



**Organization for Security and Co-operation in Europe**  
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**Spot Report**

**ICTY convicts two Croatians for contempt of the Tribunal**

**Introduction**

On 10 March the ICTY convicted Ivica Marijačić, editor-in-chief of the Croatian weekly *Hrvatski List*, and Markica Rebić, former head of the Croatian Intelligence Service, with contempt of the Tribunal. Based on an article written by Marijačić and an interview with Rebić that appeared in mid-November 2004, both were found guilty of knowingly revealing the identity and testimony of a protected witness, contrary to an order of the Tribunal. The ICTY fined Marijačić and Rebić €15,000 each, citing the need to deter others from similar conduct that could undermine confidence in the ICTY's ability to grant effective protective measures. Notably, the ICTY stated that deliberate violation of the Tribunal's order was sufficient to establish interference with justice and hence contempt. Marijačić and Rebić have both announced their intention to appeal the conviction.

The fact that measures protecting the identity of the witness in question - a Dutch army officer who had served as a United Nations peacekeeper in Bosnia<sup>1</sup> - were lifted immediately prior to the trial indicates that the key issue for the ICTY was the intentional violation of its order, not the publication of the testimony *per se*<sup>2</sup>. Indeed, given the unsealing of this testimony for the contempt trial, it appears likely that if the journalists had applied to the ICTY to remove the protective measures in advance of publication, such a request would likely have been granted. The balance between press freedom and respect for court orders at issue in this case has direct relevance for the conduct of war crime proceedings in Croatia, including the Norac/Ademi trial anticipated to begin in 2006.

Despite the ICTY's verdict, it remains an open question how Rebić obtained the documents that revealed the identity as well as the content of the testimony.

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<sup>1</sup> This witness testified in the ICTY's case against Tihomir Blaškić.

<sup>2</sup> The Appeals Chamber at the request of the Prosecution lifted its order imposing protective measures prior to the trial commencing.

## The Judgment

In its unanimous judgment<sup>3</sup>, the Trial Chamber determined that Marijačić and Rebić were guilty of contempt after establishing that they not only published protected information in violation of a court order<sup>4</sup>, but did so deliberately<sup>5</sup>. In response to Marijačić's objection that the order did not apply to the public or the press, the ICTY concluded that its order "applies to all persons coming into possession of the protected information." The Chamber further established that Marijačić and Rebić knew the information was protected but proceeded with publication nonetheless. The Chamber cited numerous references in the publication which discussed the "secret" nature of the testimony<sup>6</sup>.

In response to arguments from Marijačić's about the public's right to know and Rebić that publication was in Croatia's national interest, the Trial Chamber stated that individuals, including journalists, could not decide to publish contrary to a court order, simply based on their own assessment of the public interest. In response to Rebić's argument that the Dutch soldier did not warrant the same type of protection as victims and that no harm had come to him from the publication, the Trial Chamber stated that once protective measures were in place, third parties cannot conduct their own assessment of whether they are necessary. Actual harm to the witness was irrelevant for purposes of determining whether the person revealing protected information committed contempt.

In imposing its sentence, the Trial Chamber noted that the gravity of the contempt was lessened since no harm had come to the witness as a result of the publication of his identity and testimony. However, the contempt was aggravated by the "deliberate and calculated" defiance of Marijačić and Rebić that tended to diminish the authority of the ICTY. In this regard, their motivation to correct what they perceived as a misrepresentation by the ICTY Prosecutor was irrelevant. Noting the need to discourage such behaviour, the Trial Chamber determined that Marijačić and Rebić created a risk that confidence would be undermined in the ICTY's ability to provide effective protective measures. This constituted a serious interference with the administration of justice. Concluding that the "work of the Tribunal has a long way to go ... [it] remains vital that its work should not be interfered with by irresponsible conduct on the part of journalists."

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<sup>3</sup> Although, during the trial Judge Bonomy questioned the point of the proceedings and suggested the case was a waste of the Tribunal's resources, in the end he voted to convict along with the two other judges.

<sup>4</sup> This was an oral order to hear the witness in closed session issued by the Blaškić Trial Chamber on 16 December 1997. According to the judgment, since the witness testified entirely in closed session, his identity as well as the content of his testimony was protected. Since his written statement was largely the same as his closed session testimony, the written statement was also considered protected.

<sup>5</sup> Rule 77(A)(ii), according to which Marijačić and Rebić were convicted provides that: "The Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who... (ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber."

<sup>6</sup> The title of the publication was "World Exclusive – The First to Publish the Secret Document that Shows Carla del Ponte's Plot against Croatia." In his interview in *Hrvatski List*, Rebić stated that he had provided the periodical with documents he knew to be protected and was aware that publication would be in contravention of ICTY orders. In an edition of *Hrvatski List* that appeared after the April 2005 indictment, Marijačić wrote that Rebić and he had "pondered at length the pros and cons," but despite awareness of its confidential nature, they opted for publication. Rebić confirmed to a Croatian news agency in late April 2005 that the documents were protected and indicated his awareness that he might face "consequences" for publicizing them.

### **Implications of the verdict for the pending contempt trial of Jović, Šešelj, Križić, and Margetić**

The Marijačić/Rebić judgment has implications for another contempt case involving Croatian journalists currently pending at the ICTY. In this second case, Josip Jović, former editor-in-chief of *Slobodna Dalmacija*, and the publisher and two former editors-in-chief of *Hrvatsko Slovo*, Stjepan Šešelj, Domagoj Margetić and Marijan Križić, are charged with revealing that Stjepan Mesić, President of Croatia, testified as a protected witness in a 1998 closed hearing in the Blaškić trial [see Fortnightly Report No.9/2005]<sup>7</sup>.

In contrast to the Marijačić/Rebić case, the four others are indicted not only for violation of the protective measures imposed during the Blaškić trial, but also for publication in violation of ICTY orders to cease and desist directed specifically to them. For example, the witness testimony was published by Jović in *Slobodna Dalmacija* in November and December 2000. After the ICTY ordered *Slobodna Dalmacija* to cease publication, the newspaper published the order under a headline revealing the name of the protected witness and accused the Tribunal of “an aggression against the rule of law.” Similarly, after an ICTY order to cease publishing protected material, Margetić wrote to the ICTY announcing that he did not recognize the court’s authority and would not obey the order. He then published additional excerpts of the witness’ testimony in December 2004 in a new publication, *Novo Hrvatsko Slovo*. Finally, Križić and Šešelj again disclosed the identity of the protected witness in *Hrvatsko Slovo*, after the ICTY’s ‘cease and desist’ order in December 2004.

The trial in this case is expected in 2006.

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<sup>7</sup> The ICTY Appeals Chamber in January 2006 lifted the measures protecting the identity and testimony of President Mesić [see Fortnightly Report No.03/2006].