

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

(IT-95-14-R77.2)

MARIJAČIĆ & REBIĆ**IVICA MARIJAČIĆ***Convicted of contempt of the Tribunal in the Prosecutor v. Tihomir Blaškić case for publishing the identity of a protected witness, the statement of the witness and the fact that the witness had testified in non-public proceedings before the Tribunal*Journalist and editor-in-chief of the Zagreb-based weekly publication *Hrvatski List*.

- Fined 15,000 Euros

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

- As editor-in-chief of *Hrvatski List*, Ivica Marijačić published an article in which the identity of a protected witness, the statement of the witness and the fact that the witness had testified in non-public proceedings before the Tribunal were revealed.

Indictment	Initial: 26 April 2005; second amended 7 October 2005
Initial appearance	14 June 2005, pleaded not guilty to all charges
Trial Chamber Judgement	10 March 2006, sentenced to pay a fine of 15,000 euros
Appeals Chamber Judgement	27 September 2006, sentence affirmed

**MARKICA
REBIĆ***Convicted of contempt of the Tribunal in the Prosecutor v. Tihomir Blaškić case for disclosing the identity of the protected witness, the statement and transcript of the witness statement, and the fact that the witness had testified in non-public proceedings before the Tribunal*

Former head of the Security Information Service (SIS) for the Republic of Croatia

- Fined 15,000 Euros

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

- Markica Rebić provided Ivica Marijačić with the identity of the protected witness, copies of the statement the witness gave to the OTP, and the transcript of the testimony the witness gave before the Trial Chamber in the closed session of the court proceedings.

Indictment	Initial: 26 April 2005; second amended 7 October 2005
Initial appearance	14 June 2005, pleaded not guilty to all charges
Trial Chamber Judgement	10 March 2006, sentenced to pay a fine of 15,000 euros
Appeals Chamber Judgement	27 September 2006, sentence affirmed

STATISTICS

Trial days	3
Witnesses called by Prosecution	2
Prosecution exhibits	22
Witnesses called by Defence	0
Defence exhibits	2
Chambers exhibits	2

TRIAL	
Commenced	17 January 2006
Closing arguments	19 January 2006
Trial Chamber III	Judge O-Gon Kwon (presiding), Judge Patrick Robinson, Judge Iain Bonomy
Counsel for the Prosecution	David Akerson, Rebecca Graham, Salvatore Cannata
Counsel for the Defence	For Ivica Marijačić: Marin Ivanović For Markica Rebić: Krešimir Krsnik
Judgement	10 March 2006

APPEAL	
Appeals Chamber	Judge Fausto Pocar (presiding), Judge Mehmet Güney, Judge Andréia Vaz, Judge Theodor Meron, Judge Wolfgang Schomburg
Counsel for the Prosecution	Peter Kremer
Counsel for the Defence	For Ivica Marijačić: Marin Ivanović For Markica Rebić: Krešimir Krsnik
Judgement	27 September 2006

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.

On 18 November 2004, an article appeared in *Hrvatski List*, a Croatian newspaper, concerning a Dutch army officer, Johannes van Kuijk, who had testified in closed session before this Tribunal in December 1997, during the *Blaškić* trial.

Following the publication of this edition of *Hrvatski List*, an investigation was carried out by the Prosecution. On 26 April 2005, an indictment was confirmed against Ivica Marijačić and Markica Rebić, which charged them with contempt for their knowing and wilful interference with the Tribunal's administration of justice, by way of disclosing information in knowing violation of an order of a Chamber. In particular, they were charged with revealing the identity of a protected witness, the statement of that witness, and the fact that he had testified in non-public proceedings. Following the amendment of the indictment, in October 2005, it was further specified that Ivica Marijačić had published the identity and statement of the protected witness, and Markica Rebić had disclosed the identity of the witness along with his statement and the transcript of his closed session testimony.

The amended indictment stated that the actions of both Ivica Marijačić and Markica Rebić were in breach of three orders issued in the course of the *Blaškić* trial. The first order was a decision on the protection of witnesses, dated 6 June 1997. The second order was the oral order of 16 December 1997 to hear Lieutenant van Kuijk's testimony in closed session. The third order was a further written order dated 1 December 2000.

Ivica Marijačić and Markica Rebić were charged with:

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

TRIAL

The trial of Ivica Marijačić and Markica Rebić was held on 17, 18 and 19 January 2006, before Trial Chamber III. Immediately prior to the trial, upon the request of the Prosecution, the Appeals Chamber issued a decision lifting the protective measures granted to Lieutenant van Kuijk, such that his identity and the content of his testimony could be discussed openly in this trial. In the course of the trial, the Chamber heard legal arguments from the Prosecution and the Defence for both Ivica Marijačić and Markica Rebić, heard two witnesses for the Prosecution, and examined several documents. The Chamber also considered various arguments that had been submitted in writing by the parties prior to trial.

TRIAL CHAMBER JUDGEMENT

The article which appeared in *Hrvatski List* on 18 November 2004, was written by Ivica Marijačić, who was the editor-in-chief of *Hrvatski List*, and was printed adjacent to an interview with Markica Rebić, who was said to be the source of the material for the article. In addition to revealing the identity of Lieutenant van Kuijk, the newspaper printed extracts from a written statement that he had given to the Prosecution in August 1997. The headline on the front page of the 18 November 2004 edition of *Hrvatski List* declared that what was being published was a "Secret Document," and this was repeated in the article written by Ivica Marijačić. In the interview with Markica Rebić, the *Hrvatski List* interviewer stated that Markica Rebić had given the editorial office two documents, which were, the statement given by the witness and the transcript of his testimony in the *Blaškić* case.

The existence of an order, or orders, that was breached by the disclosure of information about Lieutenant van Kuijk was a central part of the Prosecution's case against the Ivica Marijačić and Markica Rebić. During the course of the trial, the Prosecution dropped its argument that the first order, of 6 June 1997, was applicable to Lieutenant van Kuijk. However, the Prosecution maintained its position that the second order, that is the oral order to go into closed session on 16 December 1997, served to protect the identity of van Kuijk, as well as the content of his testimony and statement. The Defence argued that the closed session did not protect the identity of the witness, nor did it cover the content of his written witness statement.

When rendering the judgement the Trial Chamber found that when a witness testifies entirely in closed session, such that he was never subject to public view and his name can only be found in the confidential transcripts of his testimony, his identity was indeed protected. Furthermore, where the content of a witness' closed session testimony was largely the same as that of a written witness statement that he has given to the Prosecution, that content was protected by the closed session order and must not be published, whether it was the transcript itself that was printed, or extracts of the written statement.

In connection with the closed session order, the Defence raised a general argument that this Tribunal was not empowered to issue orders that are binding upon members of the press and public. The Trial Chamber noted, however, the powers that are granted to the Tribunal by the United Nations Security Council in the Statute, as well as the provisions of the Rules which permit Chambers to issue all necessary orders, including orders which exclude members of the press and public from having access to certain information. The Trial Chamber therefore concluded that when a Chamber orders that testimony be heard in closed session, rendering everything that transpires confidential, such an order applies to all persons coming into possession of the protected information.

With regard to the third order, of 1 December 2000, which the Prosecution also asserted was breached by Ivica Marijačić and Markica Rebić, the Trial Chamber found that this order contained no additional protective measures applicable to Lieutenant van Kuijk, and was not satisfied that it applied to *Hrvatski List*. The Trial Chamber therefore found that Ivica Marijačić and Markica Rebić cannot be found responsible for contempt for breaching this order.

The Trial Chamber was in no doubt that the physical component of contempt was satisfied, with regard to Ivica Marijačić and Markica Rebić. Markica Rebić disclosed the transcript of Lieutenant van Kuijk's closed session testimony, along with his written witness statement to *Hrvatski List*. Ivica Marijačić then wrote an article discussing the matters to which Lieutenant van Kuijk had testified, and published extracts from his witness statement. By these actions, both Ivica Marijačić and Markica Rebić breached the closed session order.

The Trial Chamber was convinced that both Ivica Marijačić and Markica Rebić knew that what they were publishing was protected information. The interview with Markica Rebić in *Hrvatski List* revealed that the newspaper was aware that publication of the material provided by Markica Rebić would be in contravention of orders of the Tribunal, and the transcript of van Kuijk's testimony was clearly marked "closed session." Ivica Marijačić described the document that he was publishing as "secret." In a later edition of *Hrvatski List*, Ivica Marijačić wrote that he and Markica Rebić had, "pondered at length the pros and cons" of publishing the information, but despite his awareness of its confidential nature, he defiantly opted for publication. For his part, Markica Rebić repeated to another news agency that he was aware of what he was doing when he disclosed the material to *Hrvatski List* in November 2004. He also described that material as comprising "protected documents," and stated that he may face "consequences" for revealing it.

The Trial Chamber found that both Ivica Marijačić and Markica Rebić deliberately disclosed information that was protected by an order for closed session made during the course of the *Blaškić* trial. It was not for a journalist, or any third party, to act in violation of a closed session order and then try to justify the violation by seeking to go behind the terms of the order.

The Chamber took into consideration in sentencing that, in this case, no harm was done to Lieutenant van Kuijk as a result of the revelation of his identity and content of his closed session testimony. However, the deliberate and calculated manner in which Ivica Marijačić and Markica Rebić defied the closed session order was a serious matter which tended to diminish the authority of the Trial Chamber in the *Blaškić* trial. Furthermore, public confidence in the effectiveness of the Tribunal's protective measures was vital

to the success of its work. It was therefore incumbent upon the Trial Chamber to take such steps as it could to ensure that there was no repetition of the type of conduct demonstrated by Ivica Marijačić and Markica Rebić, on the part of themselves or any other person.

On 10 March 2006, Trial Chamber rendered its judgement, convicting Ivica Marijačić and Markica Rebić with:

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

Sentence: Fine of 15,000 Euros each to be paid within 30 days of the judgement to the Registrar of the Tribunal.

APPEALS CHAMBER JUDGEMENT

On 20 March 2006, both accused filed a notice of appeal of the judgement. On 5 April 2006, Markica Rebić filed a motion asking for the suspension of the payment of fines. On 7 April 2006, the Appeals Chamber issued a decision that payment of the fine would not be due before the Appeals Chamber had rendered its judgement on contempt. This decision applied equally to Ivica Marijačić.

On 27 September 2006, the Appeals Chamber issued its judgement in the case, dismissing all appeals and affirming the sentence imposed by the Trial Chamber. It ordered that the accused pay a fine of 15,000 Euros each, and allowed them to do so in three instalments of 5,000 Euros each, due on 16 October 2006, 15 January 2007 and 16 April 2007.