

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

(IT 95-14/1-AR77)

ANTO NOBILO**ANTO NOBILO***Found not guilty of contempt of the Tribunal in the case of the Prosecutor v. Zlatko Aleksovski (IT-95-14/1)*Counsel for the Defence in the case of *The Prosecutor v. Tihomir Blaškić*

- Acquitted

Indictment	None issued
Initial appearance	None
Trial Chamber Judgement	11 December 1998, sentenced to pay a fine of 10,000 guilders (4000 immediately, 6,000 pending)
Appeals Chamber Judgement	30 May 2001, found not guilty

STATISTICS

TRIAL	
Commenced	20 November 1998; trial held in closed session
Trial Chamber I	Judge Almiro Simões Rodrigues (presiding), Judge Lal Chand Vohrah, Judge Rafael Nieto Navia
Counsel for the Prosecution	Grant Niemann, Anura Meddegoda
Counsel for the Defence	Goran Mikuličić, Srdjan Joka
Judgement	11 December 1998

APPEAL	
Appeals Chamber	Judge David Hunt (presiding), Judge Richard May, Judge Patrick Robinson, Judge Fausto Pocar, Judge Mohamed El Habib Fassi Fihri
Counsel for the Prosecution	Anura Meddegoda
Counsel for the Defence	Goran Mikuličić, Srdjan Joka
Judgement	30 May 2001

RELATED CASES <i>by geographical area</i>	
ALEKSOVSKI (IT-95-14/1) "LASVA VALLEY"	
BLAŠKIĆ (IT-95-14) "LASVA 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.

In September 1998, during the re-examination of a defence witness in the trial of *Tihomir Blaškić*, Anto Nobile sought to tender a map which had been prepared by a witness who had been called in the *Aleksovski* trial. He named the witness and had the *Blaškić* witness identify the professional position held by him. The *Aleksovski* Trial Chamber had, however, granted protective measures, *inter alia*, in respect of that witness's identity, his face and his profession.

On 25 September 1998, the Prosecution filed a confidential motion regarding Anto Nobile's alleged violation of the Trial Chamber's witness protection order, requesting that he be punished for contempt of the Tribunal pursuant to Rule 77(A)(iii) of the Rules of Procedure and Evidence. In his written response, Anto Nobile did not contest the facts of the allegation, but argued that he had been unaware of the protective order. Noting the prosecution's motion, the Trial Chamber issued a confidential order dated 15 October 1998, calling upon Anto Nobile to appear in court.

TRIAL

The arguments of the parties were heard in closed session on 20 November 1998, before Trial Chamber I, consisting of Judge Almiro Simões Rodrigues (presiding), Judge Lal Chand Vohrah and Judge Rafael Nieto Navia.

TRIAL CHAMBER JUDGEMENT

With regard to the testimony by a witness before the Chamber, Sub-rules 77(A)(iii) and (v) provide that, "any person who ... discloses information relating to those proceedings in knowing violation of an order of the Chamber ... commits a contempt of the Tribunal." Having established the facts of the case, the legal question was whether Anto Nobile was in "knowing" violation.

In its judgement, the Trial Chamber considered that decisions regarding the protection of witnesses were of primary importance, not only for the protection of the lives of the witnesses, but also for the functioning of the Tribunal. Therefore, all those involved in the work of the Tribunal, including the lawyers, must take all necessary measures to guarantee the absolute respect of protective measures for witnesses. The Chamber held that "in knowing violation" not only entails a deliberate violation, but also a deliberate abstention from checking the circumstances under which a witness has given evidence.

According to the Trial Chamber, Anto Nobile had deliberately failed to ascertain whether protective measures had been made in relation to the witness. The Trial Chamber considered, on the one hand, that the violation was serious and unnecessary, and that it had been committed by an experienced professional. On the other hand, the Trial Chamber held that it was Anto Nobile's first violation and that he had committed himself not to do it again.

On 11 December 1998, the Trial Chamber rendered its judgement, convicting Anto Nobile of contempt of the Tribunal.

Sentence: Anto Nobile was fined 10,000 guilders (approximately 4,538 euros): 4,000 guilders to be paid within seven days, and 6,000 guilders only to be paid if, within a period of a year, Anto Nobile was found to be in contempt of the Tribunal again.

APPEAL PROCEEDINGS

On 18 December 1998, Anto Nobile filed a confidential application to appeal the Trial Chamber's finding. The application was granted on 22 December 1998. On 30 May 2001, the Appeals Chamber, consisting of Judge David Hunt (presiding), Judge Richard May, Judge Patrick Robinson, Judge Fausto Pocar and Judge Mohamed El Habib Fassi Fihri, rendered its judgement. They identified that the issue in the appeal was whether the Trial Chamber had erred in either law or fact in finding that Anto Nobile's violation of such an order was a "knowing" one, and thus that he was in contempt of the Tribunal.

The Appeals Chamber held that *actual* knowledge of the order was not required before it could be knowingly violated and that it was sufficient that the person charged with its violation acted in wilful blindness of the order. It defined wilful blindness as follows: "[p]roof of knowledge of the existence of the relevant fact is accepted in such cases where it is established that the defendant suspected that the fact existed (or was aware that its existence was highly probable) but refrained from finding out whether it did exist because he wanted to be able to deny knowledge of it (or he just did not want to find out that it did exist)." The Appeals Chamber held that wilful blindness is "equally culpable" as actual knowledge.

It found that there was no evidence of wilful blindness. The Prosecution had accepted that Anto Nobile "had been told that the map in question was a public document presented in open session." The Appeals Chamber considered that "[t]his may well have given him the impression that all circumstances surrounding the map were public." It emphasised that "[t]he fact that many protected witnesses give evidence in open court does not readily give rise to either the suspicion or the awareness of the high probability that a witness who gives evidence in open session is the subject of an order granting protective measures." The Appeals Chamber pointed out that if the witness in question were a victim, it could perhaps be argued that Defence Counsel experienced in the practices of the Tribunal "would be aware of the risk that there will be an order granting protective measures to that witness." However, it reiterated that the protected witness "was not a victim" and noted that Anto Nobile had described him as an expert giving evidence for the Prosecution and that such description had not been disputed. The Appeals Chamber considered that "[a]lthough some such witnesses may have been given the benefit of protective measures orders, it is not immediately apparent why protective measures would usually be needed for them, and there is no reason to suspect that all such witnesses may be the subject of such orders." The Appeals Chamber stated that "[t]here can be no wilful blindness to the existence of an order unless there is first of all shown to be a suspicion or a realisation that the order exists. It added that "[i]f the Trial Chamber's description of Mr. Nobile's failure to make inquiries as 'deliberate' was intended to be a finding of wilful blindness to the existence of the order, then the Appeals Chamber is satisfied that there was no basis in the evidence for such a finding." It also expressed its satisfaction "that there was no basis in the evidence for the necessary conclusions (which in any event the Trial Chamber did not express) that Mr. Nobile's failure to make an inquiry as to the existence of the order resulted from his wish to be able to deny knowledge of its existence or because he just did not want to find out that it did exist."

In addition, the Appeals Chamber expressed its opinion on the important issue of whether it is necessary for the Prosecution *also* to establish an intention to violate or disregard the violated order. It held that it is not necessary to establish an intention to violate the order and that it is sufficient that the person charged "acted with reckless indifference as to whether his act was in violation of the order."

Finally, the Appeals Chamber noted that at no time during the hearing did the Trial Chamber formulate a specific charge against Anto Nobile which identified the nature of the contempt alleged as being that on which the Prosecution had relied in its Motion. It also noted that the definition of a "knowing" violation of a Trial Chamber's order was not discussed at any time. The Appeals Chamber added that it is "essential that, where a Chamber initiates proceedings for contempt itself, it formulates at an early stage the nature of the charge with the precision expected of an indictment, and that it gives the parties the opportunity to debate what is required to be proved. It is only in this way that the alleged contemnor can be afforded a fair trial."

On 30 May 2001, the Appeals Chamber rendered its judgement, allowing the appeal by Anto Nobile and finding him not guilty of contempt of the Tribunal. The Appeals Chamber directed the Registrar to repay to him the sum of 4,000 guilders paid as the fine imposed by the Trial Chamber.

Judge Patrick Robinson appended a Separate Opinion to the judgement in which he expressed his "agreement with the decision of the Chamber in the matter" but stated that he did not believe that "the proceedings should have been instituted in the first place". Judge Robinson concluded that "although the

legal issues raised by the case are very important, much judicial time has been unnecessarily expended in this matter".