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UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case:	IT-94-1-A-R77
	Date:	31 January 2000
	Original:	English

IN THE APPEALS CHAMBER

Before: Judge Mohamed Shahabuddeen, Presiding
Judge Antonio Cassese
Judge Rafael Nieto-Navia
Judge Florence Ndepele Mwachande Mumba
Judge David Hunt

Registrar: Mrs Dorothee de Sampayo Garrido-Nijgh

Judgment of: 31 January 2000

PROSECUTOR

v

DUŠKO TADIĆ

JUDGMENT ON ALLEGATIONS OF CONTEMPT AGAINST PRIOR COUNSEL, MILAN VUJIN

Counsel for the Respondent

Mr Vladimir Domazet for Milan Vujin

Counsel for the Interested Parties

Mr Upawansa Yapa, Ms Brenda Hollis and Mr Michael Keegan for the Prosecutor
Mr Anthony Abell for Duško Tadić

Judgment on Allegations of Contempt Against Prior Counsel, Milan Vujin

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I Introduction

1. On 10 February 1999, the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991 ("Tribunal") called upon Mr Milan Vujin, Advocate of Belgrade, to respond to allegations that he had acted "in contempt of the International Tribunal in that he knowingly and wilfully intended thereby to interfere with the administration of justice".[1] This was done in accordance with Rule 77 of the Tribunal's Rules of Procedure and Evidence.

2. Mr Vujin ("Respondent") had acted for Duško Tadić ("Tadić") in different capacities in proceedings in the Tribunal – as non-assigned co-counsel during the pre-trial stage of his prosecution, and as assigned lead counsel in the preparation of his appeal against his conviction and in the hearing of related proceedings before the Appeals Chamber – until November 1998. He had worked with the defence team during the pre-trial stage for a year without remuneration, and paying his own expenses. The allegations of contempt arose out of the Respondent's conduct as lead counsel on behalf of Tadić in connection with the appeal. They were made in statements annexed to the Scheduling Order, which described the statements as appearing –

> [...] to disclose grave allegations of contempt of the International Tribunal against Mr Milan Vujin, lead counsel for [Tadić] at the time of the events complained of, including:
>
> (i) telling persons about to give statements to co-counsel for [Tadić] what they should or should not say before they were interviewed by [Witness D], and in effect instructing them to lie to [Witness D];
> (ii) nodding his head to indicate to witnesses, during witness interviews with [Witness D], when to say yes and when to say no;
> (iii) interfering with witnesses in a manner which dissuaded them from telling the truth;
> (iv) knowingly instructing a witness to make false declarations in a statement to the International Tribunal; and
> (v) paying a person giving a statement money when pleased with the information provided, but not paying him when he did not answer as instructed [...].

The Scheduling Order specified that these acts were alleged to have occurred between September 1997 and April 1998.

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[1] Scheduling Order Concerning Allegations Against Prior Counsel, 10 Feb 1999 ("Scheduling Order"), Order (1). That Order was made on a confidential basis. However, an order is made by this Judgment releasing a redacted version of that Scheduling Order as a public document, but not the statements attached to it.

3. Witness D had been co-counsel for Tadić (with the Respondent) during the preparations for his appeal. He gave evidence in closed session, having been granted protective measures in relation to his identity for reasons unassociated with his position as counsel.

4. The five numbered paragraphs in the Scheduling Order did not purport to be an exclusive definition of the "grave allegations of contempt" to which that Order required the Respondent to respond. From the outset of the hearing, the parties concentrated upon the events which were related in the statements rather than upon the five numbered paragraphs. This Judgment deals with those events in Sections V and VI.

5. The time frame from September 1997 to April 1998 was intended to be based upon the events described in the statements. It is not completely accurate. For example, in one matter in which it was alleged that the Respondent put forward to the Appeals Chamber a case which was known to him to be a false one, the relevant document was in fact filed on 1 May 1998, although it is clear from the statements that the decision to do so is alleged to have been made prior to that date. The Respondent was at all times made aware of the case which he had to meet in relation to that matter. The Appeals Chamber considers the fact that the document was filed on that date was not material in the circumstances.

6. Evidence was also admitted in relation to events which occurred outside that period. However, this was not for the purpose of increasing the content of the allegations against the Respondent; the purpose was merely to demonstrate a particular course of conduct or to explain the events which took place within that period. Also, the Respondent was again at all times made aware of the case which he had to meet.

II The hearing

7. The allegations of contempt against the Respondent came to the attention of the Appeals Chamber in a somewhat indirect fashion. In support of Tadić's appeal, the Appeals Chamber had granted him an *ex parte* Order to the Republika Srpska to assist those representing him to take statements from potential witnesses. Those witnesses were interviewed by the Respondent and Witness D at the Prijedor police station on 14 March 1998.

8. In October 1998, the prosecution filed a motion alleging (1) that those interviews had been conducted in a way that amounted to intimidation and a violation of fundamental rights, in particular of persons indicted by the Tribunal, and (2) that an interpreter with the Tadić legal team had made telephone calls to a potential witness which the witness had perceived to be threatening. It was also alleged by the prosecution that "Defence Counsel" or their agents had attempted "to shape the statements of potential witnesses".[2] The Appeals Chamber scheduled a closed session hearing of that motion for 9 October, but the prosecution called no witnesses at the hearing in support of its allegations. On 4 November, the Appeals Chamber dismissed the prosecution's complaint upon the basis that the evidence did not support the allegations.[3]

9. Shortly after those allegations were dismissed, Witness D brought to the attention of the Deputy Registrar certain conduct alleged on the part of the Respondent in connection with (a) the interviews at the Prijedor police station in March 1998 and (b) the submission to the Appeals Chamber in May 1998 of the statement of a proposed witness (and indicted person), Mlađo Radić. Witness D was requested by the Deputy Registrar to produce any material in support of his allegations; and Witness D did so. On 10 February 1999, the Appeals Chamber issued the Scheduling Order to which reference has already been made, which required the Respondent to respond to the allegations of contempt and which fixed 30 March for an initial hearing. Pursuant to Rule 69 of the Rules of Procedure and Evidence, certain protective measures were put into place for potential witnesses to be called in the case against the Respondent. Both the prosecution and Tadić were granted leave to appear in the contempt proceedings as interested parties. On 24 March, the Appeals Chamber made an order as to the procedure to be followed at the hearing, and this order was made public. The Respondent filed a document formally denying the allegations against him.[4]

10. On 30 March, the Respondent filed a motion seeking an adjournment, explaining that, in view of the NATO attack on the Federal Republic of Yugoslavia (Serbia and Montenegro) which had just commenced, he had been unable to obtain a visa to travel. The hearing was postponed until 26 April. On that date, the hearing commenced in public. The allegations of contempt were read,

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2 Decision on Prosecution Request for Orders Regarding Defence Harassment and Intimidation of Potential Witnesses, 4 Nov 1998, p 2. An order is made by this Judgment releasing a redacted version of that Decision and the respective pleadings as public documents.

3 *Ibid*, p 4.

4 Notice Identifying the Witnesses Concerning Allegations Against Prior Counsel, 26 Feb 1999, p 3.

and the Respondent confirmed his previous written submission denying the allegations. Four witnesses were heard (one part-heard) during the three days before the Respondent was required to return to his country, and the proceedings were adjourned. Throughout the case against the Respondent, the witnesses were called by the Appeals Chamber in accordance with Rule 77, but the burden of proving that case was effectively assumed by counsel appearing for Tadić.

11. Due to scheduling difficulties and the involvement of various judges in other cases, the evidence of the part-heard witness was not completed until a one day hearing on 28 June. The hearing resumed for a two week period commencing on 31 August, immediately following the Tribunal's Summer recess.[5] Eight further witnesses were heard (one by video conference link), completing the case against the Respondent. Six of the witnesses called in that case were assigned pseudonyms, and their evidence was heard in closed session because of concerns of possible retribution if their identity were disclosed in public.[6] The Respondent elected to call his witnesses before giving evidence himself.[7] Four of the Respondent's witnesses were heard during that two week period, and four more were heard in the week commencing 11 October. At the request of the Respondent, and with the partial support of the prosecution, the whole of the Respondent's case was heard in closed session.[8] At the request of all parties, the final addresses were also heard in closed session.[9] The hearing concluded on 18 November, when the Appeals Chamber reserved its judgment.

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5 Because of Judge Wang's illness at that time, he was (by consent) replaced by another judge. The then President assigned Judge Hunt temporarily to the Appeals Chamber for that purpose.

6 A number of persons who did not give evidence were named in evidence given and in documents tendered during the various closed sessions in the course of the hearing. For the purposes of this Judgment, it has been necessary to refer to some events concerning those persons, and an order is made by the Judgment releasing to the public the material to which reference has been made. Pseudonyms have been assigned to those persons named where there exist concerns of possible similar retribution.

7 His right to do so was argued at the hearing. The Appeals Chamber ruled that it was a matter for the Respondent to decide when he gave his evidence, but stated that, in evaluating his evidence if it were given after that of his own witnesses, the Appeals Chamber would take into account the fact that he had heard that evidence before giving his own (9 Sept 1999, Transcript pages 1361-1362).

8 This was a majority decision; Judges Nieto-Navia and Hunt dissented.

9 This was also a majority decision; Judge Hunt dissented.

III Contempt

12. Contempt of the Tribunal is dealt with in Rule 77 of the Tribunal's Rules of Procedure and Evidence. That Rule identifies a number of specific situations which are stated to constitute contempt of the Tribunal, but Rule 77(E) provides:

> Nothing in this Rule affects the inherent power of the Tribunal to hold in contempt those who knowingly and wilfully interfere with its administration of justice.

It has not been submitted in this case that, if established, the allegations against the Respondent in the present case would not constitute contempt of the Tribunal in that general sense. There was, however, argument as to whether the various changes made to Rule 77 over the relevant period qualified such an inherent power and increased the extent of the conduct which amounts to contempt, to the prejudice of the Respondent's rights.[10] Reference will be made to that argument later, as it is necessary, first, to consider generally the Tribunal's jurisdiction to deal with contempt.

13. There is no mention in the Tribunal's Statute of its power to deal with contempt. The Tribunal does, however, possess an inherent jurisdiction, deriving from its judicial function, to ensure that its exercise of the jurisdiction which is expressly given to it by that Statute is not frustrated and that its basic judicial functions are safeguarded.[11] As an international criminal court, the Tribunal must therefore possess the inherent power to deal with conduct which interferes with its administration of justice. The content of that inherent power may be discerned by reference to the usual sources of international law.

14. There is no specific customary international law directly applicable to this issue. There is an international analogue available, by way of conventional international law, in the Charter of the International Military Tribunal (an annexure to the 1945 London Agreement)[12] which gave to that

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[10] Rule 6(D) of the Rules of Procedure and Evidence provides that an amendment made to the Rules shall not operate to prejudice the rights of the accused in any pending case.

[11] *Nuclear Tests Case*, ICJ Reports 1974, pp 259-260, par 23, followed by the Appeals Chamber in *Prosecutor v Blaškić*, Case IT-95-14-AR108*bis*, Judgment on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, 29 Oct 1997 ("*Blaškić Subpoena Decision*"), footnote 27 at par 25. See also *Northern Cameroons Case*, ICJ Reports 1963, p 29.

[12] Agreement by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics for the Prosecution and Punishment of the Major War Criminals of the European Axis, 8 August 1945.

tribunal the power to deal summarily with "any contumacy" by "imposing appropriate punishment, including exclusion of any Defendant or his Counsel from some or all further proceedings, but without prejudice to the determination of the charges".[13] Although no contempt matter arose before the International Military Tribunal itself, three contempt matters were dealt with by United States Military Tribunals sitting in Nürnberg in accordance with the Allied Control Council Law No 10 (20 December 1945), whereby war crimes trials were heard by the four Allied Powers in their respective zones of occupation in Germany. That Law incorporated the Charter of the International Military Tribunal. The US Military Tribunals interpreted their powers as including the power to punish contempt of court.[14]

15. It is otherwise of assistance to look to the general principles of law common to the major legal systems of the world, as developed and refined (where applicable) in international jurisprudence.[15] Historically, the law of contempt originated as, and has remained, a creature of the common law. The general concept of contempt is said to be unknown to the civil law, but many civil law systems have legislated to provide offences which produce a similar result.

16. In a passage widely accepted as a correct assessment of the purpose and scope of the law of contempt at common law as developed over the centuries, the Report of the (UK) Committee on Contempt of Court, published in 1974, described it as:

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[13] Article 18(c).

[14] All references are taken from "Trials of War Criminals Before the Nuernberg Military Tribunals under Control Council Law No 10": *US v Karl Brandt*, 27 June 1947, at 968-970 (where a prosecution witness assaulted one of the accused in court); *US v Joseph Altstoetter*, 17 July 1947, at 974-975, 978, 992 (where defence counsel and a private individual attempted improperly to influence an expert medical witness by making false representations, and mutilated an expert report in an attempt to influence the signatories of the report to join in altering it); and *US v Alfried Krupp von Bohlen und Halbach*, 21 Jan 1948, at 1003, 1005-1006, 1088, 1011 (where defence counsel staged a walk out, and then failed to appear, in protest of a ruling against their clients, but which conduct was ultimately dealt with on a disciplinary basis).

[15] cf *Prosecutor v Blaškić*, Case IT-95-14-PT, Decision on the Objection of the Republic of Croatia to the Issuance of Subpoenae Duces Tecum, TC II, 18 July 1997, par 152; *Prosecutor v Furundžija*, Case IT-95-17/1, 10 Dec 1998, Judgment, pars 177-178.

> [...] a means whereby the courts may act to prevent or punish conduct which tends to obstruct, prejudice or abuse the administration of justice either in relation to a particular case or generally.[16]

The rule of law, which lies at the heart of society, is necessary to ensure peace and good order, and that rule is directly dependent upon the ability of courts to enforce their process and to maintain their dignity and respect. To maintain their process and respect, the common law courts have, since the twelfth century, exercised a power to punish for contempt.[17] In order to avoid any misconception, it is perhaps necessary to emphasise that the law of contempt as developed at common law is not designed to buttress the dignity of the judges or to punish mere affronts or insults to a court or tribunal; rather, it is justice itself which is flouted by a contempt of court, not the individual court or judge who is attempting to administer justice.[18]

17. Although the law of contempt has now been partially codified in the United Kingdom,[19] the power to deal with contempt at common law has essentially remained one which is part of the inherent jurisdiction of the superior courts of record, rather than based upon statute. On the other hand, the analogous control exercised in the civil law systems over conduct which interferes with the administration of justice is based solely upon statute, and the statutory provisions, in general, enact narrow offences dealing with precisely defined conduct where the jurisdiction of the courts has been or would be frustrated by that conduct.[20]

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[16] Report of the Committee on Contempt of Court, UK Cmnd 5794 (1974) ("Phillimore Committee Report"), par 1. That passage has been accepted as a correct assessment of the purpose and scope of the law of contempt by the European Court of Human Rights, in *Sunday Times v United Kingdom*, Series A Vol 30 at pars 18 and 55, (1979) 2 EHRR 245 at 256, 274, by the English House of Lords, in *Attorney-General v Times Newspaper Ltd* [1992] 1 AC 191 at 207-209 (per Lord Ackner), and by the Ontario Court of Appeal, in *Regina v Glasner* (1994) 119 DLR (4th) 113 at 128-129. See also *AMIEU v Mudginberri Station Pty Ltd* (1986) 161 CLR 98 at 106 (High Court of Australia); *Witham v Holloway* (1995) 183 CLR 525 at 533 (per joint judgment), 538-539 (per McHugh J) (High Court of Australia); *US v Dixon & Foster* 509 US 688 (1993) at 694 (Supreme Court of the United States).

[17] *United Nurses of Alberta v Attorney-General for Alberta* (1992) 89 DLR (4th) 609 at 636 (per McLachlin J, for the majority of the Supreme Court of Canada).

[18] *Attorney-General v Leveller Magazine Ltd* [1979] AC 440 at 449 (per Lord Diplock). This statement has frequently been quoted with approval.

[19] Contempt of Court Act 1981, following in part the recommendations of the Phillimore Committee Report.

[20] For example, the German Penal Code punishes as a principal offender anyone who incites a witness to make a false statement (§§ 26, 153). The Criminal Law of the People's Republic of China punishes anyone who entices a witness to give false testimony (Article 306). The French *Nouveau Code Pénal* punishes those who pressure a witness to give false evidence or to abstain from giving truthful evidence (Article 434-15). More general statutory provisions exist which deal with such things as the control of the hearing (*police de l'audience*), "affronts" (*outrages*),

[FOOTNOTE CONTINUED NEXT PAGE]

18. A power in the Tribunal to punish conduct which tends to obstruct, prejudice or abuse its administration of justice is a necessity in order to ensure that its exercise of the jurisdiction which is expressly given to it by its Statute is not frustrated and that its basic judicial functions are safeguarded. Thus the power to deal with contempt is clearly within its inherent jurisdiction.[21] That is not to say that the Tribunal's powers to deal with contempt or conduct interfering with the administration of justice are in every situation the same as those possessed by domestic courts, because its jurisdiction as an international court must take into account its different setting within the basic structure of the international community.[22]

19. This Tribunal has, since its creation, assumed the right to punish for contempt. The original Rules of Procedure and Evidence, adopted on 11 February 1994, provided by Rule 77 ("Contempt of Court") for a fine or a term of imprisonment where – subject to the provisions of what is now Rule 90(F), which permits a witness to object to making any statement which may tend to incriminate him or her – a witness "refuses or fails contumaciously to answer a question relevant to the issue before a Chamber". In January 1995, such punishment was also made applicable to a person who attempts to interfere with or intimidate a witness, and any judgment of a Chamber under Rule 77 was made subject to appeal.[23] In July 1997, such punishment was also made applicable to any party, witness or other person participating in proceedings before a Chamber who discloses information relating to the proceedings in violation of an order of the Chamber. Both of these additions expressly identified the relevant conduct as "contempt".

20. In November 1997 – that is, shortly after the relevant period in this case commenced in September 1997 – Rule 77 was recast in a different form. The effect of the alterations was:

(a) to elaborate the references to an interference with or intimidation of a witness to include a witness who is giving, has given, or is about to give evidence before a Trial Chamber,

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offences committed during the hearings (for example, *delits d'audience*) and the publication of comments tending to exert pressure (*pression*) on the testimony of witnesses or on the decision of any court. The Russian Criminal Code punishes interference in any form whatsoever with the activities of the court where the purpose is to obstruct the effectuation of justice (Article 294), and also provides more specific offences such as the falsification of evidence (Article 303).

[21] The Appeals Chamber has already held this to be so, but as an *obiter dictum* only, in the *Blaškić Subpoena Decision*, par 59.

[22] *Blaškić Subpoena Decision*, par 40.

[23] The heading of the rule was corrected to read "Contempt of the Tribunal".

(b) to include within the conduct which amounts to contempt the failure of any person without just excuse to comply with an order to attend or to produce documents before a Chamber,

(c) to provide a detailed procedure whereby a person may be called upon to answer an allegation that he or she is in contempt (where the Chamber has good reason to believe that the person may be in contempt),

(d) to provide for counsel to be assigned where the person called upon is indigent, and

(e) to require leave before an appeal could be brought.

It was also expressly stated for the first time that nothing in Rule 77 affects "the inherent power of the Tribunal to hold in contempt those who knowingly and wilfully interfere with its administration of justice".

21. In July 1998, the time within which leave to appeal had to be sought was varied so as to take into account the absence of the party challenging a determination of contempt where that determination had been made orally.

22. In December 1998 – that is, well after the relevant period in this case concluded in April 1998 – the references to interference with or intimidation of a witness were further elaborated so as to include for the first time any person who threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness or a potential witness, and to include within the conduct which amounts to contempt –

(i) threatening, intimidating, offering a bribe to, or otherwise seeking to coerce any person, with the intention of preventing that person from complying with an obligation under an order of a judge or a Chamber, and

(ii) incitement to commit, and any attempt to commit, "any of the acts punishable under this Rule".

The procedure whereby a person may be called upon to answer an allegation of contempt was varied to spell out in more detail the steps to be taken by the Chamber in initiating the proceedings. The maximum punishment was substantially increased, and the right to seek leave to appeal was limited to decisions made by a Trial Chamber.

23. Rule 77, so far as it is relevant, is now in the following terms:

> **Contempt of the Tribunal**
>
> (A) Any person who
>
> (i) being a witness before a Chamber, contumaciously refuses or fails to answer a question,
> (ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber, or
> (iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber,
>
> commits a contempt of the Tribunal.
>
> (B) Any person who threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness, commits a contempt of the Tribunal.
>
> (C) Any person who threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber, commits a contempt of the Tribunal.
>
> (D) Incitement to commit, and attempts to commit, any of the acts punishable under this Rule are punishable as contempts of the Tribunal with the same penalties.
>
> (E) Nothing in this Rule affects the inherent power of the Tribunal to hold in contempt those who knowingly and wilfully interfere with its administration of justice.

Sub-rules (F) and (G) deal with procedure, (H) and (I) with penalty and (J) with leave to appeal.

24. Care must be taken not to treat the considerable amount of elaboration which has occurred in relation to Rule 77 over the years as if it has produced a statutory form of offence enacted by the judges of the Tribunal, notwithstanding the form in which Sub-rules (A) to (D) may be expressed. Article 15 of the Tribunal's Statute gives power to the judges to adopt only –

> [...] *rules of procedure and evidence* for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters.[24]

That power does not permit rules to be adopted which constitute *new* offences, but it does permit the judges to adopt *rules of procedure and evidence* for the conduct of matters falling within the inherent jurisdiction of the Tribunal as well as matters within its statutory jurisdiction.[25] As stated earlier, the *content* of these inherent powers may be discerned by reference to the usual sources of international law, but not by reference to the wording of the rule.

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[24] The emphasis has been added.

[25] Rule 91, which deals with false testimony, is another provision in the Rules concerning the conduct of a matter falling within the inherent jurisdiction of the Tribunal.

25. Sub-rules (A) to (D) are statements of what was seen by the judges at Plenary meetings of the Tribunal to reflect the jurisprudence upon those aspects of the law of contempt as are applicable to the Tribunal. Those statements do not displace the underlying law; both the Tribunal and the parties remain bound by that underlying law.[26]

26. In the opinion of the Appeals Chamber:

(a) the inherent power of the Tribunal as an international criminal court to deal with contempt is for present purposes adequately encompassed by the wording of the reservation inserted in Rule 77 in November 1997 – that the Tribunal has the power "to hold in contempt those who knowingly and wilfully interfere with its administration of justice" – as such conduct would necessarily fall within the general concept of contempt, being "conduct which tends to obstruct, prejudice or abuse the administration of justice";[27] and

(b) each of the formulations in the current Rules 77(A) to (D), when interpreted in the light of that statement of the Tribunal's inherent power, falls within – but does not limit – that inherent power, as each clearly amounts to knowingly and wilfully interfering with the Tribunal's administration of justice.

27. It was argued by the Respondent that the nature of the conduct which amounts to contempt had been greatly increased to the prejudice of his rights by the amendments made to Rule 77 both after the commencement of the relevant period in this case and after its conclusion. Those are the amendments made –

(i) in November 1997, which refer for the first time to the inherent power of the Tribunal to hold in contempt those who knowingly and wilfully interfere with its administration of justice, and

(ii) in December 1998, which are said to have widened the conduct amounting to contempt to include for the first time any coercion of witnesses by threats, intimidation or bribes.

The Respondent submitted that the Appeals Chamber should accordingly disregard those changes in these proceedings.[28]

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[26] Rule 96, which deals with evidence in cases of sexual assault, is a similar statement insofar as it deals with the admissibility of evidence of consent by the victim.

[27] See footnote 16.

[28] Transcript pages 14-16, 25. The issue was briefly mentioned again, at Transcript pages 986-987, 1007.

28. The Appeals Chamber rejects that argument. The inherent power of the Tribunal to deal with contempt has necessarily existed ever since its creation, and the existence of that power does not depend upon a reference being made to it in the Rules of Procedure and Evidence. As the Appeals Chamber is satisfied that the current formulation of Rules 77(A) to (D) falls within that inherent power, the amendments made in December 1998 did not increase the nature of the conduct which amounts to contempt to the prejudice of the Respondent's rights.[29]

29. As stated earlier, it has not been submitted in this case that the allegations made against the Respondent, if established, would not constitute contempt of the Tribunal in the sense of knowingly and wilfully interfering with its administration of justice. It therefore remains only for the Appeals Chamber to consider whether those allegations have been established against the Respondent.

IV The background to the allegations

30. The allegations of contempt against the Respondent have to be considered against the extensive background of Tadić's trial and the preparations for his appeal. Included in those preparations was an application, made in accordance with Rule 115 of the Tribunal's Rules of Procedure and Evidence, to present additional evidence to the Appeals Chamber in relation to a substantial number of factual issues.[30] It was during the preparation of that application that the conduct of the Respondent amounting to contempt presently being considered by the Appeals Chamber is alleged to have taken place. Although the application to present the additional evidence was ultimately unsuccessful,[31] that fact does not affect the nature of the conduct which has been alleged.

31. One particular issue arising out of the trial is of relevance to many of the allegations of contempt. That concerned the identification of Tadić as being involved in at least two of the incidents which were investigated at the trial and in relation to which the Trial Chamber found

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[29] The ruling given on 26 April 1999 during the hearing (at Transcript page 33) expressly left open the issue as to whether the amendments made after the relevant period did indeed introduce a new standard of conduct.

[30] Motion for the Extension of Time Limit, 6 Oct 1997; as elaborated in Appellant's Brief in Relation to Admission of Additional Evidence Under Rule 115, 5 Feb 1998.

[31] Decision on Appellant's Motion for the Extension of Time-Limit and Admission of Additional Evidence, 15 Oct 1998.

against him. The first was the killing of two Muslim policemen at Kozarac; the second was the beating of six prisoners at the Omarska camp as a result of which four of them were alleged to have died.

32. Tadić was charged in Count 1 of the indictment with persecution on political, racial and/or religious grounds, amounting to a crime against humanity.[32] It was alleged under this count that Tadić was actively involved in the attack by Serbian forces upon the village of Kozarac and other villages and hamlets in the surrounding area of what is now part of the Republika Srpska, during which the majority of the non-Serb population of the area were seized and transferred to detention centres. It was alleged that Tadić also took part in the killing and beating of a number of the seized persons.[33]

33. Although not specifically charged, but nevertheless held to be relevant to the charge, evidence was led that, on the afternoon of 26 May 1992, Tadić and about sixteen other Serb paramilitaries were pointing weapons at six Muslim policemen from Kozarac, who were standing in line in front of the Serbian Orthodox Church with their hands behind their necks. Tadić pulled two of the policemen out of the line and killed them by slitting their throats, also stabbing each one several times.[34] The evidence of Tadić's participation relied upon a sole witness, one Nihad Seferović,[35] although there was substantial evidence that Tadić had been in the general area over this period.[36] The case put forward by Tadić at the trial was that he was not in Kozarac from 24 to 27 May 1992, and evidence was led from a number of witnesses who were there during that period and who said that they had not seen him.[37] There was also a challenge to the ability of Seferović, to view these events in the churchyard clearly.[38] The Trial Chamber found beyond reasonable doubt that Tadić killed the two policemen in front of the Serbian Orthodox church.[39]

34. In his appeal against conviction, Tadić alleged that this finding constituted an error of fact leading to a miscarriage of justice, submitting that the evidence of Seferović was both –

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[32] Tribunal's Statute, Article 5(h).
[33] Indictment, par 4.1.
[34] *Prosecutor v Tadić,* Case IT-94-1-T, Opinion and Judgment, 7 May 1997 ("Trial Judgment"), par 393.
[35] *Ibid*, at par 393.
[36] *Ibid*, at pars 380-386.
[37] *Ibid*, at pars 394-395.
[38] *Ibid*, at par 393.
[39] *Ibid*, par 397.

(a) unreliable, because he had been introduced to the prosecution by a tainted source, and

(b) implausible, because, having fled from the area to the mountains for safety during the bombardment of Kozarac by the Serbian paramilitary forces, he claimed to have returned to the village of Kozarac while the Serbian paramilitary were still there in order to feed his pet pigeons, so concerned was he for their welfare, and that he had there seen the killing from the orchard of a house across from the Serbian Orthodox church.[40]

35. The Appeals Chamber has since rejected this ground of appeal, holding that, before it can substitute its own factual findings for those of a Trial Chamber, it must be satisfied that the evidence upon which the Trial Chamber made its findings could not reasonably have been accepted by any reasonable person,[41] and that Tadić had failed to show that the reliability of Seferović was suspect or that his testimony was inherently implausible.[42]

36. The second incident – beating the six prisoners – was pleaded in Counts 5-11, in which Tadić was charged with wilful killing, torture or inhuman treatment and wilfully causing great suffering or serious injury to body and health, amounting to grave breaches of the Geneva Conventions,[43] murder and cruel treatment, as violations of the laws or customs of war,[44] and murder and inhumane acts, amounting to crimes against humanity.[45] It was alleged that, between 1 June and 31 July 1992, a group of Serbs which included Tadić severely beat numerous prisoners in Omarska camp including the four prisoners who subsequently died.

37. Evidence was led that this beating took place in a hangar at the camp on 18 June 1992, that the perpetrators used metal rods and cables to beat the prisoners, that they punched them as well and that they used knives to inflict wounds. A number of prisoners were forced to take part in these beatings, and one of them was forced to bite off a testicle of another prisoner.[46] Four of those prisoners were never seen again. Tadić was identified as having played an active part in these events by two prisoners who were beaten but survived – one who knew Tadić well and another who

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[40] Amended Notice of Appeal, 8 Jan 1999, Ground 3; *Prosecutor v Tadić,* Case IT-94-1-A, Judgment, 15 July 1999 ("Appeal Judgment"), pars 57-60.
[41] Appeal Judgment, par 64.
[42] *Ibid*, at par 67.
[43] Tribunal's Statute, Article 2(a), (b) and (c).
[44] *Ibid*, Article 3.
[45] *Ibid*, Article 5(a) and (i).
[46] Trial Judgment, pars 200-206.

identified him from a photo spread in a procedure which the Trial Chamber held to have been reliable.[47] There was substantial evidence, including evidence from witnesses who knew Tadić well, that he had been in the relevant area of the Omarska camp on the day in question, and evidence from some of those witnesses that he had been on the hangar floor at the relevant time.[48]

38. In addition to challenging the identifications made, the case put forward by Tadić was an alibi, that he had never been to the Omarska camp and that on 18 June 1992 he had been living in Prijedor and was working there at the relevant time as a traffic policeman.[49] The Trial Chamber noted various inconsistencies in the evidence of the prosecution witnesses (including the fact that one of the prisoners who was forced to participate in the beatings did not see Tadić there). It rejected the evidence of alibi, and it was satisfied beyond reasonable doubt that Tadić was actively involved in the beatings, but it was not so satisfied that the four missing prisoners died as a result of those beatings.[50] There was no appeal by Tadić against these findings.

39. In both of these incidents, a substantial issue arose as to the safety of the identification made of Tadić as having being involved in them. One of the major tasks to be undertaken by the Respondent and Witness D (as counsel on behalf of Tadić) in the preparation of his application to present additional evidence in his appeal – and on his express instructions – was to demonstrate that, both at Kozarac and in the Omarska camp, there was a man described as his *Doppelgänger* (or look-alike), or even more than one such man, who may have been mistakenly identified by the witnesses as Tadić. Momčilo Radanovic (also known as "Ciga") was the primary nomination as such a look-alike, but Dragan Lukić and Mišo Daničic were others who were also nominated. Another task was to follow up information which suggested that other persons (and not necessarily look-alikes) were responsible for the acts which the Trial Chamber had found were done by Tadić. Both these issues had been discussed during the preparation for the trial itself, but had been discarded by Jhr Michaïl Wladimiroff (then lead counsel for Tadić) because, as he had appreciated the issues at the time, the existence of the look-alike never passed the level of rumour, the implementation of both suggestions would involve calling hostile witnesses, and in any event he did not want to cause confusion only for the sake of confusion. Since judgment was given by the Trial

[47] *Ibid*, pars 207-208.
[48] *Ibid*, pars 210-225.
[49] *Ibid*, par 229.
[50] *Ibid*, pars 231-241.

Chamber, however, a number of people had come forward with information which, it was thought, should assist Tadić in his appeal upon this issue of identification.

V The evidence relating to the events in issue

40. It is convenient to deal with the evidence relating to the events in issue in groups which differ from the descriptions given to them in the five numbered paragraphs of the Scheduling Order which initiated these proceedings against the Respondent. Those numbered paragraphs merely described in general terms particular events related in the statements annexed to the Scheduling Order which were relevant, and did not purport to do so exclusively. Nor did they purport to characterise those events in a way which was necessarily relevant to the law of contempt. From the outset of the hearing, the parties concentrated upon the events themselves which were related in the statements, rather than upon the five numbered paragraphs, and it was clear to everyone that the "grave allegations of contempt", to which the Scheduling Order required the Respondent to respond, were those events set out in the statements annexed to the Scheduling Order.

41. This Judgment will deal with the events related in the statements under the following headings, which the Appeals Chamber believes more appropriately characterise those events:

(1) Putting forward to the Appeals Chamber in support of the Rule 115 application a case which was known to the Respondent to be false –
   (a) in relation to the weight to be given to statements made by one Mlađo Radić, and
   (b) in relation to the responsibility of one Goran Borovnica for the killing of the two Muslim policemen.

(2) Manipulating proposed witnesses –
   (a) by seeking to avoid any identification by them of persons who may have been responsible for the crimes for which Tadić had been convicted, and
   (b) by persuading them to tell lies or to withhold the truth from Witness D (as co-counsel for Tadić) when taking their statements to be used in the Rule 115 application.

(3) Bribing a witness to tell lies to or to withhold the truth from Witness D.

(1)(a) Putting forward to the Appeals Chamber in support of the Rule 115 application a case which was known to the Respondent to be false in relation to the weight to be given to statements made by one Mlađo Radić

42. Two statements by Mlađo Radić were submitted as part of the Rule 115 application. In the first, Radić stated that, as a policeman on duty as a guard in the administration building of the Omarska interrogation centre, he had seen Dragan Lukić and Mišo Daničic coming to the centre several times, and he recounted an incident in which Lukić had attacked a number of people, wounding a guard who had attempted to stop him. In the second statement, Radić said that he had heard talk of people being beaten up at the centre, but that no one had mentioned Tadić. This material was directed to supporting (a) the evidence of Tadić that he had never been to the Omarska camp, and (b) the possibility that the evidence identifying him as having been there was mistakenly based upon the presence there of a look-alike of Tadić.

43. The first statement purports to have been made on 10 March 1998 at Prijedor. It commences:

> I, Mladjo Radić, to a question of the lawyer Milan Vujin, voluntary [sic] make the following:
>
> STATEMENT

Paragraph 6 commences:

> To a question of the lawyer Milan Vujin if there were any incidents? I state that [...]

The second statement commences:

> On 18th April 1998, at the prison in [The] Hague, when the permission of my lawyer Veljko Guberina and the Court was granted, the lawyer Milan Vujin, the defender of Duško Tadić, visited me, and I make to him the following
>
> STATEMENT
>
> In everything I confirm my statement I made to you on 10th March 1998 [...].

In his submissions relating to these statements, the Respondent said:[51]

> RADIC MLADEN
>
> "Unavailability"
>
> Radic Mladen called Mladjo did not testify until now although on March 10, 1998 immediately prior to his arrest he gave a statement to the Defense counsel of Dusko Tadic because he was himself on the list of the indicted and was not previously available.

[51] Appellant's Brief in Relation to Admission of Additional Evidence on Appeal Under Rule 115 II, filed 1 May 1998, p 21, and signed by the Respondent.

> Interests of Justice
>
> This witness also had certain duties in the investigation center of Omarska and in his statement of March 10, 1998 given before his arrest and latter [sic] on on [sic] April 18, 1998 after the arrest when he confirmed his previous statement this witness is claiming that he never saw Dusko Tadic in Omarska [...].

44. In fact, the first statement had not been made in Prijedor, nor was it made on 10 March 1998, nor was it made to the Respondent. It had been made at the United Nations Detention Centre, some time after Radić had been arrested on an indictment against him on 9 April 1998, and at the instigation of Tadić. Tadić testified that the Respondent had told him to date the document 10 March 1998 and to indicate that it had been made to him (the Respondent) personally at Prijedor.

45. The Respondent denied that he had said this to Tadić, but he conceded that he knew, when he took the second statement from Radić, that the date on the first statement was false, that it had not been taken before Radić's arrest, and that it had not been taken by himself. He claimed that the words "to a question of the lawyer Milan Vujin" in the first statement, and "my statement I made to you" in the second statement, did not mean that he had personally taken the first of them. It was, he said, a question of interpretation. He said that he had not thought that the date was of any significance, that only the contents of the statement were significant, that those contents had been confirmed by Radić in his second statement and that the Tribunal would not have been misled by the erroneous date. He also said that Tadić had instructed him to file the statements. He accepted that he was wrong to have left the incorrect date, but he said that he had been under pressure of time when filing his submissions, and that he had not intended to mislead the Tribunal. He accepted that he had a duty, as a lawyer, to be truthful in his submissions to the Tribunal. He also asserted that, according to the criminal procedure in Yugoslavia, a lawyer is "duty-bound to follow the defence of the accused". Finally, he accepted that he had put himself forward in his submissions as having adopted two points in the first statement – that it had been made by Radić before his arrest, and that it had been made to him as defence counsel – and that the Tribunal may have considered that adoption by him as being of relevance to the issues before it in the appeal.

(1)(b) Putting forward to the Appeals Chamber in support of the Rule 115 application a case which was known to the Respondent to be false in relation to the responsibility of one Goran Borovnica for the killing of the two Muslim policemen

46. A defence witness at Tadić's trial (Witness W) had given evidence that the person who killed the two Muslim policemen at Kozarac was one Goran Borovnica, not Tadić. There was other evidence at the trial that Borovnica had been present at the time. Evidence was given in the present proceedings that, during the course of preparing the application to present additional evidence to the Appeals Chamber, Witness W had informed the Respondent that his identification of Goran Borovnica at the trial had been false, that in fact it had been one Momčilo ("Ciga") Radanovic who killed the two policemen, and that he had not dared to name Ciga at the trial because Ciga held a high position in the Serb community and because he had feared for his own safety. He had only been prepared to reveal the truth after the trial because he had been promised asylum in "a third country".

47. According to the evidence in the present proceedings, the Respondent told Witness W that it would be better to stick to the evidence he had given at the trial because Goran Borovnica was now dead, saying that what was important was his evidence that Tadić had not done it, not who did. He also told Witness W to find other evidence which corroborated the evidence which he had given at the trial and which Witness W had already told him was false. The Respondent thereafter repeatedly inquired whether Witness W had obtained such corroboration and, when Witness W said that one Vlado Krckovski could give corroboration, the Respondent had Krckovski called before a military tribunal in the Republika Srpska to give evidence. According to the note of this evidence, the Respondent elicited from Krckovski that he had seen Goran Borovnica kill the two policemen.

48. That note of Krckovski's evidence was put forward as part of the application pursuant to Rule 115 to present additional evidence, in these terms:[52]

> As a participant in the events in Kozarac this witness [Vlado Krckovski] has the knowledge that Dusko Tadic did not take part in the conflict and that he left Kozarac before the conflict. During the conflict he did not see him at all. This witness confirms that the two Muslim policemen were not killed by knife as claimed by Seferovic in the courtyard of the church, but that they were killed, as he had seen himself, by Goran Borovnica firing a gun at them, near the shop called "Zeljezara".

The document in which this description was put forward was signed by the Respondent.

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[52] Appellant's Brief in Relation to Admission of Additional Evidence on Appeal Under Rule 115, 4 Feb 1998, pp 31-32.

49. The evidence of this event upon which Tadić relies was given by people closely associated with him: his brother Mladen and Witness H.[53]

50. The Respondent in his evidence denied being told that Goran Borovnica had not killed the two policemen. He said that he had not known who was telling the truth, or whether Goran Borovnica or Ciga had killed the two policemen. It was for the court, not him, to determine such issues. He had not sought to have Krckovski identify Goran Borovnica when he gave evidence before the military tribunal. He had asked Krckovski only whether he had been a participant in the events, and what he could say about them. Krckovski had identified Goran Borovnica of his own volition as the person who killed the two policemen. The Respondent had thought that the statement as recorded by the military tribunal was in the interests of his client, Tadić, and that he should use it.

51. The Respondent said that there had been conflict between Witness D and himself as to the inclusion of this document in the Rule 115 application, but he had taken the view that the only information which he had was that Goran Borovnica had killed the two policemen, and that the presence of Goran Borovnica at the scene was confirmed by other evidence at the trial. He was not prepared to put forward the suggestion that another person had killed the two policemen rather than Goran Borovnica unless he had a witness to confirm that the other person had killed them.

(2) Manipulating proposed witnesses –
(a) by seeking to avoid any identification by them of persons who may have been responsible for the crimes for which Tadić had been convicted, and
(b) by persuading them to tell lies or to withhold the truth from Witness D (as co-counsel for Tadić) when taking their statements to be used in the Rule 115 application

52. Both general allegations in this group, that the Respondent manipulated witnesses, are based upon events which took place at the Prijedor police station on 14 March 1998, when the Respondent and Witness D conducted interviews with prospective witnesses there. These may therefore be dealt with together. The interviews followed the binding order made by the Appeals Chamber on

[53] Witness H was granted protective measures which permitted his identity to remain confidential so far as the public is concerned. His identity was known to the Respondent and to the Appeals Chamber.

2 February 1998, directed to the Republika Srpska, to facilitate interviews with a number of witnesses.[54]

53. When Witness D and Witness F (an independent interpreter) were travelling with the Respondent and two of his legal colleagues from Banja Luka to Prijedor that morning, the Respondent called an unscheduled halt on the way at a motel called "Peti Neplan". The Respondent said in evidence that he had been asked by the Chief of Police of the Prijedor area at that time, Marko Dzenadija ("Dzenadija"), to meet him there, and that, when he did so, Dzenadija had informed him that he had been unable to find all of the witnesses named in the binding order.

54. Both Witness D and Witness F gave evidence that no reason for the stop was ever given to them at the time, and that they had been left downstairs whilst the Respondent spoke to Dzenadija alone. The Respondent's evidence was that he had not thought it necessary to involve Witness D in their discussion with Dzenadija on what he described as a "technical issue", and that he had also spent some time with the owner of the hotel, who was a client of his, discussing a dispute which the client had with the customs authorities in Belgrade.

55. When the party arrived at the Prijedor police station, there was another lengthy delay whilst the Respondent was absent from the interview room without explanation. Witness A, who was the first to be interviewed, went looking for the Respondent on a number of occasions and informed him that Witness D did not wish to commence the interview without him. The Respondent had suggested that they start without him, but Witness D declined to do so.

56. The Respondent explained in his evidence that a lawyer in the former Yugoslavia is bound by law to warn a witness whose statement is to be taken that he or she is duty bound to tell the truth but need not say anything which will be detrimental to the witness or to the witness's family. He had been doing this in relation to the witnesses gathered at the Prijedor police station during his absence from the interview room. He had also been showing photographs to one of the prospective witnesses for identification purposes, an issue to which reference will be made later.

[54] Order to Republika Srpska, 2 Feb 1998.

Witness A

57. Witness A is a former policeman. He made a statement to be submitted in these proceedings that the Respondent had instructed him to look at him whenever he was asked a question by Witness D during the interview and that he would indicate with his head whether he should answer the question or not. The Respondent had informed him that the rest of the witnesses had been given instructions as to what to say. The Respondent had also instructed him to make sure that he did not mention any names. When the interview commenced, the Respondent had nodded his head as to when to say "yes" and when to say "no".

58. Witness A confirmed in his evidence that his statement contained the truth, but he added that it had been the assistant Chief of Police at the Prijedor police station who had given him these instructions, and not the Respondent, although the instructions were still to answer questions according to the indication given to him by the Respondent. At one stage in his evidence, in cross-examination by counsel for Tadić, Witness A re-confirmed his original version that the instructions had been given by the Respondent, but then again affirmed his second version in cross-examination by the prosecution. He explained that he may perhaps have been misunderstood by the person taking his statement because there had been a power cut at the time when the statement was being taken. Witness A also said in his evidence that the Respondent personally had not nodded his head to him. He explained his signature on his statement (which contained an affirmation that it had been read by him and was true) by saying that – as it was written in the Cyrillic alphabet, of which he did not have a very good understanding – he had not read every word of it.

59. Witness A revealed during the course of his evidence that, after he had been summoned to appear before the Tribunal to give evidence, he had received anonymous telephone calls advising him to watch out what he was doing because he "could just disappear". He had also been contacted by Dzenadija, the Chief of Police, at the same time to discuss "important matters" with him, although no such discussion had in fact taken place. This had concerned him. He had also been followed. He gave evidence that, prior to coming to the Tribunal that morning, he had spoken to his wife on the telephone, and she had told him that everyone knew he was in The Hague, although (as a protected witness) no one was meant to know his whereabouts.

60. When it was put to Witness A that he had "softened" his evidence against the Respondent because he was frightened of repercussions, he replied:

> I'm going to answer that. As far as Vujin is concerned, no. I have truly been speaking the truth. I cannot look at a man in his eyes and speak falsehoods. I'm not afraid of Mr Vujin; there's no need for me to be afraid of him. I should be concerned when I go back to my native Prijedor, what's going to happen to me over there.

Witness H (who is closely associated with Tadić) gave evidence that Witness A had told him that he was nervous about giving evidence because Dzenadija had approached him and told him to be careful about doing so.

61. It was Witness A who first brought the conduct of the Respondent to the attention of Witness D when he saw him with his interpreter at the end of April 1998 in Prijedor, and had informed him that the statement which he had made at the Prijedor police station had not been truthful. Witness D had asked him if he would make a statement in relation to that conduct, but he had at that stage declined to do so "because of the circumstances prevailing at the time". In October 1998, he made a statement concerning the events of March. He made it clear in his evidence that he had done so voluntarily, that he had no complaint about the way in which his statement had been taken, and that the reference in it to the Respondent having given him instructions was merely a misunderstanding.

62. The Respondent gave evidence denying in general terms having suggested to any witness what he or she should say or influencing the statements which any witness made. He denied having seen Witness A at the Prijedor police station on that occasion, and he suggested that Witness A may have been either deluded as to the purpose of his evidence or offered asylum or something in return for his evidence. No such suggestion had been put to Witness A in cross-examination.

Witness B

63. Witness B had been a guard at the Omarska camp. At some time which is not quite clear – either shortly before or shortly after Tadić was convicted – Witness B had offered to Witness H (who is closely associated with Tadić) that he would give a statement for use in the appeal confirming that Tadić had never been at the Omarska camp, that Mišo Daničic had been at the camp and that in his opinion Daničic looked like Tadić. (In his evidence, Witness B said that Daničic was "the spitting image" of Tadić.) He was interviewed by the Respondent the next day, but he was asked no questions about Daničic.

64. That was around May 1997. In September of that year, Witness B was again asked by the Respondent to give a statement, one which was to be video-recorded. Before the video-recording commenced, the Respondent instructed him that, if Witness D asked him for any names, he should not give them. He does not say in his statement that he was otherwise given any express instructions to answer the questions of Witness D in accordance with head signals which the Respondent would give him, but he does say that, whenever he was asked a question about Daničic, the Respondent "was shaking his head instructing me to say 'no' ".

65. The recorded interview then commenced, and the Respondent was asking him the questions. Again, he did not ask any questions about Daničic. During a break in the recording, however, Witness D raised the name of Daničic with the Respondent. The recording resumed and the Respondent asked him if he knew Daničic. He was shaking his head at the time he asked the question, but Witness B answered that he did know Daničic, and that Daničic had been at the Omarska camp.

66. When the Rule 115 application to present additional evidence to the Appeals Chamber was filed by the Respondent, only the March statement made by Witness B, where no names are mentioned, was included. The video-recording made in September, where Daničic is identified by Witness B, was not filed.

67. In his evidence before the Appeals Chamber, Witness B confirmed the truth of the statement, but then contradicted part of it. When asked whether the Respondent had done anything with his head when he asked him about Daničic, Witness B replied:

> [...] when I was asked about Mr Daničic, I personally noticed some kind of head-nodding. I don't know whether it was intentional or not. I cannot condemn anyone for it. Perhaps it was just a movement of the head. I said this in my statement. I noticed that Mr Vujin was trying to tell me something, but I didn't know what. So there was this head-nodding or perhaps it was an misunderstanding.

But, when he was asked how he had interpreted the head-nodding, Witness B replied:

> I interpreted this particular matter in the following way: that I should not give the name of Mišo Daničic or anything else.

He had nevertheless said that he did know Daničic. Later, he again sought to qualify his statement that the head-nodding was instructing him to deny knowledge of Daničic:

> The nodding of Milan Vujin's head, I would not – once again, I would like to mention that I could not understand that, that something was happening when this shaking of the head went on, for me to give any kind of answer.

He went on to say that he had not known what the purpose of the head-nodding was. He had not been able to understand it. He described the head-nodding as the Respondent sometimes moving his head up and down and sometimes from side to side.

68. Witness B agreed with counsel for Tadić that he had signed every page of his statement only after he was happy with the truthfulness and the accuracy of its contents. To the prosecution, however, he said that he had not read it word for word. He had just scanned it with his eyes. It had not been read out to him.

69. Witness B maintained his statement that the Respondent had instructed him not to give any names if Witness D asked for them throughout his evidence. There is one aspect of his evidence indicating some confusion on his part in relation to this issue. He said at one stage that the first question he had been asked by the Respondent at the very beginning of the video recording was "Do you know Mišo Daničic?", but this version is not supported by the evidence of anyone else. The Respondent claimed that it had been Witness D who had asked Witness B about Daničic. Witness B himself confirmed his statement that he was sure that the Respondent would not have asked him about Daničic "if [Witness D] had not mentioned him and insisted on it". According to the evidence, Witness D asked about Daničic only during the break in the video-recording. The question could not therefore have been asked at the very beginning of the video-recording.

70. The Respondent in his evidence denied that he had shaken his head during this interview and, as already stated, he denied in general terms having suggested to any witness what he or she should say or influencing the statements which any witness made.

GY

71. GY was one of the prospective witnesses who were present at the Prijedor police station on 14 March 1998.[55] She arrived there, but was sent home by the Respondent before she had been interviewed by Witness D. It was suggested to the Respondent in cross-examination that he had spoken to her in the absence of Witness D because he had something to hide, and that he wished to press her to stop naming important names or to frighten her off in some way.

[55] GY is the pseudonym assigned to one of the persons who did not give evidence but who were named in evidence. See footnote 6.

72. GY had given Witness D a statement on 3 January 1998 for the purposes of Tadić's appeal. It is a detailed statement, refuting the evidence of a number of witnesses upon whom the Trial Chamber had relied in its judgment. She said that she had arrived at the Omarska camp a few days after the beating of the six prisoners there for which Tadić was convicted. She said that she had nevertheless heard of the beating the day it occurred from members of the Omarska police, and she had been told that the persons responsible included Mišo Daničic and Dragan Lukić (both of whom she had known since her younger days) and Milenko Stojnic, but not Duško Tadić. She expressed the view that the witnesses identifying Tadić had mistaken either Daničic or Lukić for him, both of them having "emphatic resemblance, with beards" to Tadić. Moreover, she said, the description given by one of the witnesses (as recorded at par 290 of the Trial Judgment) corresponded with Milenko Stojnic. GY also said in this statement that she had seen Dragan Lukić at Kozarac at the time when the two Muslim policemen were killed. The Respondent was aware of this statement on 14 March when GY came to the Prijedor police station.

73. It was not explained why in those circumstances a fresh statement had to be taken, but the anticipation of Witness D was obviously that GY would repeat these details in that new statement, hence the suggestion that the Respondent was attempting to prevent her from doing so and eventually sent her home so that she could not do so.

74. The Respondent rejected the suggestions made to him in cross-examination. He gave evidence that he had taken GY to another room so that she could identify photographs of Daničic, Ciga "and so on", so that a set of photographs could be assembled to show to the other witnesses to see whether they knew these people and knew about their activities. There was, he said a big pile of photographs to show her and, if this had been done in the interview room where Witness D was waiting, there would not have been time to interview more than two witnesses that day. He had sent a message to Witness D to start the other interviews without him. He said that he had told Witness H to take GY home –

> [...] because it was said that she had been locked up by the police. So I told her to go away.

The Respondent said that he did not remember whether he had given this explanation to Witness D at the time. However, Witness A gave evidence of having conveyed the Respondent's message to

Witness D, and Witness H (who is closely associated with Tadić) gave evidence that he had heard that the police chief had locked GY up for a while in his office.

75. The Respondent produced a statement which he had taken from GY in 1995:[56]

> All the time during my stay in the Center [the Collection Center Omarska] I have never seen nor heard that Dusko Tadic used to come to the Center.
>
> I know that there was a man who was very much looking like him and that he used to come to the Center. In this moment I may say that the name of that man is Misa, I think Danicic, but at this time there is no need to say anything more, although the events in the Center are well known to me.

When asked why he had not asked GY to give more detail concerning Daničic, instead of merely recording her opinion that there was "no need to say anything more", the Respondent replied:

> I did my work but I could not exert pressure on a witness so that this witness would say more than she wanted to say. She didn't want to make any other statements apart from this very short one.

76. The Respondent also produced a statement which Witness D had taken from GY on 18 March 1998, four days after she had been sent home by the Respondent from the Prijedor police station. In it, she names as having been involved in the crimes for which Tadić has been convicted Dragan Lukić and Mišo Daničic, and she refers as well to "another two witnesses who are living abroad", but does not name them.

77. A statement which the Respondent had taken from GY after receipt of the Scheduling Order which initiated these proceedings was also tendered, in which she relates the events of 14 March. She does not mention being locked up by the police, but she says:

> Suddenly, I heard some commotion and shouting and I went out and I saw that there was a problem created as to where I was. Attorney Vujin was also there and I was told then to go home with [Witness H], and that later on the defense [sic] attorneys will come to take my statement.

She also says:

> I categorically declare that defense [sic] attorney Vujin never advised me what to say, never forced or coerced me as to how I was to testify and what I should or should not say.

There was an objection on behalf of Tadić to the tender of this statement (and others) without calling the witnesses themselves. The Appeals Chamber ruled that the statements would be

[56] The document is dated "Oct 15, 1992", but the Respondent said that the year was an error.

admitted "subject to their weight being evaluated by the Chamber".[57] GY was not called by the Respondent to give evidence. He said that he thought it unnecessary to do so.

Miloš Preradović

78. One of the documents put forward by the Respondent in support of the Rule 115 application to present additional evidence to the Appeals Chamber purports to be a statement given to the Respondent by Miloš Preradović. The document, which was filed with the Tribunal on 5 February 1998 in connection with the Rule 115 application to present additional evidence, attributes to Preradović a statement that he had been engaged as a policeman in regular service in the Prijedor municipality during the conflict there and that he knew Tadić by sight, but that he had never been together with Tadić in Kozarac during that conflict. This document asserts that evidence given by witnesses at the trial that he had been together with Tadić at that time was false. The document is in the common form of a typed statement, commencing:

> On the request of Mr Milan Vujin, the Defence Counsel of Duško Tadić, herewith I give the following
>
> STATEMENT

79. A second statement purporting to have been made by Preradović, dated 27 December 1998, was subsequently filed in support of the application to present additional evidence. It deals mainly with the character and the untruthfulness of Seferović who identified Tadić as having killed the two Muslim policemen, and adds that Seferović never kept birds. This contradicted the reason given by Seferović at the trial for returning to Kozarac while the Serbian paramilitary were still there, to feed his pet pigeons.

80. This second statement, which Preradović acknowledged in his evidence as his own, also states:

> I never met any of the lawyers of Dusko Tadic. It is true that I received one telephone call from Mr Vujin. It was a very short conversation, he only asked me if we could meet in connection with Dusko's case and nothing more.
>
> Sometime after that, commander Bogoljb [sic] Kos from the station in Prejidor [sic] called me to come to the station because Mr Vujin had left a questionnaire there in connection with Dusko Tadic and if I agreed with the questions I should sign it. There were four or five copies of the same questionnaire. Above my name there was only one question. Did I or did I not see Dusko Tadic in Kozarac during the attack on it. I answered "No" and signed it. Nobody ever asked me what had happened in Kozarac on the May 27, 1992 [...].

[57] 14 Oct 1999, Transcript page 2072.

81. On 15 February 1999, Preradović gave a statement to Witness H (who is closely associated with Tadić) in the following terms:

> I never was in contact with Duško's former lawyer, Milan Vujin and the statement which I have now been shown by [Witness H] and which I am supposed to have given to Milan Vujin is not consistent with the statement which I signed in Prijedor Police Station in the presence of the Chief of Police, Bozidar Kos. That statement is completely different in its content and said: did I see Dusko Tadic during the war operations in Kozarac to which I replied only "No" because at that time I was not there in that area. I am confirming that this statement is a clear fraud and that I never gave such a statement. I am ready to confirm this in front of any Court and in front of The Hague Tribunal.[58]

82. In his evidence before the Appeals Chamber, given by video-link, Preradović confirmed having made the statement to Witness H dated 15 February 1999, and in response to questions from the Presiding Judge twice confirmed that its contents were true and correct. He was then asked if he had made the first statement, that filed on 5 February 1998 (which in his later statement to Witness H he had described as "a clear fraud"). He said:

> Well, let me tell you, the statement that [Witness H] gave me seemed different to me from this statement, and I did not receive a copy from [Witness H] either. [...] The first statement that I gave at the SUP was made in several copies.

The reference to "the SUP" is to the Prijedor police station. Preradović was asked again to look at the statement to the Respondent filed on 5 February 1998 and to say whether it was a statement he had made. He replied:

> I believe that this is the accurate statement, the one I gave at the SUP, but I cannot say 100 per cent – I cannot be 100 per cent sure because I did not get a copy from the SUP.

He said that the statement which he had signed at the Prijedor police station had included the words "On the request of Mr Milan Vujin ..." which appear in the disputed document filed on 5 February 1998.

83. In cross-examination, Preradović explained that the contents of the statement to the Respondent filed on 5 February 1998 were "the same, almost the same, more or less the same" as the contents of the one he signed at the Prijedor police station, the only difference being that the

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[58] This is the English translation provided to the Appeals Chamber on behalf of Tadić. A translation made by the Tribunal's Conference & Languages Services Section is not markedly different, except that the penultimate sentence reads: "I hereby claim that this statement is a pure forgery and that I never gave such a statement to anybody". The difference between "a clear fraud" and "a pure forgery", in the context, is insubstantial.

document which he signed was a questionnaire which required him to answer "yes" or "no", and the statement filed on 5 February 1998 did not include that. He repeated this explanation a number of times. He also said that the statement which he had signed at the Prijedor police station –

> [...] wasn't very legible, and that is why I said that it didn't correspond exactly. Whether it was the photocopy's fault or anything else, I don't know, but they're all more or less of the same content.

When asked, then, why he had described the statement to the Respondent filed on 5 February 1998 as "a clear fraud", Preradović said:

> Well, let me put it this way: The statement I gave to [Witness H], it is the same – the contents are the same as the other one, except that with [Witness H]'s statement, I seem to think that something was not very clear, either in the copy or something else, and that is why I gave this, and I don't know why I should have given the statement at all.

Simo Kevic

84. Witness A included within his statement to the Tribunal an account of a meeting which he had with one Simo Kevic ten to fifteen days after the statements had been taken at the Prijedor police station on 14 March 1998. Kevic had been one of the witnesses interviewed and, according to Witness A, in a conversation he had with him concerning the events of that day Kevic said:

> Milan Vujin is a real Serb; if he was not there I would have said everything I knew, and everything I saw.

Witness A confirmed the truth of this account in his evidence.

85. The Respondent denied having had any discussion with Kevic at the Prijedor police station. He produced a statement by Kevic stating that he had been spoken to by the Respondent at the Prijedor police station, and he had been told only that he should tell the truth but that he had no obligation to say anything which may be harmful to him. He had not been coached what to say. He denied having discussed the Respondent with anyone thereafter, or telling anyone that the Respondent had told him what he should say.

86. Kevic was not called as a witness before the Appeals Chamber on behalf of the Respondent, and no request was made on behalf of Tadić that he be called by the Chamber.

(3) Bribing a witness to tell lies to or to withhold the truth from Witness D

87. Witness B has already been referred to. He had been a guard at the Omarska camp and had offered to Witness H (who is closely associated with Tadić) that he would make a statement

confirming that Tadić had never been at Omarska camp, that Mišo Daničic had been at the camp and that in his opinion Daničic looked like Tadić. He had been interviewed by the Respondent the following day, but was asked no questions about Daničic. After taking his statement, the Respondent gave him DM100. This was the equivalent of a month's wages for him. Witness B had not asked for any money. Although in his statement Witness B said that he had not thought that such a payment was proper behaviour, in his evidence he said that he had understood it as "a humanitarian gesture".

88. That was around May 1997.[59] In September of that year, Witness B was again asked by the Respondent to give a statement, one to be video recorded. Witness D was also present. As already mentioned, the Respondent instructed Witness B not to mention any names if Witness D asked him. The Respondent did not at first ask him any questions about Daničic. During a break in the recording, however, Witness D raised with the Respondent the name of Daničic. The recording resumed and the Respondent asked him if he knew Daničic, and (despite the Respondent shaking his head at the time he asked this question) Witness B said that he did and that Daničic had been at the Omarska camp. The Respondent had appeared to be unhappy when he gave his answer, although in his evidence Witness B was prepared only to say that it was "possible" that his identification of Daničic was the cause of that unhappiness. On this occasion, the Respondent gave no money to Witness B.

89. The Respondent said in evidence that, following the first interview, he had talked with Witness B and had ascertained that his son, who was a sportsman, was missing during the conflict current at that time and had left a wife and a young baby. The wife was the daughter of a friend of the Respondent. Witness B had told him that he was unemployed, as was his daughter in law, and that they could not even afford milk for the baby. He had given Witness B the money, saying "Take this. This is for milk for your granddaughter, not for you to drink". It had been given to him not as a reward for not naming names but as "just help to a human being who had these day-to-day problems in his life". He had also advised Witness B to see a colleague of his in connection with seeking compensation for the loss of his son.

[59] No point was taken that this was outside the relevant period.

90. Witness B had subsequently returned to the Respondent's office, when there was further discussion between them about tracing his son. At the end of that discussion, Witness DH (a lawyer assisting the Respondent) gave Witness B some more money, saying that it was to help him because he had no money and everything was so hard for him.

VI Analysis and findings

Some general principles

91. The evidence of the witnesses upon which Tadić relies in order to establish that the Respondent is guilty of contempt was strongly criticised by the Respondent and, to a lesser extent, by the prosecution. The submissions of those parties dealt with the evidence of each of those witnesses in isolation, relying upon certain departures in their evidence from the statements which they had given before the hearing to persons representing Tadić and upon certain internal inconsistencies within their evidence. These criticisms give rise to two matters of principle of general application, but of particular application to the present case.

92. The first such matter of principle is that a tribunal of fact must never look at the evidence of each witness separately, as if it existed in a hermetically sealed compartment; it is the accumulation of *all* the evidence in the case which must be considered. The evidence of one witness, when considered by itself, may appear at first to be of poor quality, but it may gain strength from other evidence in the case.[60] The converse also holds true.

93. The second matter of principle of general application is the weight to be given to a statement made by a witness out of court which is inconsistent with his or her evidence in court. Where such out of court statement is merely hearsay, the common law denies it any value as evidence of the truth of what had been said out of court, and restricts its relevance to the issue of the witness's

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[60] These propositions are not new. For a discussion of them in the domestic context, see, in Australia: *Chamberlain v The Queen* (1984) 153 CLR 521 at 535 (High Court of Australia); *Regina v Heuston* (1995) 81 A Crim R 387 at 391 (New South Wales Court of Criminal Appeal); in New Zealand: *Thomas v The Queen* [1972] NZLR 34 at 37-38 (New Zealand Court of Appeal); *Police v Pereira* [1977] 1 NZLR 547 at 532-533 (Supreme Court, Auckland); and in Canada: *Regina v Morin* [1988] 2 SCR 345 at 358 (Supreme Court of Canada); *Regina v MacKenzie* [1993] 1 SCR 212 (Supreme Court of Canada).

credit.[61] On the other hand, the civil law admits the hearsay material without restriction, provided that it has probative value; the weight to be afforded to it as evidence of the truth of what was said is considered at the end of all the evidence. This Tribunal has, by its Rules, effectively rejected the common law approach. Rule 89(C) provides:

> A Chamber may admit any relevant evidence which it deems to have probative value.

The application of that Rule was considered at the trial of Tadić, in a decision which was not challenged in the appeal.[62] The Appeals Chamber has since held that is now well settled in the practice of the Tribunal that hearsay material having probative value is admissible so as to prove the truth of what was said,[63] acknowledging nevertheless that the weight to be afforded to that material will *usually* be less than that given to the testimony of a witness who has given it under a form of oath and who has been cross-examined, although even this will depend upon the infinitely variable circumstances which surround hearsay material.[64]

Other relevant events

94. In addition to the evidence relating to the events in issue, evidence of events which had occurred before the relevant period, and of other events which occurred during the relevant period, was admitted in order to demonstrate a particular course of conduct or to explain the events in issue which took place within that period. This evidence is a suitable starting point in any analysis of the evidence relating to the events in issue. There are four matters to which specific reference should be made:

(i) the list of prospective witnesses to be interviewed in preparation for the trial which had been prepared by Mr Michaïl Wladimiroff, then lead counsel for Tadić;

(ii) the concerns expressed by Mr Wladimiroff about the conduct of the Respondent, both at the time and in evidence before the Appeals Chamber;

(iii) the entries made by Tadić in his diary; and

(iv) the claims made by the journalist Brkić.

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[61] In Australia, however, the common law has now been modified in certain circumstances to enable such evidence, once admitted in relation to credit, to establish also the truth of what had been said: Evidence Act 1995 (Commonwealth), Section 60.

[62] *Prosecutor v Tadić,* Case IT-94-1-T, Decision on Defence Motion on Hearsay, 5 Aug 1996.

[63] *Prosecutor v Aleksovski,* Case IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 Feb 1999, par 15.

[64] *Ibid,* at par 15. Extensive reference is made to the *Tadić* Decision on Defence Motion on Hearsay.

(i) The list of prospective witnesses to be interviewed in preparation for the trial which had been prepared by Mr Michaïl Wladimiroff, then lead counsel for Tadić

95. In February 1996, the Respondent was working for the defence team without remuneration on the understanding that, as a local lawyer, he would be able to "open doors" for the defence team and to explain local procedures. At this time, Mr Wladimiroff experienced obstruction in his attempts to speak to prospective witnesses in the Republika Srpska. This obstruction appeared to have been caused by the Chief of Police in the Prijedor area, Mr Simo Drljača ("Drljača"). Prospective witnesses were unwilling to speak to Mr Wladimiroff and, when he was able to speak to any witnesses to whom Drljača had already spoken, their evidence was carefully choreographed and was, Mr Wladimiroff thought, untrue. He subsequently also learnt that a lawyer in Prijedor had been warned by the police not to speak to him.

96. In an interview with Drljača at the Prijedor police station, Mr Wladimiroff discovered that Drljača had in his possession a copy of the list of potential defence witnesses which Mr Wladimiroff had prepared. It is common ground that Drljača – who was subsequently indicted by the Prosecutor for genocide, but was killed at the time of his arrest – did everything possible to obstruct the work of both the Prosecutor and those appearing for persons accused by the Prosecutor of war crimes. Drljača made it clear to Mr Wladimiroff that he was meddling in matters of the past and that he had no right to do so. He did not want Mr Wladimiroff or anyone connected with the Tribunal in the area of Prijedor at all. The Respondent produced evidence of statements made by Drljača to investigators employed on behalf of Tadić:

> Nobody can order me to allow hearing witnesses in my region. No one witness from my region must make a statement without my agreement.

Drljača was striking the table with his hand and raising his voice when he said this. According to the statement from the investigators produced in evidence by the Respondent, Drljača also threatened that "anyone who attempts to work without his approval in collecting data for defence of Tadić will get a bullet in his forehead or will be arrested".

97. According to the evidence of Mr Wladimiroff, when he asked Drljača where he had obtained the list of potential defence witnesses he was told that he had obtained it from the Respondent. When taxed with this by Mr Wladimiroff, the Respondent explained that he had given Drljača the list because he thought that it would assist in tracking down the witnesses. At the time when

Mr Wladimiroff gave this evidence, he had not been part of the defence team for more than two and a half years.

98. In his own evidence, the Respondent denied giving the list to Drljača and said that, if Drljača had said anything to Mr Wladimiroff to the contrary, what he had said was untrue. He also said that the evidence of Mr Wladimiroff that he (the Respondent) had agreed with him that he had given the list to Drljača was a lie, because there had been no such conversation. He suggested that Mr Wladimiroff may have lied as part of a conspiracy or a strategy on the part of the defence team.[65]

99. At an early stage in his evidence, the Respondent accepted that, by giving the list to Drljača, he would have made it impossible or difficult to find the witnesses, and he said that at about this time he had written to the Minister of Interior Affairs to ask that Drljača be replaced. A copy of that letter was produced, and its authenticity was not disputed. He had also spoken to Radovan Karadžić, then the President of the Republika Srpska. Later in his evidence, however, the Respondent disagreed with the proposition that giving the list of potential witnesses to Drljača would have been a disastrous step for a defending lawyer to take. He said that the only way some witnesses could be reached was through either Drljača as the Chief of Police or one Dule Jankovic as chief of the police station. When asked why, then, he claimed not to have given the list to Drljača, the Respondent replied merely that he had not been asked to do so.

100. The Appeals Chamber is satisfied that the evidence of Mr Wladimiroff upon this issue is to be preferred to that of the Respondent. The suggestion that Mr Wladimiroff was part of a "defence conspiracy" overlooks his departure from that team a very long time before. The careful manner in

[65] There was no suggestion made as to how else Drljača could have obtained possession of the list of witnesses. One witness called by the Respondent, Witness DA (a legal colleague of the Respondent), gave evidence that, in the Summer of 1998, he had been present at the United Nations Detention Unit at The Hague as part of an official delegation from the Government of Republika Srpska when Tadić was interviewed. He said that, so pleased was Tadić with his legal representation at the time, he had turned over to the government representatives "his entire file case". The Appeals Chamber has not concerned itself with the truth of this assertion by Witness DA, although it does observe that his evidence was unsatisfactory in many respects. The assertion itself was never put to Tadić in cross-examination. However, as the incident is alleged to have occurred more than two years after the list of witnesses was seen in the possession of Drljača, this could not have been the means by which the list came to be in Drljača's possession.

which he gave his evidence was impressive. Notwithstanding the Respondent's denials, and the copy of the letter addressed to the Minister of Interior Affairs which he produced, the Appeals Chamber finds that the Respondent did in fact give Drljača the list of prospective witnesses prepared by Mr Wladimiroff, and – in the light of his knowledge of Drljača's behaviour in relation to matters concerned with the Tribunal, and of the availability of another source of assistance to find witnesses (Jankovic) – that the Respondent did so knowing that it was contrary to the interests of Tadić.

101. This finding has some bearing upon the weight to be given to other pieces of evidence concerning the Respondent's conduct contrary to the interests of Tadić, which – taken only by itself, and depending upon its source – would otherwise have been either so insufficiently specific or so unimpressive as to warrant disregarding it.

(ii) The concerns expressed by Mr Wladimiroff about the conduct of the Respondent, both at the time and in evidence before the Appeals Chamber

102. Mr Wladimiroff gave evidence that the work done for him by the Respondent in relation to witness statements was of poor quality, notwithstanding his specific instructions as to the type of statements which he required. He had initially attributed this to incompetence. He said that the Respondent continually interfered during interviews by correcting the witnesses or advising them what to say. It was submitted on behalf of Tadić that an incident recorded in the television documentary played during the hearing was one such incident where the Respondent had instructed a witness how to answer questions. The Appeals Chamber is not satisfied that it was. In that incident, during an exchange between the Respondent and Mr Wladimiroff's interpreter, the Respondent said "I don't care what he wants. I ask what I want to", but this may well have been a dispute as to whether the Respondent could ask *any* questions without the permission of Mr Wladimiroff, rather than the Respondent saying that he wanted to tell the witness what to say. Mr Wladimiroff was unable to recall in his evidence which interpretation was the correct one, and it is not clear from the documentary itself.

103. Mr Wladimiroff had nevertheless made the allegation of interfering with witnesses during interviews in general terms. He described this practice of the Respondent as one of manipulating the witnesses. However, rather than being improper, he thought that the Respondent's conduct had merely been not professional. Although Mr Wladimiroff and his co-counsel eventually attempted to

"sideline" the Respondent because of his conduct, he continued to be in unauthorised contact with Tadić during the preparation for trial. Mr Wladimiroff said that he had not wished to confront the Respondent, because he feared that to do so may have prejudiced his access to the area in Bosnia where he was investigating the charges against Tadić.

104. Mr Wladimiroff said that eventually he had been driven to the conclusion that the Respondent was in reality taking care of the interests of the Serb authorities and was not truly interested in defending Tadić except insofar as the interests of Tadić coincided with those of the authorities. The Respondent's concern, he believed, had been to defend the Serb cause and to protect other persons from becoming involved in the Tadić defence. In a documentary concerning the preparations for the Tadić trial recorded for future showing on Dutch television, Mr Wladimiroff said:

> It's becoming ever more awkward because [the Respondent] is not doing what he should be doing, and we are increasingly getting worried about his role. This means that we are wondering whether he should still have a place in this team, because we are increasingly faced with the question of whether this is co-operation or a lack of co-operation or even worse, perhaps he is pursuing goals which we are not pursuing.

These contemporaneous remarks, recorded early in 1996 (that is, before the trial), ensure an acceptance of Mr Wladimiroff's evidence as truthful. The lack of specificity in that evidence would normally have resulted in little weight being given to it. However, the Appeals Chamber's finding that the Respondent had knowingly acted contrary to the interests of Tadić when giving the list of witnesses to Drljača gives this evidence of Mr Wladimiroff greater weight than it would otherwise have had.

(iii) The entries made by Tadić in his diary

105. Entries made by Tadić in a diary for the period January to April 1996 were admitted into evidence. There was no suggestion made in the cross-examination of Tadić that the entries had not been made contemporaneously with the period to which they purported to relate. Notwithstanding their contemporaneous nature, however, such entries should be treated with considerable reserve. Although these entries do not appear to have been written for other than personal consumption, the situation in which Tadić found himself may well have had a considerable bearing upon his state of mind at that time.

106. Tadić had already been in custody, in one form or another, for two years following his arrest in Germany on 12 February 1994. Many persons in custody, with so much idle time at their disposal, become obsessed with the conduct of their lawyers. The trial was expected to commence early in May 1996, and this was confirmed in February of that year. In January, his counsel had reported to the Trial Chamber the difficulties the defence was experiencing in the conduct of its investigations both within the region of the former Yugoslavia and elsewhere, even after the Dayton Peace Agreement.[66] There is a substantial danger, therefore, that Tadić's understandably stressed state of mind at the time of these entries may have affected the views which he had formed.

107. Taken only by itself, this evidence would have had so little weight as to warrant disregarding it, but there is sufficient corroboration for the accuracy of the relevant entries as to require consideration as to whether at least some weight should be given to it.

108. In January 1996, Tadić recorded the dissatisfaction with the Respondent's behavior which Mr Wladimiroff had expressed to him, and he expressed his own view that, despite what appears to be described as the Respondent's "obvious sabotage", Mr Wladimiroff was "winning the difficult terrain of my defence". He records Drljača's order preventing any police officer or former police officer testifying without his personal authorisation, and his family's loss of trust in the Respondent. In February, he records the information that the Respondent had given the list of witnesses to Drljača, and his own dissatisfaction concerning the assignment of the Respondent as counsel for General Đorde Đukić before the Tribunal,[67] and concerning the time being spent by the Respondent on that case rather than on his own. He recorded that he had asked the Respondent whether he had given the list of the witnesses to Drljača and that, by his reaction, the Respondent was not telling the truth when he denied doing so. In March, Tadić recorded in a detailed way his discussion with Mr Wladimiroff as to whether the Respondent should be excluded from the defence team, and how this would have to be carried out.

109. The more significant passages are recorded in February:

> Formally, [the Respondent] is taking part in my defence, but only to the extent of ensuring that my case does not cause broader consequences which would affect the true participants in the events which took place there in 1992, and especially someone who is in Serbia at the moment.

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[66] Trial Judgment, par 22.
[67] Case IT-96-20.

> It is difficult to understand the situation in any different way, when in the least correct way and for almost a year Vujin has avoided taking statements from some of my other witnesses living in Belgrade. All this refusal boils down to the general approach of the authorities there not to recognise the Hague Tribunal. Vujin believes that even his co-operation would in a way represent a recognition of the Tribunal and this is one of the reasons for not interviewing people who live under his nose in Belgrade.

And, later:

> Vujin is convincing in every conversation, but the facts and the reality speak against him. Whatever happens, I will take that decisive step and break off all contacts with counsel Vujin.
>
> My impression is that he has been included in my defence for the sole reason of preventing the events connected with Omarska from being discovered, and the easiest way to do so is to prolong and obstruct the investigation and the questioning of witnesses and the accused from Omarska.
>
> The issue is at the moment completely clear or else he would have left my case himself because he became the lead counsel of General Đukić. Bearing in mind the busy period certainly ahead of him in next few [illegible] of the Đukić case, the real reasons for him wanting to stay in my defence team is to deny any assistance to other counsels and me.

110. As most of what Tadić has recorded is based on what he had been told by Mr Wladimiroff, this material does not constitute independent evidence of the Respondent's conduct, although it does constitute corroboration of the contemporaneous statements by Mr Wladimiroff as to his state of mind at that time. Insofar as it expresses Tadić's own state of mind in relation to the conduct of the Respondent, the evidence still suffers from the fact that Tadić was at that time soon to face trial with difficulties still affecting the preparation of his case. The Appeals Chamber does not, therefore, place any weight upon these entries in Tadić's diary.

(iv) The claims made by the journalist Brkić

111. In an article published some four years ago, Milovan Brkić ("Brkić"), a Yugoslav journalist, accused the Serbian legal profession (with certain named exceptions) of working on behalf of "the regime" in order to ensure that persons accused before this Tribunal did not expose those connected with the State leadership to any risk of prosecution, regardless of the needs of their own defence. The Respondent was named as one of those lawyers who co-operated with the State Security Service in this way.

112. When called as a witness, Brkić made it clear that he had no independent knowledge of such conduct on the part of the Respondent. He said that he had obtained his information from persons within the State Security Service. They had shown him documents in proof of the allegations he

made, including a "programme of activity" to select a group of attorneys who would appear for persons accused before the Tribunal, who would control those accused by threatening that their families in Yugoslavia would be persecuted if they implicated others, and who, if necessary, would force their clients to commit suicide. His particular source of information, he said, occupied a "high position". He trusted this person, and information he had previously obtained from him had not turned out to be false.

113. Brkić said that he was told by the State Secret Service official in the high position that Tadić had already spoken to investigators with the Office of the Prosecutor and had implicated "quite a few" persons from the Republika Srpska in grave crimes against humanity, and that these people had subsequently been arrested. Brkić had not sought other details of the information he had been given because, he explained, he would have lost the confidence of this official. His editor, however, had asked for some proof of the allegations before the article was published and, after a confidentiality agreement had been signed, Brkić was given some notes by the official to show to his editor. Those notes had since been returned. He had not paid the official for the information. He described him, in effect, as a whistle-blower.

114. Brkić described his own motivation in publishing the article as that of a journalist who wished to inform the Serbian public how its political leadership was endeavoring to obstruct this Tribunal in a way which did not befit it. He believed that the article was true. Although he claimed in his statement to have "concrete proof" that the Respondent had undermined the defence of Tadić, he said in evidence that, since writing that statement, circumstances had changed and that, if he were now to reveal the sources of his information, he would have "signed their death sentence". When invited to identify his sources in writing during a closed session, he replied:

> If that paper is accessible to Mr Vujin, then I would be signing the death sentence for those people, the people whose names I can write down. If you think you can bear them on your conscience, then I will do so, I mean, the Tribunal.
>
> I hope that the Honourable Tribunal will bear in mind the fact of the country that I live in, and that the key people within that state, within that country, occupying the top posts are accused of the worst crimes committed in the history of humankind, and you're asking me to do something that places me in a very, very difficult situation, to be responsible for the lives of people, for the life of a man.

There was a considerable attack upon the credit of Brkić, and a long (and not always clear) examination of the history of litigation in which he or his newspaper had been parties, including litigation which the Respondent had brought against him. The Appeals Chamber does not believe

that it is necessary to determine the issues which arose in that cross-examination. That is because, in judging the weight to be given to this material put forward by Brkić, it is relevant to note that it was, on its face, hearsay upon hearsay. The very existence of his source was in issue, and the witness's non-disclosure of the identity of that source, for whatever reason, means that an acceptance of his assertions necessarily depends solely upon his own word.

115. The other evidence in the present case to which reference has already been made would prevent those allegations by Brkić being completely disregarded as having no weight at all. But, even in the light of that other evidence, his allegations still have very little weight. Such is the seriousness of the allegations now being investigated that the Appeals Chamber is not prepared to take evidence of such little weight into account in this case.

Some general matters

116. There are three other matters raised in argument to which reference should be made before turning to the evidence concerning the events in issue.

117. First, it was submitted on behalf of the Respondent that these allegations would never have been made against him if the Appeals Chamber had not rejected the application made by Tadić pursuant to Rule 115 to present additional evidence in his appeal against conviction. The first suggestion implicit in that submission is that Tadić, together with Witness D who had represented him in that appeal, had manufactured the allegations so that these present proceedings may be used to obtain material which would justify a review of the judgment of either the Trial Chamber or the Appeals Chamber pursuant to Rule 119. The second implicit suggestion is that, in any event, no regard should be had in these proceedings to the material which has been so obtained.

118. The Appeals Chamber accepts that such a possible motive in bringing the allegations to the notice of the Appeals Chamber is a matter to be considered in relation to the credit of both Witness D and Witness E (who was closely associated with him in the quest for additional evidence), although the existence of the motive itself would first have to be established. But the Appeals Chamber does not accept that, in the event that any of the allegations against the Respondent are made out, any such motive which may have led to their disclosure has any relevance to the gravity of the conduct so established. The Appeals Chamber has not, in the end,

found it necessary to rely upon the evidence of either of those witnesses in its factual findings in this case.

119. Two specific matters were raised in relation to the credit of the Respondent as a witness. The first is the complaint made by TB concerning the Respondent.[68] The second is the action of the Respondent in contacting a number of persons in disobedience of the Scheduling Order which initiated the Rule 77 proceedings against him.

120. When defending himself against the allegation that he had failed to have witnesses in their statements identify the real perpetrators of the crimes, the Respondent produced a statement of TB prepared by Witness D as an example that Witness D, too, had failed to have the witness record the names of the perpetrators he had given in conference. That led to an issue as to the circumstances in which TB's statement had been made.

121. Witness D gave evidence in reply (based upon his adoption of a statement given by his independent interpreter at the time) that TB had told him that he had been present when the two Muslim policemen were killed, that Tadić had not been there, and that the policemen had been killed by a "closely knit gang, including Dragan Lukić, Momčilo Radanovic, Mišo Daničic and Goran Borovnica", by being shot "near the forge". TB had also told Witness D that he had been present as well at the beatings of the men in the Omarska camp, that Dragan Lukić and Mišo Daničic were responsible for the beatings, the leader being Daničic, and that Lukić had given the order for one of the victim's testicles to be bitten off. Finally, TB had also told Witness D that there was a "striking likeness" in appearance between Tadić on the one hand and Lukić and Daničic on the other hand, and that Lukić was a very dangerous man who had killed a man in Switzerland.

122. Witness D said that TB had been unwilling to make any written statement at all. In the end, he had made a statement only that he had never seen Tadić in the Omarska camp. Witness D went on to say:

> He was quite explicit as to why he didn't want to say anything more, and that was because he said that Mr Vujin worked for the Serbian Secret Service, and that he was very concerned that if he said anything about the events that occurred in the Omarska camp and about individuals responsible for those events, that Mr Vujin would report them back to the

[68] TB is the pseudonym assigned to one of the persons who did not give evidence but who were named in evidence. See footnote 6.

> powers in Republika Srpska and in Serbia and that would have very grave consequences for him and his family.

Witness D subsequently qualified the reference to the Respondent working for the Secret Service. Rather, TB had said only that he was himself under surveillance at the time when he made his statement.

123. The statement given by the interpreter – which she said she had based upon her own clear recollection, although she had refreshed her memory from notes made by Witness D at the time – was somewhat more detailed as to the terms of TB's complaint concerning the Respondent. She stated that TB had said that he was unwilling to make a written statement because:

> [...] he was afraid for his own personal safety if he did so and for that of his wife and two children. He said that his home was constantly watched by neighbours of his who have been indicted for crimes in the Omarska camp and that his telephone is "tapped". He knew this because, after speaking to [Witness E] on the telephone during October 1997, he had received a warning against talking to Duško Tadić's lawyers or indeed anyone else about the events occurring at Omarska in May to August 1992. This could only have happened if that telephone call was listened into. Hence his wish to talk to [Witness D] at the Hotel Bosna, rather than his home address.

124. This evidence by Witness D as to TB's state of mind is direct evidence of that state of mind, not hearsay. The interpreter did not give evidence, and the quoted part of her statement was not adopted by Witness D, so that it is only hearsay. But, even upon the basis that there is direct evidence of TB's state of mind, there is no basis in the evidence for assuming that it was formed as a result of any direct knowledge rather than hearsay and rumour. The absence of TB as a witness has denied both the Respondent and the Appeals Chamber the opportunity for investigating that issue. The Appeals Chamber is not satisfied that this evidence should be taken into account on the issue of the Respondent's credit as a witness.

125. The second matter relating to the credit of the Respondent as a witness was his action in contacting a number of persons contrary to the terms of the Scheduling Order of 10 February 1999 which initiated the Rule 77 proceedings against him. The second order was in these terms:

> (2) without prejudice to the Order for protective measures for witnesses "A" and "B" issued by this Chamber today, Mr Milan Vujin, his representatives and agents, shall refrain from contact with any person *identified or referred to* in the documents without the prior approval of this Appeals Chamber, pending determination of this matter [...].[69]

[69] The emphasis has been added.

The expression "the documents" is defined earlier in the Order as meaning the ten confidential statements as supplied by counsel for Tadić, redacted in accordance with the Order for Protective Measures, annexed to that Order. (In fact, only nine statements were annexed to it.) One of the nine statements annexed to the Order was that of Witness A, which deals in part with events involving Simo Kevic and GY. Another of the nine statements was that of Witness H who also mentioned Simo Kevic.

126. During his evidence, the Respondent produced (a) a statement of Simo Kevic which he had taken from him on 15 March 1999 as a result, he said, of having read the statement of Witness H, and (b) a statement of GY which he had taken from her on the same date. These were tendered on his behalf and admitted into evidence. When taxed in cross-examination with the terms of the Scheduling Order, the Respondent claimed that had not understood the second order as prohibiting him from having contact with these two people. He stated his understanding of the order as follows:

> I understood that I should not contact the witnesses in the order and in the documents, whereas I had not received a single document.
>
> I don't consider a statement to be a document. A document is written evidence of something, whereas a written statement is a written statement. The order must be clear and, had it been clear, it should have stated: "You mustn't contact Witnesses A and B or other witnesses named in some other written statements".
>
> Therefore, my stand is quite clear: I received no document and I was not bound by a single document.

Subsequently, the Respondent suggested that he was not prohibited from contacting GY "because [...] she was not encompassed within the charges", or Simo Kevic because he "was not mentioned in all these documents".

127. The Respondent had introduced his evidence before the Appeals Chamber with details of his extensive experience as a lawyer over a period of some twenty seven years. The Appeals Chamber does not accept that the Respondent genuinely drew any distinction between a document and a statement, or that he honestly misinterpreted the Scheduling Order in either of the not wholly consistent ways he put forward in his evidence. The Appeals Chamber observed the Respondent giving evidence over a substantial period. He demonstrated a marked arrogance in his attitude which suggested that no-one should be permitted to stop him doing what he wanted to do.

128. The Appeals Chamber is satisfied that the Respondent's conduct in contacting these two witnesses was an arrogant action done in deliberate disregard of the prohibition against doing so in the Scheduling Order. The Respondent has not, of course, been charged with contempt in relation to such conduct, and the Appeals Chamber does not view this conduct in the context of it being a contempt.[70] But it does regard the untruthful attempts which the Respondent made to explain his conduct as directly relevant to his credit as a witness.

129. Another matter which the Appeals Chamber has taken into account as relevant to the credit of the Respondent is his decision to give evidence after all of his own witnesses had given evidence. The Respondent had been told by the Appeals Chamber that, in evaluating his evidence if it were given after that of his own witnesses, it would take into account the fact that he had heard that evidence before giving his own.[71] The explanation given by the counsel for the Respondent that his earlier witnesses could not be heard if the Respondent were called first, which was not confirmed by either the Respondent or anyone else in evidence, is not accepted.

130. At the same time, the Appeals Chamber has also taken into account as relevant to the guilt or innocence of the Respondent the evidence which was given as to his character. Such evidence is relevant because it bears on the questions as to whether the conduct alleged to constitute contempt was deliberate or accidental, and whether it is likely that a person of good character would have acted in the way alleged.

Conclusions

131. The Appeals Chamber now returns to the events in issue, and takes them in the groups as classified at the commencement of Part V of this Judgment ("The evidence relating to the events in issue") for the purposes of expressing its conclusions. The Appeals Chamber accepts that, in order to find the Respondent in contempt of the Tribunal, it must be satisfied beyond reasonable doubt

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[70] There was an application made on behalf of Tadić to add to the allegations of contempt the conduct of the Respondent in contacting the witness Miloš Preradović, but his statement had not been annexed to the Scheduling Order of 10 February 1999. It was not argued that Preradović had been identified or referred to in any of the statements which were annexed to the Scheduling Order, and the Appeals Chamber refused the application: 9 Sept 1999, Transcript page 1360. There was no similar application in relation to the Respondent's contact with the witnesses GY or Simo Kevic.

[71] 9 Sept 1999, Transcript pages 1361-1362.

that he conducted himself in the way alleged and that such conduct constitutes contempt of the Tribunal.

(1)(a) Putting forward to the Appeals Chambers in support of the Rule 115 application a case which was known to the Respondent to be false in relation to the weight to be given to statements by one Mlađo Radić

132. The first of the statements signed by Radić and put forward by the Respondent purported to have been given by Radić in Prijedor, before his arrest, and to the Respondent as a lawyer. In fact, it had been given by Radić in the United Nations Detention Centre in The Hague, after his arrest, and to Tadić as a fellow inmate of the Detention Centre. The Respondent was aware that the statement was false in all these respects. The second of the statements signed by Radić was taken by the Respondent, and in it Radić confirmed that the earlier statement he had given was true despite the Respondent's awareness that it had been false in all those respects.

133. The Appeals Chamber does not accept the Respondent's argument that the first statement should not be interpreted as meaning that he had taken it. The clear and necessary meaning of the statement is that the Respondent did take it, and the Appeals Chamber is satisfied that this is how the Respondent knew that it would be interpreted. He accepted that both that fact and the fact that it had been taken from Radić before his arrest were significant matters in the appeal. His explanation that he believed that the contents of the statement were accurate, even if the date was wrong, is not accepted. As has been seen, in his submission to the Appeals Chamber in support of the Rule 115 application, the Respondent emphasised the importance of the fact that the first statement had been taken from Radić before his arrest.[72] His evidence before the Appeals Chamber that the Tribunal would not have been misled by the erroneous date is not accepted.

134. The Appeals Chamber finds that the Respondent did put forward a case in relation to the Radić statement that he knew to be false in material respects.

[72] The relevant part of the document is quoted at par 43.

(1)(b) Putting forward to the Appeals Chamber in support of the Rule 115 application a case which was known to the Respondent to be false in relation to the responsibility of one Goran Borovnica for the killing of the two Muslim policemen

135. In the submission which the Respondent made to the Appeals Chamber in the Rule 115 application in relation to Witness W's statement, he emphasised the importance of the fact that Witness W had himself seen one Goran Borovnica kill the two Muslim policemen, and not Tadić.

136. The Appeals Chamber is satisfied that, at that time, the Respondent knew that Witness W had asserted that his evidence at the trial naming Goran Borovnica as the killer was false, and that he was now asserting that it was Momčilo ("Ciga") Radanovic who had killed the two policemen. The Appeals Chamber does not accept the Respondent's denial that he had been told by Witness W that his evidence at the trial had been false. It prefers the evidence of Mladen Tadić and Witness H, despite their close association with Tadić and the motive which that association could give them to lie. Once it is accepted that the Respondent was prepared to put forward one part of the case which he knew to be false, it is easier to conclude that he did so on this occasion also. The Respondent accepted that there had been conflict between Witness D and himself in relation to his decision to put forward this part of the case. That fact, too, supports a finding that he knew that this part of the case was false as well. So does the evidence which the Respondent gave that he did not know whether it was Goran Borovnica or Ciga who had killed the two policemen. This was not a situation in which the Tribunal could determine where the truth lay, as he suggested. The Respondent, by submitting as the only evidence on the point a statement which he knew had been repudiated by the very person who made it, denied to the Tribunal any opportunity to make any determination as to where the truth lay.

137. It was argued by the Respondent that he could not put forward any suggestion that another person had killed the two policemen rather than Goran Borovnica unless he had a witness to confirm that the other person had killed them. This was argued by him on a number of occasions throughout his evidence. It should be stated that this was not the real issue. The prosecution bore the onus of proving beyond reasonable doubt that it was Tadić who killed the two policemen and who beat the six men at the Omarska camp. In order to defend Tadić, it was never necessary to prove that it was in fact another person who actually did these things. It was sufficient to show that there was a reasonable possibility that the witness or witnesses upon whom the prosecution relied had been mistaken in their identification of Tadić as the person who did them. In the circumstances

of this case, such a possibility would have been raised by showing that there was at the scene a person who looked sufficiently like Tadić that he could have been mistaken for him, whether or not the look-alike could be shown to have actually done these things himself. His presence there could raise a reasonable doubt as to the accuracy of the identification made. The Appeals Chamber is satisfied that the Respondent, as the experienced criminal lawyer he claimed to be, knew that this was the real issue.

138. The Appeals Chamber finds that the Respondent did put forward a case in relation to Witness W's statement which he knew to be false.

(2) Manipulating proposed witnesses

139. Although the relevant evidence is recorded earlier in this Judgment without separating that which relates to the Respondent's instruction not to name names from that which related to the instruction to answer questions as indicated by the Respondent's head signals, the Appeals Chamber intends to make separate findings in relation to these two allegations of manipulating proposed witnesses.

(2)(a) The instruction to name names

140. It is necessary here to refer to a further piece of evidence which is relevant. In January 1999, the Respondent was interviewed by a Yugoslav newspaper, *The Daily Telegraph*, concerning his departure from the Tadić defence team. According to the newspaper, the Respondent had said that he had refused to continue acting for Tadić because –

> [...] there were demands made of me with which I could not professionally comply. For example, he asked me to disclose the perpetrators of specific crimes.

In his evidence, the Respondent agreed that he had said something to that effect. When asked why, the Respondent replied:

> Because it is not defence counsel's job to reveal the names of perpetrators of crimes, and it is not to give their names but to defend them, and it is up to the police to find the names of the perpetrators.

141. The Respondent went on to assert that in any event not a single witness had ever said that another person had in fact done what Tadić had been charged with. That assertion is not accepted by the Appeals Chamber, as the event involving Witness W has already shown it to be false. But

the issue which the Respondent claims never to have been established by a single witness is, once again, not the real one, for the reasons explained in paragraph 137.

142. Witness B said in his statement that the Respondent instructed him that, if Witness D asked him for any names, he should not give them. He maintained that assertion throughout his evidence, and it is consistent with the Respondent's attitude, as expressed in his evidence, that it is not defence counsel's job to name names. The fact that the Respondent filed the first interview he conducted with Witness B (when no names were mentioned) but not the subsequent video-recorded interview (when the name of Daničic was mentioned) supports the intention of the Respondent to avoid names being named. The Appeals Chamber accepts that this instruction was given to Witness B by the Respondent.

143. Witness A also said in his statement that the Respondent had instructed him to make sure that he did not mention names. In his evidence, however, Witness A said that this had been a misunderstanding in his statement, and that the instructions had in fact been given to him by the assistant Chief of Police at the Prijedor police station, not by the Respondent. The instructions were nevertheless to answer questions according to the indication given to him by the Respondent.

144. Witness A had been interfered with between the time he gave his statement and the time he gave his evidence, as described in paragraph 59. The evidence does not permit the Appeals Chamber to identify who was responsible for that interference other than the Police Chief to whom Witness A referred. But that is not the issue here. It is obvious that Witness A was fearful of retaliation in relation to the evidence which he was to give concerning the Respondent, whether or not the Respondent was responsible for the threats he received. In those circumstances, a departure from his statement of the nature which occurred is an understandable one – even though, when examined, the new version still implicates the Respondent as a party to the instruction given.

145. A tribunal of fact is always permitted to accept part and reject part of the same witness's evidence. The Appeals Chamber is conscious that it is a substantial step to take to accept the statement given by a witness in preference to his or her sworn evidence, especially when the witness seeks to repudiate the relevant part of the statement. However, once it is accepted that the Respondent did not believe that it was his job to name names, and that he gave a similar instruction to Witness B, it is easier to conclude that he gave one to Witness A also, as Witness A asserted in

his statement. The fact that it had been Witness A who sought out Witness D in April 1998 to give him the information concerning his original statement, and who again sought out Witness D in October 1998 to make a formal statement, suggests that he had something more to say than merely that the assistant Police Chief had given him instructions.

146. The Appeals Chamber accepts that the Respondent gave Witness A the instruction not to name names.

147. The evidence as to the Respondent's conduct concerning GY at the Prijedor police station is highly suggestive of an attempt by the Respondent to prevent her identifying names to Witness D as she had, somewhat tentatively, done so in the statement which she had given to the Respondent earlier. There is, however, other evidence in the case which supports the Respondent's explanation for his conduct. The fact that Witness D already knew of her earlier statement, and was able to obtain a detailed statement from her four days later, gives rise to a reasonable doubt that the Respondent had acted with the suggested motive of preventing her from making a statement. The Appeals Chamber does not accept that such a motive has been established.

148. The evidence relating to the original statement made by Miloš Preradović is, at best, confused. If Preradović thought that the document which he was shown by Witness H differed from that which he signed only because it omits a question which required him to answer "yes" or "no" and because it may have been a faulty photocopy, it is difficult (if not impossible) to understand why he would have asserted in his written complaint that the document shown to him was a "clear fraud" and "completely different in its content". The Appeals Chamber strongly suspects that Preradović, too, was interfered with between making that complaint and giving evidence, but the evidence does not permit it to make such a finding or to identify who was responsible for the interference. The Appeals Chamber makes no findings in relation to Preradović.

149. The evidence relating to Simo Kevic is inconclusive. No-one sought to call him to give evidence before the Appeals Chamber, and none of the material is sufficiently reliable to establish anything against the Respondent. The Appeals Chamber makes no findings in relation to Kevic.

150. The general allegations of manipulation of witnesses by seeking to prevent names being named, recorded in Part V Section (2)(a) of this Judgment, have nevertheless been made out.

(2)(b) The instruction to answer questions according to the Respondent's head signals

151. Witness B did not suggest at any time that he had been given such instructions, although in his statement he did say that he had interpreted the Respondent as instructing him by way of a head signal to answer a particular question about Daničic by saying "no". In his evidence, he first departed from his statement to the extent that, although he noticed some kind of head-nodding, he did not know whether it was intended or not. Then he said that he had noticed that the Respondent was trying to tell him something, but he did not know what. Next, he said that he interpreted the evidence as an instruction not to give the name of Daničic or anyone else. Finally, he returned to where he started in his evidence, that he had not understood the head-nodding as giving him any instruction.

152. The allegation by Witness B in relation to this particular instruction has always been limited, and his evidence concerning it was far less impressive than it was in relation to the instruction to name no names. The Appeals Chamber has already accepted that Witness B was instructed by the Respondent to name no names, but it is not satisfied that the instructions to Witness B went any further than that so as to include a general instruction to answer questions in accordance with head signals given by the Respondent.

153. Witness A specifically said in his statement that he had been given such a general instruction as well as an instruction to name no names. As already mentioned, in his evidence Witness A said that this had been a misunderstanding in his statement, and that the instructions had in fact been given to him by the assistant Chief of Police at the Prijedor police station, not by the Respondent. Witness A had the same reason to depart from his statement upon this issue as has already been discussed in relation to the instruction not to name names, but the circumstances in favour of accepting what he said in his statement in preference to what he said in his evidence are not as strong. There is no evidence from the Respondent, as there was in relation to the instructions not to name names, which supports the truth of the allegation made. Of less importance, but nevertheless still relevant, Witness A asserted in his evidence that the Respondent had not in fact given any head signals during the interview. The only evidence that the instruction was given is to be found, therefore, in the statement which Witness A made. The Appeals Chamber is not satisfied that the instructions to answer questions in accordance with his head signals was given to Witness A by the Respondent.

154. The allegations recorded in Part V Section (2)(b) of this Judgment have therefore not been made out.

(3) Bribing a witness to tell lies or to withhold the truth from Witness D.

155. This allegation is based upon the statement made by Witness B, that he had been paid DM100 (the equivalent of one month's wages) by the Respondent after an interview in which he had made no mention of Daničic as having been a look-alike of Tadić and as having been at the Omarska camp, but that he had not been paid any money after a subsequent video-recorded interview in which he had named Daničic. Witness B said in his statement that he had not thought the payment was proper behavior, but in his evidence he said that he had understood it as a humanitarian gesture.

156. The Respondent said in his evidence that the payment following the first interview had been to help the witness because of the difficult financial and emotional circumstances he was in at the time. A second payment had been made to the witness some time after the second interview, but in circumstances unassociated with any interview.

157. The Appeals Chamber accepts the submissions made on behalf of Tadić that:

(a) it is unwise for any lawyer to give gifts to a prospective witness, for whatever reason, because such a gift can so easily be misinterpreted – either by the witness or by others,

(b) Witness B's change in attitude to the propriety of the payment is highly suggestive of interference with him during the period between giving the statement and giving evidence, and

(c) the Respondent's inclusion in the Rule 115 application to present additional evidence to the Appeals Chamber of the first interview (in which Mišo Daničic is *not* named), but not the later video-recorded interview (in which Mišo Daničic *is* named), supports the proposition that he was unhappy with Witness B for having named him.

158. However, the Appeals Chamber believes that the second payment made to Witness B, by the Respondent's colleague Witness DH in circumstances unassociated with any evidence given or not given by Witness B, gives rise to a reasonable doubt that the first payment was intended as a bribe

to Witness B to remain silent as to the identity of the real perpetrators of the crimes of which Tadić had been convicted.

159. No finding of contempt is made in relation to this allegation.

Summary

160. The Appeals Chamber has thus found:

(1) that the Respondent put forward to it in support of the Rule 115 application a case which was known to him to be false in relation to the weight to be given to statements made by Mlađo Radić and in relation to the responsibility of Goran Borovnica for the killing of the two Muslim policemen, and

(2) that the Respondent manipulated Witnesses A and B by seeking to avoid any identification by them in statements of their evidence of persons who may have been responsible for the crimes for which Tadić had been convicted.

The Appeals Chamber is satisfied beyond reasonable doubt that this conduct constituted contempt of the Tribunal.

VII Observation on taking statements from witnesses

161. Some time was spent during the hearing in an examination of the methods by which the Respondent took statements or otherwise obtained evidence from prospective witnesses. Extensive reference has already been made to the statements taken at the Prijedor police station on 14 March 1998, and brief reference has been made to a witness being called before a military tribunal in the Republika Srpska to give evidence.

162. There was substantial criticism of the Respondent for having organised the resuscitation of an old prosecution for desertion against Tadić in the Banja Luka military tribunal so that witnesses could be called before that tribunal to make statements. In response to that criticism, the Respondent asserted:

> In our law, counsel may not contact any of the witnesses at any stage of the proceedings; we are not allowed to do so.

And, again:

> I must say at this point, and remind one and all, that our legal system is such that lawyers are prohibited contact with witnesses, and that we are very wary and were very wary when we talked to them and in respect to the witnesses in this case.

He went on to identify three ways in which statements were permitted to be taken:

(i) by "lawyers personally via the investigating judge of the military court",

(ii) by "lawyers via an order to the Republika Srpska", which took place in a police station with a police typist, and

(iii) by policemen at the request of a lawyer.[73]

163. The Appeals Chamber has not been placed in a position where it can determine just what the law on this point is in the former Yugoslavia. The material which the Respondent supplied to the Chamber as supporting what he had said does not demonstrate the existence of any law prohibiting lawyers from obtaining statements from witnesses directly and without intervention by the court or the police, but the material he supplied may be incomplete. However, whatever the law may be in the various parts of the former Yugoslavia, it must clearly be understood by counsel appearing in matters before this Tribunal that they are bound by the law of the Tribunal to act freely when seeking out witnesses. They are bound by the Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal, which (by Article 19) prevails where there is any inconsistency between it and any other code which counsel may be bound to honour. International law does not recognise any prohibition upon counsel such as asserted by the Respondent to exist in the former Yugoslavia, and States could not effectively legislate to frustrate the proper workings of the Tribunal in that way.

164. In the present case, the Respondent explained his resort to the military tribunal by his concern that, in an application pursuant to Rule 115 to present additional evidence to the Appeals Chamber, the Chamber would prefer the evidence to be on oath, and therefore would accept statements taken by an official organ of the country in which the witnesses reside. (The Appeals Chamber was informed that affidavits are unknown in the former Yugoslavia.) Such would certainly be an understandable concern. But it should again clearly be understood that counsel

[73] At Transcript page 1957, the Respondent began by enumerating what he said were the three ways statements could be taken, and concluded by referring to the four ways (see also Transcript page 2019), but he did not identify the fourth way, at least with any clarity.

appearing before the Tribunal are not *obliged* to have statements taken from prospective witnesses in police stations or in courts or through any other official organs. Indeed, in most cases it would be unwise, and potentially counter-productive, to follow such procedures, because of the intimidating effect they may have on the witnesses themselves, and the perceptions which such procedures may create as to the influence of the State upon statements which are made in that way.

VIII Punishment

165. In early 1998, at the time of the Respondent's acts which the Appeals Chamber has found to constitute contempt, the maximum punishment prescribed by Rule 77 of the Tribunal's Rules of Procedure and Evidence was a term of imprisonment not exceeding six months, or a fine of Dfl 20,000, or both.

166. The Appeals Chamber regards the Respondent's contempt as serious. Courts and tribunals necessarily rely very substantially upon the honesty and propriety of counsel in the conduct of litigation. Counsel are permitted important privileges by the law which are justified only upon the basis that they can be trusted not to abuse them.

167. It unfortunately happens that counsel occasionally do abuse those privileges or act dishonestly or improperly. Such cases usually involve conduct on the part of counsel which is intended, for whatever reason, to assist in winning the case for the client whom counsel represents. That is bad enough. In the present case, the Respondent's conduct has been *against* the interests of his client. That is even worse, particularly where the client is in custody and relies so heavily upon his counsel for assistance. The conduct of the Respondent in this case strikes at the very heart of the criminal justice system. The Appeals Chamber has not considered the extent to which the interests of Tadić may in fact have been disadvantaged by the conduct in question. That is a matter which would require substantial investigation, and no such investigation was either suggested or undertaken in these proceedings. The contempt in this case remains a serious one, no matter what disadvantage was or was not in fact caused to Tadić.

168. The contempt requires punishment which serves not only as retribution for what has been done but also as deterrence of others who may be tempted to act in the same way. Before

determining what punishment should be imposed, however, it is necessary to consider what other consequences may flow from the finding by the Appeals Chamber that the Respondent is in contempt of the Tribunal, so that those consequences may be taken into account in that determination.

169. The Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal defines professional misconduct as including any violation of the Code and engaging in conduct which involves dishonesty, deceit or misrepresentation or which is prejudicial to the proper administration of justice before the Tribunal.[74] Knowingly making an incorrect statement of a material fact to the Tribunal and offering evidence which counsel knows to be incorrect amount to violations of Article 13 of the Code. The Respondent has been guilty of professional misconduct in all the categories described.

170. The Code does not itself provide for any sanction where counsel is guilty of professional misconduct, although reference is made to Rule 46 ("Misconduct of Counsel") of the Tribunal's Rules of Procedure and Evidence. However, that Rule (which permits a Chamber to refuse audience to counsel where, in its opinion, the conduct of that counsel obstructs the proper conduct of the proceedings) is not applicable where counsel is no longer appearing as counsel before the Chamber.

171. The Respondent is on the list of assigned counsel kept by the Registrar in accordance with Rule 45. The Registrar has power pursuant to Article 20 of the Directive on Assignment of Defence Counsel to strike any counsel off that list where he or she has been refused audience by a Chamber in accordance with Rule 46, and to notify the professional body to which that counsel belongs of the action taken in relation to his or her conduct. The Respondent's conduct as found by the Appeals Chamber in these proceedings is substantially worse than that which permits the Registrar to strike counsel off the list pursuant to Article 20 of the Directive.

172. In the opinion of the Appeals Chamber, the Registrar has power generally to strike the Respondent off the list of assigned counsel because of his serious professional misconduct as demonstrated by the Appeals Chamber's findings. A direction will therefore be given to the

[74] Article 20.

Registrar to consider striking the Respondent off the list and reporting his conduct as found by the Appeals Chamber to the professional body to which he belongs. The Appeals Chamber proposes to determine the punishment to be imposed upon the Respondent upon the basis that the Registrar in the reasonable exercise of her power would necessarily strike him off the list of assigned counsel and report his conduct to his professional body.

173. The Chamber has anxiously considered whether a term of imprisonment should be imposed, but it has decided that it would be inappropriate in the present case. A substantial fine is nevertheless necessary in this case to achieve the purposes for which punishment is imposed. The Appeals Chamber fixes that fine at Dfl 15,000.

IX Disposition

174. For the foregoing reasons, the Appeals Chamber unanimously –

(1) finds the Respondent, Milan Vujin, in contempt of the Tribunal;

(2) orders him to pay a fine of Dfl 15,000 to the Registrar of the Tribunal within twenty one days, or within such further time as may be allowed upon application by the Respondent to the Appeals Chamber;

(3) directs the Registrar of the Tribunal to consider striking the Respondent off the list of assigned counsel kept by her pursuant to Rule 45 of the Tribunal's Rules of Procedure and Evidence and reporting his conduct as found by the Appeals Chamber to the professional body to which he belongs;

(4) orders that copies of the following documents (redacted to comply with the relevant Witness Protection Orders) be made public:

(i) the Decision on Prosecution Request for Orders Regarding Defence Harassment and Intimidation of Potential Witnesses, 4 November 1998, together with the respective pleadings of the parties; and

(ii) the Scheduling Order Concerning Allegations Against Prior Counsel, 10 February 1999, but not the statements attached to it; and

(5) orders that the material from the evidence given and in the documents tendered during any closed session of the hearing which has been referred to in the Judgment be made public so far as it has been so referred to.

Done in both English and French, the English text being authoritative.

Judge Mohamed Shahabuddeen
Presiding Judge

Dated this 31st day of January 2000
At The Hague
The Netherlands

[Seal of the Tribunal]