tribunal pursuant to Rule 77(A) by disclosing information in violation of an order and by interfering with witnesses pursuant to sub-Rules (ii) and (iv). Mr Margetić acted in disrespect of both the Tribunal's orders and of the protected witnesses on the witness list.

The Trial Chamber now turns to the sentencing considerations.

The contemptuous conduct of Mr Margetić was particularly egregious. Mr Margetić published protected witness information - unlike in other cases - not with regard to just one or a few witnesses. He published protected witness information with regard to a considerable number of protected witnesses. He also made no effort to distinguish between the vulnerability of these witnesses. Mr Margetić did not only intentionally violate protective measures orders and interfere with witnesses, but did so with reckless disregard for the safety of witnesses.

The Trial Chamber also takes into account the personal and psychological consequences the disclosure had on the lives of at least three of the protected witnesses. These factors make the contemptuous behaviour all the more severe.

The Prosecution suggested that Mr Margetić be sentenced to a term of imprisonment of six months, and that additionally, a fine of 50,000 Euros be imposed.

The Trial Chamber considers that, in view of the gravity of the offence and the aggravating circumstance, a combination of a term of imprisonment and a fine is an appropriate punishment.

Mr Margetić, would you please stand up.

You have been charged with one count of contempt of the Tribunal pursuant to Rule 77 of the Tribunal's Rules of Procedure and Evidence. The Trial Chamber finds that the charge has been proven beyond reasonable doubt.

1. Mr Domagoj Margetić, you are guilty of Contempt of the Tribunal, punishable under Rule 77(A), Rule 77(A)(ii), Rule 77(A)(iv) and Rule 77(G);
2. You are hereby sentenced to a term of imprisonment of three months. You are entitled to credit for the 34 days you spent detained in custody in Croatia;
3. You are further sentenced to a fine of 10,000 Euros. The full amount of the fine shall be paid to the Registrar of the Tribunal within 30 days of this Judgement.

This concludes the delivery of the Judgement in the case Prosecutor v. Domagoj Margetić.
