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Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

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TRIAL CHAMBER

The Hague, 10 March 2005

SUMMARY OF JUDGEMENT FOR IVICA MARIJAČIĆ AND MARKICA REBIĆ

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

This is a hearing, pursuant to Rule 98 *ter* of the Tribunal's Rules, for the Trial Chamber to deliver its judgement in the case against Ivica Marijačić and Markica Rebić, who are charged with contempt of the Tribunal, punishable under the Tribunal's inherent power and Rule 77(A)(ii) of the Rules. Mr. Marijačić and Mr. Rebić have waived their right to be present at this hearing, but they are represented by counsel. Copies of the written judgement will be made available to the parties and the public at the end of this hearing. I will now summarise the judgement.

Summary

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. The article 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 Mr. Marijačić. In the interview with Mr. Rebić, the *Hrvatski List* interviewer stated that Mr. 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.

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 Mr. Marijačić and Mr. 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 Mr. Marijačić had published the identity and statement of the protected witness, and Mr. Rebić had disclosed the identity of the witness along with his statement and the transcript of his closed session testimony.

The amended indictment states that the actions of both Accused 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.

The trial of the two Accused was held on 17, 18 and 19 January 2006, before this Trial Chamber. Immediately prior to the trial, upon the request of the Prosecution, the Appeals

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Media Office/Communications Service

Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 EW The Hague. Netherlands

Tel.: +31-70-512-5343; 512-5356 Fax: +31-70-512-5355

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 Accused, 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.

The power of this Tribunal to hold individuals in contempt is well-established in the jurisprudence, and bears no repetition here. The essence of contempt, as articulated in Rule 77, is the knowing and wilful interference with the administration of justice, and Rule 77(A)(ii) specifies that the disclosure of information relating to Tribunal proceedings in knowing violation of an order of a Chamber amounts to such interference. The physical component of this form of commission of contempt is, therefore, the act of disclosure, meaning the revelation of something that was previously confidential, when such disclosure would breach an order of a Chamber. The mental component of this form of commission of contempt is 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.

The existence of an order, or orders, that would be breached by the disclosure of information about Lieutenant van Kuijk is a central part of the Prosecution's case against the Accused. 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. Having considered the arguments of the Defence that the closed session did not protect the identity of the witness, nor did it cover the content of his written witness statement, the Trial Chamber finds that when a witness testifies entirely in closed session, such that he is never subject to public view and his name can only be found in the confidential transcripts of his testimony, his identity is indeed protected. Furthermore, where the content of a witness' closed session testimony is largely the same as that of a written witness statement that he has given to the Prosecution, that content is protected by the closed session order and must not be published, whether it is the transcript itself that is printed, or extracts of the written statement.

In connection with the closed session order, the Defence raised a general argument that this Tribunal is not empowered to issue orders that are binding upon members of the press and public. The Trial Chamber notes, 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 concludes 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 the two Accused, the Trial Chamber finds that this order contained no additional protective measures applicable to Lieutenant van Kuijk, and is not satisfied that it applied to *Hrvatski List*. The Trial Chamber therefore finds that the Accused cannot be found responsible for contempt for breaching this order.

The Trial Chamber is in no doubt that the physical component of contempt is satisfied, with regard to both Accused. Mr. Rebić disclosed the transcript of Lieutenant van Kuijk's closed session testimony, along with his written witness statement to *Hrvatski List*. Mr. 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 Accused breached the closed session order.

The Trial Chamber is convinced that both Accused knew that what they were publishing was protected information. The interview with Mr. Rebić in *Hrvatski List* reveals that the newspaper was aware that publication of the material provided by Rebić would be in contravention of orders of the Tribunal, and the transcript of van Kuijk's testimony was clearly marked "closed session." Mr. Marijačić described the document that he was publishing as "secret." In a later edition of *Hrvatski List*, Marijačić wrote that he and 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, Mr. 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.

In conclusion, the Trial Chamber has found that both Accused deliberately disclosed information that was protected by an order for closed session made during the course of the *Blaškić* trial. It is 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 has taken 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 Mr. Marijačić and Mr. Rebić defied the closed session order is a serious matter which tends to diminish the authority of the Trial Chamber in the *Blaškić* trial. Furthermore, public confidence in the effectiveness of the Tribunal's protective measures is vital to the success of its work. It is therefore incumbent upon the Trial Chamber to take such steps as it can to ensure that there is no repetition of the type of conduct demonstrated by these Accused, on the part of themselves or any other person.

The Trial Chamber therefore finds both Ivica Marijačić and Markica Rebić guilty of contempt of the Tribunal, and imposes a fine on each of them of 15,000 Euros, to be paid within 30 days of this judgement to the Registrar of the Tribunal.

The hearing is now adjourned.

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