

UNITED NATIONS

IT-95-14/1-T
17 DECEMBER, 1998

D6/3037bis
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International Tribunal for the Prosecution
of Persons Responsible for Serious
Violations of International Humanitarian
Law Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-95-14/1-T

Date: 11 December 1998

English
Original: French

IN THE TRIAL CHAMBER

Before: Judge Almiro Simões Rodrigues, Presiding
Judge Lal Chand Vohrah
Judge Rafael Nieto Navia

Registrar: Mr. Jean-Jacques Heintz, Deputy Registrar

Order of: 11 December 1998

THE PROSECUTOR

v.

ZLATKO ALEKSOVSKI

FINDING OF CONTEMPT OF THE TRIBUNAL

The Office of the Prosecutor:

**Mr. Grant Niemann
Mr. Anura Meddegoda**

Defence Counsel:

**Mr. Goran Mikuličić
Mr. Srdan Joka**

TRIAL CHAMBER I (hereinafter “the Trial Chamber”) of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (hereinafter “the Tribunal”);

NOTING the confidential motion filed on 25 September 1998 by the Prosecutor concerning the alleged violation of an order of the Trial Chamber by Mr. Nobile,

NOTING the letter of 25 September 1998 from the Embassy of Bosnia and Herzegovina to the Trial Chamber,

NOTING the letter from the Embassy of Bosnia and Herzegovina and the documents attached thereto filed on 19 November 1998,

NOTING the strictly confidential order of 22 October 1998 for Mr. Nobile to appear,

NOTING the written response of Mr. Nobile received on 22 October 1998,

NOTING the closed session hearing of 20 November 1998,

PURSUANT to Rule 77 of the Rules of Procedure and Evidence (hereinafter “The Rules”),

RENDERS THE FOLLOWING DECISION.

I. THE FACTS

In a confidential motion dated 25 September 1998, the Office of the Prosecutor submitted a complaint against Mr. Nobile and requested that, pursuant to Sub-rule 77(A)(iii) of the Rules, the Trial Chamber impose sanctions on Mr. Nobile for contempt of the Tribunal due to the “alleged violation of an order of the Trial Chamber”.

Mr. Nobile presented a map during the cross-examination of a witness (hereinafter “witness Alpha”) in open session in the case *The Prosecutor v. Tihomir Blaskić*. The map had been used

by another witness in the case *The Prosecutor v. Zlatko Aleksovski*. Further to a decision rendered on the same day as his appearance in open session, the witness (hereinafter “the Protected Person”) had been granted protective measures, *inter alia*, in respect of his identity, his face, and his profession. While showing the map to witness *Alpha*, Mr. Nobile disclosed the identity and profession of the Protected Person in the following manner¹:

Mr. Nobile: Tell me, to your knowledge who is “X”.

“Alpha”: “X” is the ...(professional capacity) in Lasva.

Mr. Nobile: So, he is a senior representative of (with other characteristics).

“Alpha”: Yes.

Mr Nobile: We would like to request that this map, which shows that a Bosnia and Herzegovina army unit was in Ahmici, be tendered as evidence. “X”, an expert witness for the Prosecution in the *Aleksovski* case, stated this.

II. EVALUATION

Sub-rules 77 (A) (iii) and (v) of the Rules state that “[A]ny person who discloses information relating to those proceedings in knowing violation of an order of the Chamber [...] commits a contempt of the Tribunal”.

The facts clearly show that the identity and professional capacity of the Protected Person were disclosed to the public in violation of a decision of the Trial Chamber. The fact that the violation occurred is not contested by Mr. Nobile.

Mr. Nobile however pleaded that he had acted in good faith while explaining that he had not known that the Trial Chamber had ordered those measures, thereby implicitly referring back to the wording of Rule 77 which states that a “knowing” violation must be committed in order to constitute contempt of the Tribunal. The legal question which must be evaluated here is whether a “knowing” violation was committed by Mr. Nobile.

¹ For obvious security reasons, we have replaced the names of the various protagonists in the following ways:
“X”: the name of the protected person
professional capacity: the position and status of the protected person
“Alpha”: the witness examined by Mr. Nobile in the *Blaskić* case.

As counsel at this Tribunal, Mr. Nobile is obligated under all circumstances to comply with the Rules and the decisions rendered by the Tribunal during proceedings. He is also obligated to take all necessary steps to ensure that his action does not discredit the Tribunal. Such obligations are listed in Sub-rule 44(B) of the Rules, as well as in Articles 12(1) and 15(1) of the Code of Professional Conduct, and necessarily imply the obligation to verify that nothing he does violates a decision of the Tribunal.

The Trial Chamber notes that the well-established practice of the Tribunal demonstrates that the decisions of the Trial Chambers may be written or oral, public or confidential. Any decision relating to the protection of witnesses is of utmost importance, not only for the lives of the witnesses but also for the operations of the Tribunal. Witness protective measures are considered to be so crucial that they are covered by specific provisions both in the Statute and the Rules. This means that all persons striving to achieve justice at the Tribunal, including counsel, are duty bound to take all the necessary steps to guarantee absolute compliance with measures adopted for the protection of witnesses.

The Trial Chamber therefore considers that a “knowing” violation means not only a deliberate violation but also a deliberate failure to ascertain the circumstances under which a witness testified.

In the case in point, Mr. Nobile was aware of that obligation since, according to his own statements, he was careful to confirm with Mr. Mikuličić that the map in question was a public document which had been presented in open session. Mr. Nobile explained that he had not, however, taken the trouble to verify whether the witness was protected, even though it is a common practice within the Tribunal for a protected witness to appear in open session, a fact which Mr. Nobile, as an experienced counsel at this Tribunal, must have known.

This notwithstanding, Mr. Nobile had at least two very simple and direct ways to determine whether the witness was protected. He could have asked his colleague Mr. Mikuličić, who gave him the map and with whom he is regularly in contact, if only because they share the same residence in The Hague, or consulted the transcripts of the hearing during which the map was presented, which are public and easily accessible, even if only through the intermediary of Mr. Mikuličić.

By not doing so, he failed to avail himself of a source of information which was both readily available and logical to consult under the circumstances in the case in point, the mere cursory consultation of which would have given him to the information needed to avoid the violation.

Consequently, the Trial Chamber deems that by failing to verify matters, which counsel at the Tribunal must imperatively do, Mr. Nobile knowingly violated an order of the Trial Chamber within the meaning of Rule 77,

III. SANCTIONS

Sub-rule 77(B) of the Rules states that in case of contempt of the Tribunal, the Trial Chamber may “impose a fine not exceeding Dfl 20,000 or a term of imprisonment not exceeding six months”.

In determining the sanction, the Trial Chamber took into account that, in respect of the cases which may be characterised as contempt, pursuant to Rule 77, the disclosure of the identity and profession of a protected witness constitutes a serious violation. The Trial Chamber also took into account the fact that Mr. Nobile is an experienced professional and that he had absolutely no need to disclose the name of the Protected Person in order to use the map in the *Blaskić* case. Mr. Nobile, in fact, knew perfectly well that the map in question had been introduced by a Prosecution witness. The authenticity of the document was therefore in no way in question and there was no need to have it “identified” by another witness.

As mitigating circumstances, the Trial Chamber noted that it was the first violation committed by Mr. Nobile, that he had undertaken not to repeat such violations in the future, and that some of the consequences of this violation were immediately righted by the Trial Chamber hearing the case *The Prosecutor v. Tihomir Blaskić*.

The Trial Chamber deems that the imposition of a fine is sufficient to guarantee the punitive and preventive effects of the conviction.

As the matter currently stands in respect of the sanctions provided pursuant to Rule 77, and taking into account the factors laid out above, the Trial Chamber decides to fine Mr. Nobile NLG 10,000, part of which must be paid and part of which shall be suspended.

IV. DECISION**FOR THE FOREGOING REASONS**

The Trial Chamber

- **FINDS** Mr. Nobile to be **IN CONTEMPT** of the Tribunal.
- **IMPOSES** a fine of NLG 10,000 on Mr. Nobile.
- **DECIDES** to suspend the payment of NLG 6,000 for one year, if Mr. Nobile is not found in contempt of the Tribunal during that period.
- **ORDERS** Mr. Nobile to pay the remaining NLG 4,000 within seven (7) days of this decision.

Done in French and in English, the French version being authoritative.

Done this eleventh day of December 1998
At The Hague
The Netherlands

(Signed)

Almiro Simões Rodrigues
Presiding Judge Trial Chamber I

(Seal of the Tribunal)