

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

(IT 95-14 R77.6)

DOMAGOJ MARGETIĆ

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Convicted of contempt of the Tribunal in the Prosecutor v. Tihomir Blaškić case - for disclosing information in direct violation of a court order and interfering with witnesses



Freelance journalist, former editor-in-chief of *Novo Hrvatsko Slovo* and former editor-in-chief of the Zagreb-based weekly publication *Hrvatsko Slovo*

- Sentenced to three months' imprisonment and a fine of 10,000 euros

Crimes convicted of:

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

- Domagoj Margetić published the complete confidential witness list from the case *Prosecutor v. Tihomir Blaškić* on his website.
- He also published on his website three articles: in one article he acknowledged that the witness identities he disclosed were protected; in another article he revealed the identities of two protected (international) witnesses who testified in non-public proceedings in the Tihomir Blaškić case, the date of the testimony, the pseudonym of one of the two witnesses and the fact that the witness testified in closed session; the third article revealed the identity, pseudonym and date of testimony of the other protected witness and, among other things, the fact that the witness testified in closed session.

Indictment	11 September 2006
Initial appearance	13 October 2006, pleaded not guilty
Trial Chamber Judgement	7 February 2007, sentenced to three months' imprisonment and a fine of 10,000 euros
Sentence served	Sentence completed on 3 April 2007

STATISTICS

Trial days	2
Witnesses called by Prosecution	3
Witnesses called by Defence	1

TRIAL	
Commenced	30 November 2006
Closing arguments	Received in written form
Trial Chamber I	Judge Alphons Orié (presiding), Judge Christine Van den Wyngaert, Judge Bakone Justice Moloto
Counsel for the Prosecution	Ann Sutherland, Salvatore Cannata
Counsel for the Defence	Veljko Miljević
Judgement	7 February 2007

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.

The initial indictment of Domagoj Margetić was confirmed on 26 April 2005, amended on 7 July and again on 29 August 2005. On 31 May 2006, the indictment was joined with another contempt case. The final indictment charged him with contempt of the Tribunal for disclosing the identity of a protected witness, extracts of closed-session witness testimony, and the fact that the protected witness had testified in non-public proceedings before the Tribunal. At the time, Domagoj Margetić was the former editor of *Hrvatsko Slovo* and the editor-in-chief of *Novo Hrvatsko Slovo*, both Zagreb-based weekly publications.

On 20 June 2006, the Trial Chamber granted the Prosecution's motion to withdraw the indictment against Domagoj Margetić "in the interests of justice and judicial economy".

A new indictment against Domagoj Margetić was confirmed and made public on 11 September 2006. The indictment charges the accused with contempt of the Tribunal for knowingly and willingly interfering with the administration of justice by publishing on or about 7 July 2006 until 2 August 2006 the complete confidential witness list from the case *Prosecutor v. Tihomir Blaškić* and three related articles on his website.

Domagoj Margetić was charged with:

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

On 13 October 2006, Domagoj Margetić pleaded not guilty.

TRIAL

The trial commenced on 30 November 2006 and subsequently resumed and concluded on 8 December 2006.

TRIAL CHAMBER JUDGEMENT

The Trial Chamber found that Domagoj Margetić disclosed information, namely the identities of protected witnesses, in violation of orders issued by the Trial Chamber in the case of Tihomir Blaškić.

Domagoj Margetić also met the relevant mental element requirements when he published the witness list. The Prosecution sent notification of confidentiality to Domagoj Margetić both through post and email. In a letter addressed to Domagoj 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 did not accept Domagoj 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 rejected the Defence argument that Domagoj Margetić believed that the witness list was or became a public document. To the contrary, in the accompanying articles, Domagoj Margetić repeatedly emphasized that he was publishing confidential information.

It was submitted that Domagoj Margetić found on the internet a decision of the Trial Chamber in the Josip Jović case 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 Trial Chamber in the Josip Jović case on the 11th of July. Furthermore, in the 3rd July decision of the Trial Chamber in the Josip Jović case, the witness list was not explicitly mentioned and nothing was 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 concluded that Domagoj Margetić only became aware of the questions about the status of the witness list after he had published it. Indeed, Domagoj Margetić did not refer to the purported decision of the Trial Chamber in the Josip Jović case any earlier than in September 2006. The contention that Domagoj Margetić believed that the witness list, at the time he published it, was a public document is therefore not credible.

The Trial Chamber considered 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 Domagoj 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 found 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.

Domagoj Margetić therefore interfered with witnesses when he published the witness list. The Trial Chamber was also satisfied that Domagoj 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 Domagoj 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 found that Domagoj Margetić 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). Domagoj Margetić acted in disrespect of both the Tribunal's orders and of the protected witnesses on the witness list.

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

On 7 February 2007, Trial Chamber rendered its judgement, convicting Domagoj Margetić with:

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

Sentence: Three months' imprisonment and a fine of 10,000 Euros.
He was entitled to credit for the 34 days he spent detained in custody in Croatia.

On 3 April 2007, Domagoj Margetić was released from custody after having served the sentence and paying his fine.