IT-03-66-R77
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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 Former Yugoslavia since 1991	Case No.	IT-03-66-T-R77
		Date:	27 May 2005
		Original:	English

IN TRIAL CHAMBER I

Before: **Judge Amin El Mahdi, Presiding**
Judge Liu Daqun
Judge György Szénási

Registrar: **Mr. Hans Holthuis**

Judgement: **27 May 2005**

PROSECUTOR

v.

BEQA BEQAJ

JUDGEMENT ON CONTEMPT ALLEGATIONS

The Office of the Prosecutor:

Mr. David Akerson
Mr. Jason Dominguez

Counsel for the Accused:

Mr. Tjarda Eduard van der Spoel

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I. THE CHARGE AGAINST BEQA BEQAJ

1. Trial Chamber I of the International Tribunal ("Chamber") is seized of the case against Beqa Beqaj ("Accused"), a building worker born on 10 November 1952 in Petrove, Kosovo, who is charged with contempt of the Tribunal. The charge is set out in the indictment[1] as follows:

> 2. From on or about 17 February 2003 through to on or about 19 October 2004, Beqa Beqaj, individually and in concert with others, incited, attempted to commit, committed or otherwise aided and abetted the commission of Contempt of the Tribunal.
>
> 3. During the time period set forth above, Beqa Beqaj knowingly and wilfully interfered with the administration of justice by threatening, intimidating, offering a bribe to, or otherwise interfering with witnesses or potential witnesses in the case of *Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu,* Case No. IT-03-66-T.[2]
>
> ...
>
> 8. ...By his acts and omissions, Beqa Beqaj participated in:
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> **Count 1: Contempt of the Tribunal**, punishable under this Tribunal's inherent power and Rule 77 (A) (iv) of the Rules of Procedure and Evidence of the Tribunal;
>
> **Count 2: Attempted Contempt of the Tribunal**, punishable under this Tribunal's inherent power and Rule 77 (A) (iv) and Rule 77(B) of the Rules of Procedure and Evidence of the Tribunal; or
>
> **Count 3: Incitement to Contempt of the Tribunal**, punishable under this Tribunal's inherent power and Rule 77 (A) (iv) and Rule 77(B) of the Rules of Procedure and Evidence of the Tribunal.

2. The trial in this case commenced on 25 April 2005 and concluded on 2 May 2005. The Prosecution presented three witnesses to prove its allegations that between June and October 2004, Beqa Beqaj sought on six occasions to "convince" two potential witnesses (referred to as "Witness B1", "victim B1" or "B1" and "Witness B2", "victim B2" or "B2") "to withdraw their statements against the accused in the *Limaj et al.* case".[3]

3. During the trial, the Prosecution put the emphasis on the motive of the Accused's interferences - which are discussed in parts III and IV of this judgement. The Prosecution explained

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[1] The procedural background of the case is set in the attached annex. On 8 November 2004, the Prosecution was granted leave to amend the indictment of 21 October 2004 to correct the spelling of the Accused's first name. There is a typographical mistake in paragraph 2 of the amended Indictment of 8 November 2004 where the word "committed" was omitted.

[2] Hereinafter, "*Limaj*".

[3] Transcript of trial hearing in this case, page ("T") 36.

that B1, who is "a critical witness in the *Limaj* trial", testified in that trial that in July 1998 he was abducted and taken to a make-shift prison camp in the village of Llapushnik, Kosovo. He stated that prisoners in the camp were brutalised, tortured and murdered. He further gave evidence that when the camp was disbanded, approximately 21 prisoners were marched into the mountains and divided into two groups. One of these groups was released, and the other was to be massacred. B1 was in the latter group. The men of that group were lined up, a death sentence was pronounced, and the guards opened fire on the prisoners. B1 survived this massacre by fleeing into the woods whilst being fired at.[4] The Prosecution specified that interference with B1 was committed directly but also indirectly because Beqaj "incite[d] [a] relative to participate in the interference".[5] In relation to B2, the Prosecution alleged that Beqaj directly interfered with B2: the Accused told B2 that he had been asked on six occasions by Isak Musliu, a co-accused in the *Limaj* case, to "get B2 to withdraw his statement" in the *Limaj* case.[6]

4. The Defence challenged the jurisdiction of the Tribunal in this case and then denied that the Accused had wilfully and knowingly interfered with the Tribunal's administration of justice. The Defence argued that Beqaj did not approach the alleged victims to interfere with them, asserting instead that both alleged victims had in fact approached the Accused in person (B2) or by telephone (B1).[7]

5. The Accused chose to make a statement in court pursuant to Rule 84*bis* of the Rules of Procedure and Evidence of the Tribunal ("Rules") denying that he had ever "offer[ed] any land or money to anyone" or called anyone on the telephone:

> I didn't call anyone on the phone....I didn't go to anyone's house and to anyone's door to accuse someone or to make someone call me. This is by their own wish, and their promises and their statements are all registered. He said -- he stated that he has nothing against Fatmir Limaj and Isak Musliu. Neither Isak Musliu nor Fatmir Limaj offered me money or land and they didn't tell me to go to his relative or to call him and persuade him to testify -- not to testify against him. This is all unjust basis for me being in prison.[8]

[4] T. 36-37.
[5] T. 231.
[6] T. 38.
[7] T. 240-242.
[8] T. 43.

II. LEGAL PRINCIPLES

A. General principles

6. In accordance with the established jurisprudence of the Tribunal, the Chamber has not looked separately at each piece of evidence adduced at trial, including that of each witness called at trial. It is the accumulation of all the evidence in the case which is determining.

7. The Defence challenged the jurisdiction of the Tribunal in the offence of contempt of court. It argued that the offence of contempt of court is not provided for in the Statute of the Tribunal but in its Rules of Procedure and Evidence (Rule 77) which cannot create criminal offences. With respect to the principle of legality, the Defence submitted that the offence in Rule 77 is vague and the term "interference" is a blanket term which violates the principle of "nullum crimen sine lege".[9] The Defence further argued that "there should be some proof" that Beqaj should have known that his alleged behaviour was criminal in nature. It submitted that paragraph 1 of Article 309 of the provisional Criminal Code of Kosovo, which states that "Whoever, by use of force, by threat to use force or any other means of compulsion or by a promise of a gift or any other form of benefit induces a witness or an expert to give a false statement in court proceedings, minor offence proceedings, administrative proceedings or in proceedings before a notary public or disciplinary proceedings shall be punished by imprisonment of six months to five years" envisages a "very different criminal offence than [the one] formulated in Rule 77".[10]

8. The relevant parts of Rule 77 of the Rules read as follows:

> (A) The Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who
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> ...
>
> (iv) 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; or
>
> (v) 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.

[9] T. 247.

[10] T. 249, 257. The Defence submitted in particular that that "interference must have something to do with the obstruction of justice...and must be translated to actions of the accused that amounts to specific behaviour comparable to threats and the other elements as mentioned in Rule 77.", T. 248.

(B) Any incitement or attempt to commit any of the acts punishable under paragraph (A) is punishable as contempt of the Tribunal with the same penalties.

9. The explicit reference in the Rules to the Tribunal's inherent power to hold in contempt those who knowingly and wilfully interfere with its administration of justice was made in accordance with the terms of Article 15 of the Tribunal's Statute ("Statute"), which mandates the judges of the Tribunal to adopt the Tribunal's Rules.[11] The power to provide for contempt is not expressly mentioned in the Statute of the Tribunal but is part of the inherent powers of judges to deal with any issues necessary for the conduct of matters falling within their jurisdiction.[12] The Tribunal's Chambers have consistently affirmed the Tribunal's inherent power, which exists independently of any statutory reference, to punish conduct which tends to obstruct, prejudice or abuse the Tribunal's administration of justice. This power is necessary to ensure that the Tribunal's exercise of jurisdiction is not frustrated and its basic judicial functions are safeguarded.[13] The Rules express only the general contours of the offence of contempt.

10. The inherent power of an international court to deal with any issues necessary for the conduct of matters falling within its jurisdiction has been affirmed by other international courts. Article 18(c) of the Charter of the International Military Tribunal (an annex to the 8 August 1945 London Agreement) gave the Military Tribunal power to deal summarily with "any contumacy" by "imposing appropriate punishment". The United States Military Tribunals sitting in Nuremberg (and acting in accordance with the Allied Control Council Law No. 10 of 20 December 1945, which incorporated the Charter of the International Military Tribunal) interpreted their judicial power as including the power to punish contempt of court and dealt with three contempt matters.[14]

11. The International Court of Justice, in the *Northern Cameroons* case in 1963 and then in the *Nuclear Tests* Case in 1974, reiterated the existence of the inherent jurisdiction of an international judicial organ "enabling it to take such action as may be required, on the one hand to ensure that the exercise of its jurisdiction over the merits, if and when established, shall not be frustrated, and on the other, to provide for the orderly settlement of all matters in dispute to ensure the observance of the "inherent limitations on the exercise of the judicial function" of the Court, and to "maintain its

[11] Article 15 does not provide for the creation of new offences.
[12] The content of such inherent powers is found in applicable international law sources: *Prosecutor v. Dušan Tadić*, Case No. IT-94-1-A-R77, Judgement on Allegations of Contempt against Prior Counsel, Milan Vujin, 31 January 2000 ("Tadić Contempt Judgement"), paras 24, 26.
[13] *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-AR108bis, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, 29 October 1997; footnote 27, in Tadić Contempt Judgement.
[14] See "Trials of War Criminals Before the Nuremberg Military Tribunals under Control Council Law No. 10": *US v. Karl Brandt*, 27 June 1947 at 968-970, *US v. Joseph Altstoetter*, 17 July 1947, pp 974-5, 978, 992 and *US v. Alfried Krupp von Bohlen und Halbach*, 21 January 1948, pp 1003, 1005-6, 1088, 1011.

judicial character" (*Northern Cameroons*, Judgement, I.C.J. Reports 1963, at p. 29). Such inherent jurisdiction, on the basis of which the Court is fully empowered to make whatever findings may be necessary for the purposes just indicated, derives from the mere existence of the Court as a judicial organ established by the consent of States, and is conferred upon it in order that its basic judicial functions may be safeguarded."[15]

12. The power of a court to hold in contempt of court those who interfere with its administration of justice is a well established principle both in major common law and civil law legal systems, and it is based on the postulate that no judge may deliver justice without possessing the necessary power to deal with ancillary matters in order to ensure the integrity of judicial proceedings. In common law systems these powers exist independently of legal codification and in civil law legal systems such power is exercised on the basis of a codified reference.[16]

13. In order to exercise the jurisdiction given to them by the Statute, judges of this Tribunal exercise the inherent power to take measures necessary to ensure the integrity of proceedings, which ultimately maintain respect for justice.

14. In relation to the Defence's argument that the Accused did not know about the specifics of the offence of contempt of court in the Tribunal's Rules, the Chamber endorses the Appeals Chamber's statement in the *Kordić and Čerkez* case that "the nullum crimen sine lege principle does not require that an accused knew the specific *legal* definition of each element of a crime he committed."[17] The Prosecution argued that ignorance of the law cannot be pleaded. The Chamber agrees and observes that the Accused was aware that the victims were potential witnesses before the International Tribunal and that the Tribunal has jurisdiction over the crimes allegedly committed by the accused in the *Limaj et al.* trial. His awareness of the prohibition to interfere with witnesses is confirmed by his supposed knowledge of the rules on contempt of court in Kosovo by means of compulsion or of the promise of any form of benefit. The provisional Criminal Code of Kosovo codifies the inherent power of a judicial court to deal with contempt of court in its Article 309 - as quoted by the Defence – which states that "Whoever, by use of force, by threat to use force *or any*

[15] *Nuclear Test Case*, judgements of 20 December 1974, para. 23.
[16] See for instance Article 434-15 of the French Criminal Code which punishes those who pressure a witness to give false evidence or to abstain from giving trustful evidence. More statutory provisions exist which deal with the control of the hearing, "affronts", offences committed during the hearings and publication of comments tending to exert pressure on the testimony of witnesses or on the decision of any court. Article 306 of the Criminal Law of the People's Republic of China punishes anyone who entices a witness to give false testimony. The German Penal Code punishes as a principal offender anyone who incites a witness to make a false statement (paras 26, 153). The Russian Criminal Code punishes interference in any form whatsoever with the activities of a court where the purpose is to obstruct the effectuation of justice (Article 294) and also for provides more specific offences such as the falsification of evidence (Article 303).
[17] *Prosecutor v. Dario Kordić and Mario Čerkez*, Judgement, Case No. IT-95-14/2-A, para. 311.

other means of compulsion[18] or by a promise of a gift or *any other form of benefit*[19] induces a witness or an expert to give a false statement in court proceedings [...] shall be punished by imprisonment of six months to five years."

B. The material elements of the offence of contempt of court

15. Paragraph 3 of the Indictment alleges that the Accused interfered with the administration of justice by threatening, intimidating, offering a bribe to, or otherwise interfering with witnesses or potential witnesses in the *Limaj* case. During the hearings, in its opening statement and its closing arguments, the Prosecution emphasised that the present case is primarily a case of witness interference and bribery as opposed to threats or intimidation.[20] The Defence insisted during closing arguments that there was no evidence to support the charges of "threat", "intimidation" and "offering a bribe".[21] The Prosecution conceded that contempt of court was committed in this case by "otherwise interfering with witnesses".[22] For the purposes of clarity, the Chamber shall set out how the modes of commission of "threat", "intimidation" and "offering a bribe" are liberally construed and examine the interpretation proposed by the Prosecution of the definition of "otherwise interfering with witnesses".

1. "Threat", "intimidation" and "offering a bribe"

16. A "threat" is liberally construed as a "communicated intent to inflict harm or loss on another person or another property, especially one that might diminish a person's freedom to act voluntarily or with lawful consent".[23] A threat can also be defined as the expression of an intention to inflict unlawful injury or damage of some kind so as to intimidate or overcome the will of the person to whom it is addressed.[24]

17. In relation to "intimidation", the Committee of Experts on Intimidation of Witnesses and the Rights of the Defense of the Council of Europe defined intimidation as "[a]ny direct, indirect or

[18] Emphasis added.
[19] Emphasis added.
[20] T. 36, 213. The Prosecution stated however that the use of the name of Musliu in intercepted conversations was in effect an implied threat, T. 233.
[21] T. 247.
[22] T. 213.
[23] Black's Law Dictionary, seventh edition (1999).
[24] Dictionary of Law, L B Curzon, fifth edition. The *Oxford Dictionary of Law,* fourth edition (1997) gives the following definition to "threatening behaviour": "It is an offence, punishable with up to six months imprisonment and /or a fine, to use towards another person threatening, abusive, or insulting words or behaviour. It is a similar offence to distribute or display anything that is threatening, abusive, or insulting. In both cases it must be proved either that the accused person had the specific intent to cause the other person to believe that immediate unlawful violence would be used against him or, simply, that the threatened person was likely to believe that violence would be used against him".

potential threat to a witness, which may lead to interference with his/her duty to give testimony free from influence of any kind whatsoever."[25]

18. The word "bribe" is liberally construed as an inducement offered to procure illegal or dishonest action or decision in favour of the giver.[26] It is also defined as a price, reward, gift or favour bestowed or promised with a view to pervert the judgement of or influence the action of a person in a position of trust.[27]

2. Otherwise interfering with witnesses or potential witnesses

19. According to the Prosecution, in the *Maglov* Decision Trial Chamber II wrongly defined "otherwise interfering with a witness" as requiring proof that the accused engaged in conduct that is likely to deter a witness or a potential witness from giving evidence, or engaged in conduct that is likely to influence the nature of a witness evidence and that the accused acted knowingly and wilfully.[28] The Prosecution submitted that the *Toney* case in England offers a better construction because it does not require proof of conduct that is likely to deter a potential witness from giving truthful evidence but proof of an intention.[29] The Prosecution suggested that the Accused otherwise interfered with witnesses by suborning perjury, that is by secretly inducing potential witnesses to lie under oath.[30] This suggestion was made in relation to the Defence's submission that the term "otherwise interfering with witnesses" in Rule 77 is "a blanket term", and the Prosecution therefore has to specify in which way the Accused otherwise interfered with witnesses.[31]

20. In the *Maglov* Decision, Trial Chamber II stated that the *actus reus* for the offence of "otherwise interfering with a witness" may take one of a number of different forms and that "such forms include, but are not limited to, keeping a witness out of the way, by bribery or otherwise, so

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[25] Committee of Experts on Intimidation of Witnesses and the Rights of the Defense of the Council of Europe, *Intimidation of Witnesses and the Rights of the Defense: Recommendation No. R (97) 13, adopted by the Committee of Ministers of the Council of Europe on 10 September 1997, and explanatory memorandum,* p. 7.
[26] Oxford Dictionary of Law, fourth edition (1997).
[27] Black's Law Dictionary, seventh edition (1999).
[28] In support of this argument, the Prosecution raised the possibility that a wealthy alleged potential witness would not likely be deterred by the offer of a small amount of money to change a potential statement, T. 213.
[29] R v Toney, R v Ali (Tanveer), Court of Appeal, Criminal Division, 1993, 2All ER 409. The Prosecution described the facts of the Toney case as follows: "in this case the appellant's brother was due to be tried on a charge of robbery and two days before trial, the appellant called to see a potential witness with whom he had been at school. The appellant spoke to the witness and told him that his brother had not been at the scene of the robbery. That was simply a factual inaccuracy and that was all that that person did. He was charged with interfering with a witness. That court held the offence of perverting the course of justice by interfering with a potential witness could be committed where there is no evidence of any bribe, threat, undue pressure or other unlawful means since notwithstanding the fact that in the great majority of cases the *actus reus* would be accompanied by such unlawful means and the use of unlawful means was not an essential ingredient of the felony. It followed that since there was ample evidence on which the jury could find that the appellant's intention was to pervert the course of justice by persuading the witness to change his evidence, the appeal would be diseconomies (sic)", T. 214-5.
[30] T. 216.
[31] T. 247-249.

as to avoid or prevent service of a subpoena;[32] assaulting, threatening or intimidating a witness or a person likely to be called as a witness;[33] endeavouring to influence a witness against a party by, for instance, disparagement of the party;[34] or endeavouring by bribery to induce a witness to suppress evidence."[35] In the *Kajelijeli* Contempt Decision, the International Criminal Tribunal for the Rwanda's ("ICTR") Trial Chamber considered that "[i]nterference with a witness as contempt is to be construed as prohibiting only undue influence with a witness. Undue interference [...] could have occurred [...] if the individuals concerned [...] tried to induce them to change their testimony."[36]

21. Rule 77 (A) (iv) gives a list of possible *actus reus* of the offence of contempt of court as follows: threat, intimidation, causing of injury, offering of a bribe and otherwise interfering with a witness or a potential witness. The expression "otherwise interfering with a witness or a potential witness" is an indication that Rule 77 gives a non-exhaustive list of modes of commission of contempt of the Tribunal.[37] In view of the *mens rea* indicated in Rule 77 (A), the Chamber considers that otherwise interfering with witnesses encompasses any conduct that is intended to disturb the administration of justice[38] by deterring a witness or a potential witness from giving full and truthful evidence, or in any way to influence the nature of the witness' or potential witness' evidence. There is nothing to indicate that proof is required that the conduct intended to influence the nature of the witness's evidence produced a result.

C. The mental element of the offence of contempt of court

22. As stated above, Rule 77 provides for the state of mind required for the offence of contempt of the Tribunal. For each *actus reus* encompassed by Rule 77(A), the Prosecution must establish that the accused acted wilfully and knowingly, that is with specific intent to interfere with the

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[32] *Clement v. Williams* (1836) 2 Scott 814; *Lewis v. James* (1887) 3 TLR 527.
[33] *Partridge v. Partridge* (1639) Toth 40; *Shaw v. Shaw* (1861) 2 Sw & Tr 517; *Bromilow v. Phillips* (1891) 40 W.R. 220; *R v Castro, Onslow's and Whalley's Case* (1873) LR 9 QB 219; *Re B* (A) (1965) Ch 1112, (1965) 2 All ER 168; see also the County Courts Act 1959, s. 157 (I)(a) ("willfully insults a witness").
[34] *Welby v. Still* (1892) 66 LT 523.
[35] *Prosecutor v. Radoslav Brđanin Concerning Allegations Against Milka Maglov*, Case No. IT-99-36-R77, Decision on Motion for Acquittal pursuant to Rule 98bis, 19 March 2004, ("*Maglov* Decision"), para. 28, footnote 47, quoting *Hooley, Rucker's Case* (1898) 79 LT 306. With respect to the different forms that interference with a witness may take, see also: *R. v. Kellet* (1976) 1 Q.B. 372, 61 Cr.App.R. 240; *Martin's case* (1747) 2 Russ. & My. 674; *Macgill's case* (1848) 2 Fowler's Exch. Prac., 2nd ed., p 404; *R. v. Gurney* (1867) 10 Cox C.C. 550; Ex p. Jones (1806) 13 Ves. 237; *Re Ludlow Charities; Lechmere Charlton's case* (1837) 2 My. & Cr. 316 at 229; *Prosecutor v. Kajelijeli*, Case No. ICTR-98-44A-T, Decision on Kajelijeli's Motion to hold members of the Office of the Prosecutor in Contempt of the Tribunal, 15 November 2002, para. 9; and *Prosecutor v. Kanyabashi et al,* Decision on Prosecutor's Further Allegations of Contempt, 30 November 2001.
[36] *Kajelijeli* Contempt Decision, para. 9.
[37] However, in the Tribunal's Rule 77, the term "otherwise interfering with witnesses or potential witnesses" does not appear to be meant to encompass the acts of "threat", "intimidation", "causing of injury" or "offering of a bribe" which are already specifically provided for but rather all other acts which are intended to influence a witness or potential witness.

Tribunal's administration of justice. Such intent may be separately proved or inferred from the facts of each case.

D. Forms of responsibility alleged

23. Paragraph 2 of the Indictment alleges that the Accused incited, attempted to commit, committed or otherwise aided and abetted the commission of Contempt of the Tribunal. The Indictment charges the Accused with three counts: Contempt, Attempted Contempt or Incitement to Contempt of the Tribunal. The Chamber deducts from paragraph 2 of the Indictment that count 1 encompasses the two forms of responsibility of "commission" and "aiding and abetting".

24. In the jurisprudence of the Tribunal, "committing" a crime covers physically perpetrating a crime or engendering a culpable omission in violation of criminal law.[39] "Aiding and abetting" means rendering a substantial contribution to the commission of a crime.[40]

25. Article 25(3)(f) of the International Criminal Court Statute reflects a recent international codification of the concept of attempt. This provision combines the definitions of "attempt" found in most civil law and common law legal systems and provides that a person is criminally responsible if he or she "attempt[s] to commit [a crime] by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions". What is required for the attempt to be punishable is: (i) conduct consisting of a significant commencement of the criminal action, (ii) the intention to commit a crime, (iii) the failure of that intention to take effect owing to external circumstances.

26. According to the Prosecution, the definition of incitement is to arouse to action or to stir up.[41] The Chamber notes that the ICTR Trial Chamber in the *Akayesu* case stated that "Incitement is defined in Common law systems as encouraging or persuading another to commit an offence" and "one line of authority [...] would also view threats or other forms of pressure as a form of incitement". "Civil law systems punish direct and public incitement assuming the form of provocation, which is defined as an act intended to directly provoke another to commit a crime or a misdemeanour."[42]

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[38] *See* Criminal Law in Ireland, Seán E. Quinn, pp. 410,424,425, third edition.
[39] *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999, para. 188.
[40] *Prosecutor v. Zlatko Aleksovski*, Case No. IT 95-14/1-A, Judgement, 24 March 2000, paras 162-164.
[41] T. 212.
[42] *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement (TC), 2 September 1998, para. 555.

III. EVIDENCE ADDUCED AT TRIAL IN RELATION TO VICTIM B2

A. 11 June 2004 (alleged interference number 1)

27. The Prosecution alleges that in June of 2004, about six months before the start of the *Limaj et al.* trial, Beqaj committed the first of his six alleged interferences. This involved Bashkim Beqaj (who is the Accused's son) and Witness B2.[43]

28. Witness B2 testified that in early summer 2004, while walking in the street in Shtime, a small village in Kosovo, he was accosted by Bashkim Beqaj, the son of the Accused, just outside a restaurant where Bashkim Beqaj had had dinner.[44] Bashkim Beqaj accused B2 of having sent his uncle Isak Musliu to prison in The Hague and tried to bully him.[45] Bystanders interfered and stopped the bullying.[46] B2 then went to Beqaj's house and Beqaj apologised for the behaviour of his son, offered him coffee, promised that his son would behave well in the future and said that Isak Musliu had called him six times from The Hague and told him to go and see him.[47] The Defence suggested during the cross-examination of B2 that the Accused's son acted under the influence of alcohol.[48] The Defence reiterated during its closing arguments that it was Beqaj's son and not the Accused who was involved in this incident.[49]

B. Conclusion

29. The Chamber finds that the evidence adduced by the Prosecution in relation to this incident is inconclusive and fails to establish how Witness B2 was interfered with by the Accused. Accordingly, no finding of contempt (count 1), attempted contempt (count 2) nor incitement to contempt (count 3) is made in relation to the allegations that the Accused interfered with the potential testimony of Witness B2.

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[43] T. 38.
[44] The Defence submitted that Bashkim Beqaj was about 28 year-old, see Motion for Provisional Release referred to in Annex.
[45] "He threatened me. It was a market day in Shtime that day. I was passing by a restaurant, a place where we eat bread. He came out and he told me to stop. He said that he had some business with me, Bashkim Beqaj said this. So I stopped. He invited me in, and I told that I didn't have time, but he then proceeded by saying that, "You were the one who brought my uncle to The Hague.", T. 49, 50.
[46] T. 38.
[47] "They felt very bad about it. They invited me inside, offered me coffee and tea, and they felt really bad about what had happened. They wondered how come their son did that to me.", T. 50.
[48] T. 64.
[49] "Beqa Beqaj has nothing to do with his son's behaviour and he felt badly about it.", T. 240.

IV. EVIDENCE ADDUCED AT TRIAL IN RELATION TO VICTIM B1

A. Early September 2004 (alleged interference number 2)

30. The Prosecution alleged that the second alleged interference took place in early September 2004, two months before the *Limaj* trial commenced. The Prosecution explained that at that time Witness B1 was in a witness protection programme and unreachable so the Accused used a relative of B1 to convey the message that Beqa Beqaj, acting on behalf of Isak Musliu, an accused in the *Limaj et al.* case, would give him land if he withdrew his statement.[50]

31. The relevant evidence adduced in relation to that incident is that in late August or early September 2004, Witness B1's family (his brother and mother) called to inform him that a relative from Shtime ("the Relative")[51] came to see them and asked that B1 withdraw his statement.[52] The Relative also said that Isak Musliu had called on the phone and said that he would give B1 some land to compensate for the loss of his close relative ("Close Relative") who had been killed.[53] B1 explained during his testimony that Isak Musliu participated in the beatings and in the torture of his Close Relative and himself but that Musliu did not kill his Close Relative.[54] B1 testified that the Relative did not mention the name of Beqa Beqaj to his family nor did he remember whether Isak Musliu called the Relative directly, or first called Beqaj who then called the Relative.[55]

32. No evidence was adduced to conclusively establish that Beqaj was involved in this incident. The Chamber finds no evidence which supports the Prosecution's allegation that Beqaj interfered with B1's testimony in early September 2004.

B. 27 September 2004 (alleged interferences numbers 3 and 4)

33. As incident number 3, the Prosecution alleged that on 27 September 2004 Beqa Beqaj visited B1's Relative and asked that Relative to relay a message that Beqaj was speaking on behalf of Fatmir Limaj and Isak Musliu, who wanted B1 to travel back to Kosovo urgently to meet with the *Limaj* case lawyers and that B1 should withdraw his statement.[56] The Relative wanted to give B1 Beqaj's telephone number so they could speak directly. In incident number 4, the Prosecution alleged that later that day, 27 September 2004, Beqa Beqaj, "dissatisfied with B1's refusal to

[50] T. 38.
[51] The Relative is a protected person.
[52] T. 100.
[53] T. 104.
[54] The Close Relative is another protected person. T. 105.
[55] T. 105.
[56] T. 38 and 39.

cooperate with his earlier request, communicated a second time that B1 must go at great speed to Kosovo to meet with the lawyers and the family of the accused in the Limaj case as well as Beqaj to withdraw his statement."[57]

34. Witness B1 testified that the Relative called him at home one evening. The Relative explained to him over the phone that he had discussed with Beqaj about B1 going back to Kosovo to withdraw his testimony with regard to Limaj and Musliu and meet their lawyers and that he was giving him Beqaj's phone number so he could talk to him directly.[58] Witness B1 further testified that the Relative told him that "this would be the best for you and best for them, for Isak Musliu and for Fatmir Limaj."[59]

35. Witness B1 added that the Relative called him perhaps three times in total.[60] The third time the Relative called B1 he said "Beqa is waiting for your call. Why aren't you calling him? I gave you Beqa's number. I saw Beqa in Shtime, I asked him whether you called him. He said no. And then I decided to call you again and ask you why are you not calling Beqa?"[61]

36. The evidence does not conclusively establish that Beqaj incited the Relative to convince B1 to withdraw his statement and meet Limaj and Musliu's lawyers. Witness B1 testified that the Relative and Beqaj had discussed *together* about it being in the interests of B1 to withdraw his statement and meet Limaj and Musliu's lawyers. Even when considering the evidence adduced in relation to incident number 2, there is no evidence which shows beyond reasonable doubt that the Relative could not have acted on his own initiative.

C. 6 October 2004 (alleged interference number 5)

37. The Prosecution indicated that telephone surveillance was set up on 6 October 2004 in order to record what was happening between B1 and Beqa Beqaj, because B1 had told investigators about the communications he was receiving allegedly on behalf of the Accused.[62]

38. Relevant evidence in support of the Prosecution's allegations that Beqaj was interfering with the potential evidence of B1 is contained in several portions of the recorded conversation of 6 October 2004 between B1 and Beqaj. Beqaj tells B1 to "come and just give us one statement [...] just come and say that you have nothing to do with Fatmir Limaj and Isak [Musliu]."[63] Beqaj

[57] T. 39.
[58] T. 107-108.
[59] T. 110.
[60] T. 106.
[61] T. 111.
[62] T. 39.
[63] Exhibit P1, p. 2.

admits in this conversation that he had talked to Fatmir Limaj's brother, Demir Limaj. Beqaj asked Witness B1 to come and meet the lawyers of the accused Limaj and Musliu in Priština and said that nothing would happen to him. He must "come fix something up" and give them "some help",[64] for the sake of "the entire Albanian people of Kosovo".[65]

39. During cross-examination, Witness B1 emphasised that it was him who called Beqaj, that Beqaj never called him[66] and that he never thought that this recorded call would lead to Beqaj's arrest.[67]

40. The Chamber is satisfied that the recording of the conversation between B1 and Beqaj establishes beyond reasonable doubt that on 6 October 2004 Beqaj interfered with a potential witness before this Tribunal. The fact that the witness called Beqaj and not the contrary could have raised a doubt on the Accused's wilful interference with B1. However, in this instance, the Accused took advantage of B1 calling him to use words that are unequivocal indications of his intention to influence the potential testimony of B1.

D. 13 October 2004 (alleged interference number 6)

41. According to the Prosecution, the most significant evidence of Beqaj's alleged interference with B1 is an intercepted telephone call between B1 and Beqaj on 13 October 2004. The Prosecution explained that in this call, Beqaj is again trying to interfere with B1's truthful testimony. Beqaj again asks B1 to come back to Kosovo urgently to meet with the lawyers and Demir Limaj (Fatmir Limaj's brother) to make a statement repudiating his earlier statement in the Limaj case. The Prosecution stressed that in this recording Beqaj said the following: "We are not pressuring you as to Bala" (Bala being one of the three accused in the *Limaj* case).[68]

42. To support this allegation, the Prosecution submitted that the Accused's phone line was tapped and that his conversations on 13 October 2004 with Isak Musliu, B1, an unknown person, and finally "Dule" Bajrami were intercepted and that his conversation with Demir Limaj on 14 October 2004 was also intercepted. The transcript of each of these intercepted conversations was admitted into evidence.[69]

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[64] Exhibit P1, p. 2.
[65] Exhibit P1, p. 3.
[66] T. 143.
[67] T. 144.
[68] T. 40.
[69] Four of these calls were intercepted on 13 October 2004 between 14:04 hours and 19:24 hours and the fifth one was intercepted on 14 October 2004 at noon.

43. In the first conversation between Beqaj and Isak Musliu, the first cousin of the Accused's wife, Beqaj said that "beams weren't done", "the roof wasn't put up" and "the head of the house went back on his words now the roof can't put up".[70] The Prosecution suggested that those expressions were a previously agreed coded language (Beqaj did not appear surprised by this language in the recording)[71] conveying the information that Witness B1 had not been convinced to make a new statement. The second part of the conversation is between Musliu and Beqaj's son.

44. The second intercepted conversation was initiated by B1 and constitutes the most substantial piece of evidence in support of the Prosecution's allegations. Beqaj suggested during that call, which commenced at 16:58 hours, that B1 make either a new in-person statement to the lawyers or to Demir Limaj or send a "letter" by facsimile.[72] Beqaj then confirmed to B1 that upon such a statement, the accused Limaj and Musliu would be released immediately, and he emphasised that "about Bala I won't press you there."[73]

45. In the third intercepted call, Beqaj talks to an unknown man about a call he received at five o'clock.[74] The Prosecution advanced that the time mentioned is most probably a reference to B1 having called Beqaj at about 5pm.

46. In the fourth intercepted call, Beqaj talks to a certain "Dull" Bajrami, which Witness B1 said may be the pseudonym for Abdullah Musliu, Beqaj's brother-in-law, and he tells him that "there'll be nothing from him [...] he just called me [...] we can't hang our hopes on him [...] he's playing word games [...] I am so angry".[75]

47. Finally, in the fifth intercepted call, dated 14 October 2004, Beqaj talks to Demir Limaj and states that he received a call the night before from Salih Bajrami or Abdullah of Racak, that he knows what "this is about" and agrees to meet in Priština.[76]

48. The accumulation of the evidence adduced by the Prosecution in relation to incident number 6, in particular that constituted by the second and fourth intercepted calls, are indications which convince the Chamber beyond reasonable doubt that the Accused intended to influence the testimony of Witness B1 in the *Limaj* case.

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[70] Exhibit P7, p. 1.
[71] T. 219, 226.
[72] Exhibit P8, pp 1-2.
[73] Exhibit P8, p. 2.
[74] Exhibit P3, p. 1.
[75] Exhibit P2, p. 1.
[76] Exhibit P5, p. 1.

E. Conclusion

49. When considering the evidence in this case as a whole, the Chamber is satisfied beyond reasonable doubt that the Accused knew that B1 was a potential witness before the International Tribunal and that he knowingly and wilfully interfered with B1's potential testimony.

V. LEGAL FINDINGS

50. In view of the whole of the evidence adduced at trial, the Chamber makes the following legal findings in relation to each count of the Indictment.

A. Count 1: Contempt of the Tribunal

1. Threatening

51. The Chamber finds that no evidence supports the allegations that the Accused threatened the potential witnesses B1 and B2.

2. Intimidating

52. The Chamber finds that no evidence supports the allegations that the Accused intimidated the potential witnesses B1 and B2.

3. Offering a bribe

53. The Chamber finds that no evidence supports the allegations that the Accused offered a bribe to Witness B1 or Witness B2.

4. Otherwise interfering with potential witnesses

54. The Chamber finds that no evidence supports the allegations that the Accused interfered with the administration of justice in relation to the potential witness B2.

55. The Chamber is satisfied that there is sufficient evidence which establishes beyond reasonable doubt that the Accused wilfully and knowingly interfered with Witness B1 and that this conduct constitutes contempt of the Tribunal.

B. Count 2: Attempted Contempt of the Tribunal

56. The Chamber finds no evidence which establishes beyond reasonable doubt that the Accused wilfully and knowingly attempted contempt of the Tribunal.

C. Count 3: Incitement to contempt of the Tribunal

57. The Chamber finds that there is no evidence which establishes beyond reasonable doubt that the Accused wilfully and knowingly incited contempt of the Tribunal.

VI. PUNISHMENT

A. The purposes of punishment

58. The Trial Chamber has considered the purposes of punishment which generally apply before the Tribunal. The contempt requires punishment as retribution for actions of the Accused. This punishment has then a deterrent effect which serves to protect the interests of justice.[77]

59. The Trial Chamber has given primary consideration to the gravity of Beqaj's offence, and has also considered Beqaj's individual circumstances, including aggravating and mitigating circumstances.

B. Gravity of the offence

60. The Chamber regards the Accused's contempt as serious. The nature of the crimes under the jurisdiction of the Tribunal and the context in which they were committed necessitate substantial reliance upon oral evidence. That fact entails appropriate measures for the protection of the integrity of witnesses and their testimony. Judges of the Tribunal are mandated by the Statute of the Tribunal to adopt rules of procedure and evidence for the protection of victims and witnesses.[78] Rules 89, 91, 92*bis* and 96 of the Rules exemplify the crucial importance of the truthful testimony of witnesses and their protection. Acts intended to prevent a witness from giving evidence or influence the evidence that he is to give amount to a serious interference with the due administration of justice.[79]

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[77] In the same vein, Article 34 of Chapter III of the Provisional Criminal Code of Kosovo (Punishments) specifies the purpose of punishment as follows: 1) to prevent the perpetrator from committing criminal offences in the future and to rehabilitate the perpetrator, and 2) to deter other persons from committing criminal offences.

[78] Article 22 of the Statute entitled "Protection of victims and witnesses" stipulates that "The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of *in camera* proceedings and the protection of the victim's identity."

[79] This concern is particularly well illustrated by Lord Langdale in *Littler v. Thomson*: "If witnesses are to be deterred from coming forward in the aid of legal proceedings, it will be impossible that justice can be administered.", (1839) 2 Beav 129 at 131, case cited in *Lowe & Suffrin*: "The Law of Contempt", third edition, London 1996, p. 402.

C. Aggravating circumstances

61. The Chamber recalls that an aggravating circumstance must be proved beyond reasonable doubt.[80] The Prosecution submitted that the vulnerability of the victim B1 who survived an alleged massacre (in which his Close Relative was killed) and torture as well as two assassination attempts, and the fact that because of acts of witness interference, his family and himself are now in a witness protection programme is an aggravating circumstance.[81]

62. The offence was committed at a time when the victim was particularly vulnerable, under a witness protection programme, and this was known to the Accused. The Chamber accepts that the fact that the Accused was aware of the vulnerability of Witness B1 when he interfered with him is an aggravating circumstance.

D. Mitigating circumstances

63. Mitigating circumstances are proved on the balance of probabilities. The Defence submits that the good character of Beqaj (according to the testimony of Witnesses B1 and B2), his personal circumstances (he is the father of six children and he works in the building trade in Slovenia), his lack of a criminal record and his conduct during his provisional release are mitigating factors.[82]

64. The Chamber accepts these circumstances as mitigating. It recalls in particular that Witness B2 concluded his testimony by saying that he had never been afraid of Beqaj who "is a good person" but that "his in-law [...] tricked him into these things" and that he wished "for him to be set free and for us to go back home together, if this is possible".[83] Witness B1 testified similarly and said that Beqa Beqaj had never intimidated or threatened him, but had acted as a mediator between his family and Beqaj's wife's family and it was unfortunate that the people who had made threats were part of Beqaj's wife's family.[84]

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[80] It is worth mentioning that Article 64 (1) of the Provisional Criminal Code of Kosovo, the applicable domestic law at the time of the commission of the crimes by the Accused, states that "the court shall determine the punishment of a criminal offence within the limits provided for by law for such criminal offence, taking into consideration the purpose of punishment, all the circumstances that are relevant to the mitigation or aggravation of the punishment (mitigating and aggravating circumstances) and, in particular, the degree of criminal liability, the motives for committing the act, the intensity of danger or injury to the protected value, the circumstances in which the act was committed, the past conduct of the perpetrator, the entering of a guilty plea, the personal circumstances of the perpetrator and his or her behaviour after committing a criminal offence. The punishment shall be proportionate to the gravity of the offence and the conduct and circumstances of the offender."

[81] T. 245.

[82] T. 258.

[83] T. 69.

[84] T. 146.

E. Punishment to be imposed

65. Rule 77 (G) stipulates that "the maximum penalty that may be imposed on a person found to be in contempt of the Tribunal shall be a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both." The Prosecution suggested that a term of imprisonment of six months is appropriate in this case.[85]

66. The Rule gives discretion to the Chamber to choose between three forms of punishment, a term of imprisonment, a fine or a combination thereof. There are no general guidelines applying in this case. In the only case before this Tribunal where a sentence was imposed in relation to a final finding of contempt of court for witness interference (the *Tadić* Contempt Case), the Chamber imposed a fine equivalent to about 7,000 euros on the counsel found guilty of witness interference. In many domestic jurisdictions judges are also granted discretion in imposing either a term of imprisonment or a fine or both to punish contempt of court.[86]

67. In the present case, in view of the gravity of the offence and taking due account of the aggravating and mitigating circumstances, the Chamber considers that a term of imprisonment is the most appropriate punishment to achieve the purpose for which punishment is imposed.

[85] T. 254.

[86] Article 434-15 of Chapter IV "Infringements on the Administration of Justice" of the French Criminal Code stupulates that "Making use of promises, offers, gifts, undue influence, threats, force, schemes, or tricks in the course of a proceeding or in any matter preparatory to a claim or defense to induce another to render false testimony or make a false statement or attestation, or to abstain from rendering testimony of from making a statement or attestation, is punishable by three years of misdemeanour imprisonment and by a fine of 45000 euros, even if the subordination is not followed by an effect." Article 294 (found in Chapter 31 "Crimes against Justice. Concealment") of the *Russian Criminal Code* stipulates that "Interference in any form whatever in the activity of a court for the purpose of obstructing the effectuation of justice shall be punished by a fine in the amount of from two hundred up to five hundred minimum payments for labour or in the amount of the earnings or other revenue of the convicted person for a term of two up to five months, or by arrest for a term of from three up to six months, or by deprivation of freedom for a term of up to two years." Section 51 of the United Kingdom's *Criminal Justice and Public Order Act of 1994* provides that a person guilty of an offence under this section shall be liable, on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both and on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both. Article 307 in Chapter VI "Crimes of disrupting the order of social administration", Section 2, Crimes of obstructing justice of the *Criminal Law of the People's Republic of China* punishes interferences of witnesses by a term of imprisonment only (a maximum of three year of imprisonment).

VII. DISPOSITION

Having considered the arguments and the evidence presented by the parties, the Chamber finds Beqa Beqaj:

Count 1 Guilty;

Count 2 Not guilty;

Count 3 Not guilty.

The Trial Chamber sentences Beqa Beqaj to four (4) months of imprisonment.

Beqa Beqaj is entitled to credit for the period he spent in detention in Priština, in pre-trial and trial detention.

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

Dated this twenty seventh day of May 2005
At The Hague
The Netherlands

Judge Daqun Liu | Judge Amin El Mahdi Presiding | Judge György Szénási

VIII. ANNEX: PROCEDURAL HISTORY OF THE CASE

1. The Indictment

68. The indictment against Beqa Beqaj ("Indictment") was confirmed by Judge Carmel Agius on 29 October 2004 and placed under seal.[87] The same day, Judge Agius issued confidential and *ex-parte* warrants of arrest and orders for surrender.[88] The indictment charges the Accused with three counts: COUNT 1: Contempt of the Tribunal, punishable under this Tribunal's inherent power and Rule 77 (A) (iv) of the Rules of Procedure and Evidence of the Tribunal, COUNT 2: Attempted Contempt of the Tribunal, punishable under this Tribunal's inherent power and Rule 77 (A) (iv) and Rule 77(B) of the Rules of Procedure and Evidence of the Tribunal, or COUNT 3: Incitement to Contempt of the Tribunal, punishable under this Tribunal's inherent power and Rule 77 (A) (iv) and Rule 77(B) of the Rules of Procedure and Evidence of the Tribunal.

69. On 4 November 2004, the Chamber granted the Prosecution's motion for the partial lifting of the non-disclosure order issued by Judge Agius on 29 October 2004.[89] During the initial appearance of the Accused, on 8 November 2004, the Chamber orally granted leave to amend the Indictment in order to correct the spelling of the first name of the Accused.[90] On 11 March 2005, the Chamber granted the Defence's motion to lift confidentiality of the warrants of arrest and orders for surrender filed on 15 February 2005.[91]

2. Composition of the Chamber

70. On 3 November 2004, the case was assigned to Trial Chamber I composed of Judge Daqun Liu, presiding, Judge Amin El Mahdi and Judge Alphons Orie.[92] The next day, Judge Orie was designated the pre-trial Judge in this case.[93] On 24 March 2005, the President of the Tribunal

[87] Decision on Review of Indictment and Order for Non-Disclosure, 29 October 2004.
[88] Warrant of Arrest / Order for Surrender, 29 October 2004
[89] Order to Lift the Confidentiality of the Indictment, 4 November 2004.
[90] Oral decision during initial appearance of the Accused, 4 November 2004. The first name of the Accused is spelled "Beqa" and not "Beqe".
[91] Decision on Defence's Motion to Lift Confidentiality of Warrant of Arrest and Order for Surrender, 11 March 2005. The Defence had submitted that "there are no exceptional circumstances to justify that the warrants of arrest and orders for surrender" issued by the Confirming Judge should remain under seal and argues that it needs access to the "warrants of arrest and orders for surrender" against the Accused in order to "examine the legitimacy of the arrest and transfer to the UN Detention Unit in The Hague".
[92] Order Assigning a Case to a Trial Chamber, 3 November 2004.
[93] Order to Designate a Pre-Trial Judge, 4 November 2004.

assigned the *ad litem* Judge György Szénási to this case in place of Judge Orie.[94] On 30 March 2005, Judge El Mahdi was designated Presiding Judge of the case.[95]

3. The Defence Team

71. On 5 November 2004, the Deputy Registrar assigned Mr. Rodney Dixon as counsel to the Accused for the purposes of the initial appearance.[96] On 10 November 2004, the Accused requested the assignment of Mr. Tjarda Eduard van der Spoel as his lead Counsel.[97]

4. Initial Appearance

72. At the initial appearance of the Accused on 8 November 2004, Beqa Beqaj pleaded not guilty to all charges of contempt of the Tribunal contained in the indictment against him.

5. Detention and provisional release of the Accused

73. Beqa Beqaj was detained as a suspect from 19 October 2004 to 29 October 2004 at the request of the Prosecution and under an order issued by the United Nations Mission in Kosovo ("UNMIK"). At the date of the confirmation of the Indictment, the Prosecution requested UNMIK to transfer the Accused to the seat of the Tribunal. The Accused was transferred to the custody of the International Tribunal on 4 November 2004. At his initial appearance on 8 November 2004, the Chamber ordered the detention on remand of the Accused and enjoined the Commanding Officer of the United Nations Detention Unit in The Hague to detain the Accused until further Order.[98]

74. On 29 December 2004, the Defence for the Accused requested his provisional release although they had not obtained guarantees from UNMIK to ensure his return for trial if released. The Chamber requested the Registry to inquire with UNMIK about the possibility of obtaining such guarantees. On 4 March 2005, although no guarantees had yet been obtained from UNMIK, the Chamber issued an "Order for Provisional Release" granting Beqa Beqaj provisional release subject to various terms and conditions including the condition that the Accused "return for Trial in The Hague upon the Chamber's Order".[99] On 8 March 2005, the Accused left the custody of the Tribunal for Kosovo. On 7 April 2005, the commencement of the trial of the Accused being

[94] Order Designating Judges in a Case before a Trial Chamber, 24 March 2005.
[95] Order Designating a Presiding Judge for the Case, 30 March 2005.
[96] Decision of the Registrar, 5 November 2004.
[97] Decision of Registrar to withdraw the assignment of Rodney Dixon as Duty Counsel and appoint Mr. Van der Spoel as lead counsel, 18 November 2004.
[98] Order for Detention on Remand, 8 November 2004.
[99] Order for Provisional Release, 4 March 2005.

scheduled for 25 April 2005, the Chamber suspended the provisional release of the Accused and ordered him to return to the custody of the Tribunal.[100]

75. On 11 April 2005, the Defence filed a motion to reconsider the order suspending the provisional release of the Accused.[101] In this motion the Defence sought (1) a revocation of the order suspending provisional release on the grounds that the arrest and detention on remand of an accused charged with contempt of the International Tribunal was unlawful and (2) that the Chamber request that the Dutch authorities allow the Accused to remain on Dutch territory undetained during his trial.

76. On 25 April 2005, the Chamber denied the motion. The Chamber first noted that it is established that an International Tribunal has inherent power to protect the integrity of its proceedings. Its jurisdiction extends to adjudicate claims and proceedings that necessarily derive or arise out of a claim that is properly before it. The Chamber then noted that the Defence for the Accused did not claim that the arrest or detention of the Accused violated the rights of the Accused or was so egregious that it was detrimental to the International Tribunal's integrity (therefore impairing its right to exercise jurisdiction over the Accused). Instead it was argued that such arrest and detention violated Article 29(1) of the Statute and as a remedy the Accused should not be placed in the custody of the International Tribunal during his trial. The Chamber recalled that the reading of Article 29 (2) of the Statute clearly supports the interpretation that the International Tribunal has the necessary jurisdiction over ancillary matters flowing or arising out of main cases.[102]

6. Evidence

(a) Witnesses

77. On 31 January 2005, the Prosecution filed its pre-trial brief along with a witness list in accordance with Rule 65*ter* (E). The Prosecution intended to call seven witnesses to be heard in five days. On 22 February 2005, the Defence filed its pre-trial brief. It did not intend to call witnesses or tender exhibits.

78. On 11 March 2005, the Prosecution filed a "Motion to amend the Rule 65 *ter* (E) Witness and Exhibit List", whereby it sought to amend the witness and exhibit lists it had filed on 31 January 2005 pursuant Rule 65 *ter* (E) on the grounds that (1) the Prosecution reduced the number

[100] Order Terminating the Provisional Release of Beqa Beqaj, 7 April 2005.
[101] Defence Motion to Re-Examine the order terminating the provisional release of Beqaj, 11 April 2005.
[102] Decision on Defence's Motion to reconsider the order suspending the provisional release of the Accused, 25 April 2005.

of viva-voce witnesses in an effort to minimize the size of its case, (2) it removed three foundational witnesses after the Defence accepted the authenticity and admissibility of audio recordings, (3) it sought the addition of one viva voce witness whose statement concerned central issues and who had only recently come to attention of the Prosecution, and (4) the motion was made before the commencement of trial. On 7 April 2005, the Chamber considered that it was satisfied that the amendment of the Prosecution's witness and exhibit lists would not prejudice the preparation of the defence and granted the motion.[103]

79. On 19 April 2005, the Prosecution filed a second motion to amend the Rule 65*ter* (E) witness and exhibit lists, whereby it again sought to amend the Prosecution's witness list in order to remove one viva-voce witness from the list of witnesses and to add two exhibits (two interviews of the accused Beqa Beqaj). On 21 April 2005, noting that the Defence did not oppose the motion and that the Prosecution wished to withdraw a viva-voce witness from its list of witnesses and that the two exhibits it wished to add had been previously disclosed to the Defence, the Chamber granted the motion.[104]

80. On 25 April 2005, the Prosecution requested orally a third amendment of its list of witnesses in order to further reduce the size of the case. The Prosecution intended to call three witnesses.[105]

(b) Exhibits

81. On 31 January 2005, the Prosecution indicated that it would tender 15 exhibits during trial. The list of exhibits was amended twice on 7 and 19 April 2005. The Prosecution adduced 14 exhibits into evidence at trial.

(c) Statement under Rule 92*bis*(D)

82. On 31 January 2005, the Prosecution filed a confidential "Motion for Admission of Transcripts pursuant to Rule 92 *bis* (D)". The motion sought to introduce the prior testimony of Witness B1 given in the case *Prosecutor v Limaj et al.* (IT-03-66-T).[106] On 24 February 2005 the Chamber directed the Prosecution to file an application with the *Limaj* Trial Chamber pursuant to Rule 75(G) (i) of the Rules.[107] On 7 April 2005 the Chamber admitted the transcript of Witness B1

[103] Decision on Prosecution's Motion to Amend the Rule 65 *ter* (E) Witness and Exhibit Lists, 7 April 2005.
[104] Decision on Second Prosecution's Motion to Amend the Rule 65 ter (E) Witness and Exhibit Lists, 21 April 2005.
[105] T. 22.
[106] Prosecution Motion for Admission of Transcripts pursuant to Rule 92 *bis*, 31 January 2005.
[107] Decision on Prosecution's Motion for Admission for Transcripts pursuant to Rule 92 bis (D), 24 February 2005.

into evidence and allowed the Defence to cross-examine this witness on issues pertinent to the transcript for a limited period of time.[108]

7. Protective measures for witnesses

83. On 8 November 2004, the Prosecution filed a confidential and *ex-parte* "Motion for a Further Order Regarding Disclosure of Supporting Material" in which it requested that an order be made for the confidentiality of the supporting material. On 25 November 2004, the Chamber granted the motion.[109]

84. On 31 January 2005, the Prosecution filed a confidential "Motion for Protective Measures"[110] in which it requested that three prosecution witnesses be given pseudonyms and that their identity and location be protected, and that the confidentiality and non-disclosure of certain documents be maintained. On 24 February 2005, the Chamber granted the Prosecution's motion, finding that the protection sought was necessary and appropriate to protect the witnesses while being consistent with the rights of the Accused.[111]

85. On 25 April 2005, at the request of the Prosecutor, the Chamber orally agreed to additional protective measures for the witnesses B1 and B2.[112]

86. On 5 May 2005, the Chamber reiterated orally that the Registry must take all appropriate measures to ensure that the identity of the protected witnesses is not revealed, in particular when releasing audio and video-recordings of the hearings in this case to the media.

8. Trial

87. The trial commenced on 25 April 2005. At the outset of the trial, the Prosecution informed the Chamber that it would call only three witnesses, namely Witnesses B1, B2 and Howard Tucker, in order to further streamline the case.[113] The Prosecution and the Defence presented their opening statements on 25 April 2005. The same day, the Accused made a statement under Rule 84*bis*. The parties submitted their closing arguments on 2 May 2005. The Chamber delivered an oral decision on 5 May 2005, followed by the present written judgement setting out in particular the legal standards applicable in this case.

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[108] Decision on Prosecution's Motion for Admission of Transcript pursuant to Rule 92 *bis*, 7 April 2005.
[109] Order for Non-Disclosure, 25 November 2004.
[110] Prosecution Confidential Motion for Protective Measures, 31 January 2005.
[111] Decision on Prosecution's Motion for Protective Measures, 24 February 2005.
[112] Distortion of face and voice in lieu of closed sessions.
[113] T. 22.