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Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

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TRIAL CHAMBER

The Hague, 30 August 2006

SUMMARY OF JUDGEMENT FOR JOSIP JOVIĆ

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

In November and December 2000, Mr. 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 Mr. Stjepan Mesić, the President of Croatia, and 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 Mr. Mesić's testimony before the Tribunal in the *Blaškić* trial. In fact it contained excerpts from a written statement which Mr. 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. Mr 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 Mr Jović as saying "he would take a decision on further publication of the texts 'after studying all the legal aspects of the ban.'"

By 6 December 2000, Mr Jović had made his decision. The front page of his newspaper announced "*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 Mr. Mesić's closed session testimony. In an accompanying article, Mr 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 Mesić's mysterious testimony given before the Tribunal in The Hague from 16 to 19 March 1998". Indeed that is what Mr Jović went on to do. Between 7 and 29 December 2000, *Slobodna Dalmacija* published 21 additional excerpts of Mr. Mesić's closed session testimony.

Following an investigation, an indictment was filed against Mr Jović on 29 August 2005 and confirmed on 12 September 2005. This indictment was later amended, on the order of this Trial Chamber.

The amended indictment charges Mr. Jović with Contempt of the Tribunal under both Rule 77(A) and Rule 77(A)(ii). More particularly, it charges him with knowingly and wilfully interfering with the administration of justice by publishing the identity of a protected ICTY

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witness, the fact that the witness testified in closed session at the Tribunal and excerpts of that testimony, as well as directly violating the order to cease such publication.

The amended indictment refers to three orders issued in the course of the *Blaškić* trial. The first order is a decision on the protection of witnesses dated 6 June 1997. The second order is the oral order of 16 March 1998 that Mr. Mesić would testify in closed session. The third order is the written cease and desist order dated 1 December 2000.

The trial of Mr Jović was held on 11 July 2006 before this Trial Chamber. In the course of the trial, the Chamber heard submissions from the Prosecution and the Defence, heard oral testimony from Mr Jović and examined a number of documents. At trial, the Prosecution did not substantively pursue the allegations in relation to the first order, nor those in relation to publication of Mr. Mesić's identity and fact of his testimony. Accordingly, the Trial Chamber will not consider the charges in relation to those matters.

It is clear that the Tribunal has an inherent power to hold individuals in contempt. Furthermore, Rule 77(A) provides for a number of situations which amount to contempt. Rule 77(A)(ii) 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". Given that the instances of contempt alleged in this case 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.

The physical component of this form of contempt is the act of disclosure of information relating to proceedings before the Tribunal, where such disclosure would breach an order of a Chamber. As this Trial Chamber has explained in a previous case, 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. From examining the relevant articles and Mr Jović's testimony at trial, the Trial Chamber has no doubt Mr Jović published transcripts which violated both the oral order for Mr. Mesić to testify in closed session and the 1 December 2000 cease and desist order. Additionally, because the content of Mr. Mesić's written witness statement is largely the same as the content of his oral testimony given in closed session, Mr Jović's publication of the written statement in November 2000 also violated the orders of the *Blaškić* Trial Chamber.

The mental component of this form of contempt was the central issue at trial. This Trial Chamber has described the requisite *mens rea* 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. There may be actual knowledge or knowledge may be inferred from the circumstances. Mr Jović conceded knowledge of the cease and desist order dated 1 December 2000. His knowledge of the oral order for closed session can be inferred from 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". This inference extends to knowing the closed session transcripts reflected the substance of Mr. Mesić's written witness statement. By this standard, Mr. Jović clearly possessed the requisite *mens rea* with regard to the November and December publications.

At trial, counsel for Mr Jović put forward an alternative *mens rea* standard, being: knowledge of the order and its applicability to oneself as a matter of law. It was submitted that although Mr. 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 cannot be held in contempt of the Tribunal. Even assuming Mr Jović was genuine as to his mental state, it is settled that an error in law is no answer to this charge. If mistake of law were a defence, orders would become suggestions and a Chamber's authority to control its proceedings, from

which the power to punish contempt derives, would be hobbled. Furthermore, potential witnesses need to have confidence in the Tribunal's ability to guarantee the confidentiality of their identities and testimony, should this be necessary, in order for this Tribunal to function.

Likewise, other arguments that Mr Jović's counsel sought to raise at trial do not assist him. The fact that the *Blaškić* trial had concluded by the time Mr. Jović published the protected material is irrelevant, as protective measures for witnesses continue after the conclusion of trial. The possibility that the protected witness, who, at the time of publication, was the President of the Republic of Croatia, was better protected than other witnesses is not dispositive, as it is for the Tribunal alone to amend or withdraw the orders it issues.

Finally, Mr Jović is unable to invoke the principle of freedom of the press to excuse his conduct. Clearly, legal instruments relevant to the work of the Tribunal protect freedom of expression. But it is equally clear that there are qualifications in relation to court proceedings. 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 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 orders at issue in this case were valid limitations of Mr. Jović's right to publish information about Tribunal proceedings. It is not for individuals, including journalists, to choose to publish information in defiance of such an order on the basis of their own assessment of the public interest in that information. Mr Jović was free to request clarification or modification of the *Blaškić* Trial Chamber's orders but chose not to do so.

In conclusion, the Trial Chamber has found beyond reasonable doubt that Mr. 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.

A mitigating factor in this case is Mr. Mesić's public acknowledgements that he had produced a written statement for, and testified as a witness in, the *Blaškić* case. This can be interpreted as his implicit assertion that the protective measures are no longer necessary. Nevertheless, the contemptuous behaviour here was particularly egregious: Mr 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 stymied 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.

The Trial Chamber therefore finds Mr Jović guilty of contempt of the Tribunal, and imposes on him a fine of 20,000 Euros, to be paid to the Registrar of the Tribunal within 30 days of this Judgement.

Courtroom proceedings can be followed on the Tribunal's website.