

IT-04-84-R77.4  
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15 August 2008

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**UNITED  
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International Tribunal for the Prosecution of  
Persons Responsible for Serious Violations of  
International Humanitarian Law Committed in  
the Territory of Former Yugoslavia since 1991

Case No. IT-04-84-R77.4

Date: 15 August 2008

Original: English

**IN TRIAL CHAMBER I**

**Before:** Judge Alphons Orie, Presiding  
Judge Christine Van den Wyngaert  
Judge Bakone Justice Moloto

**Registrar:** Mr. Hans Holthuis

**Decision of:** 15 August 2008

**PROSECUTOR**

v.

**ASTRIT HARAQIJA**

and

**BAJRUSH MORINA**

*PUBLIC*

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**DECISION ON ASTRIT HARAQIJA'S MOTION SEEKING  
AMENDMENT OF THE INDICTMENT**

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**The Office of the Prosecutor:**

Mr. Serge Brammertz  
Mr. Dan Saxon

**Counsel for the Accused:**

Mr. Karim A. A. Khan for Astrit Haraqija  
Mr. Jens Dieckmann for Bajrush Morina

**Trial Chamber I** (“Trial Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991 (“Tribunal”) is seised of “Astrit Haraqija’s Defence Motion Seeking Amendment of the Indictment”, filed publicly on 19 June 2008 (“Motion”) and hereby renders its Decision.

#### **A. Background and Submissions**

1. The Motion was filed pursuant to Rule 72 (A)(ii) of the Rules as a preliminary motion alleging defects in the form of the indictment.<sup>1</sup>
2. On 8 January 2008, Astrit Haraqija (“Accused”) was indicted on two counts for alleged interference in the case of *Prosecutor v. Ramush Haradinaj et al.*<sup>2</sup> In the 8 January 2008 indictment (“Indictment”), the Accused was charged with Contempt of the Tribunal (Count 1) and, in the alternative, Incitement to Contempt of the Tribunal (Count 2), for his alleged instructions to Bajrush Morina (“Co-Accused”)<sup>3</sup> to speak to a protected witness (“PW”) in the *Haradinaj et al.* case and persuade PW not to testify.
3. The Defence seeks an amendment of the Indictment claiming that it is defective in three respects: (1) that the same factual description supports the charges against the Accused and the Co-Accused, (2) that the same factual description supports Counts 1 and 2 against the Accused, and (3) that the timeframe of the alleged crimes set out in the Indictment (*i.e.*, July – August 2007) is too broad and is unsupported by any information that the Prosecution disclosed to the Defence.<sup>4</sup>
4. In support of its submissions, the Defence contends that the Indictment is unclear as to which potentially violative conduct is attributable to the Accused, and which is to be attributed to the Co-Accused.<sup>5</sup> Additionally, the Defence asserts that Contempt and Incitement to Contempt are crimes of a different nature, and thus involve different *actus reus* and *mens rea*.<sup>6</sup> The Defence claims that the Indictment fails to clearly distinguish which actions on the part of the Accused are noted in support of Count 1 and which actions are in support of Count 2.<sup>7</sup> Finally, the Defence also contends that the Indictment makes no reference to any activity on the part of the Accused that

<sup>1</sup> Mr. Karim A. Khan was formally assigned as permanent counsel for the Accused on 20 May 2008, “and received notice of his assignment via electronic mail on 22 May 2008” (Motion, fn. 1). Thus, the Motion, which was filed on 19 June 2008, was in accordance with Rule 72(A)(ii), as it was filed within thirty days of permanent counsel having been assigned by the Accused.

<sup>2</sup> Indictment, para. 5, noting the case of *Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj*, Case No. IT-04-84-T, from which this matter arose.

<sup>3</sup> Bajrush Morina was listed in the Indictment and charged with one count, Contempt of the Tribunal.

<sup>4</sup> Motion, para. 1.

<sup>5</sup> Motion, paras 13, 14.

<sup>6</sup> Motion, paras 9-11.

occurred in August 2007, and that no other information disclosed to the Defence referenced August 2007.<sup>8</sup>

5. On 3 July 2008, the Prosecution publicly filed its “Response to Astrit Haraqija’s Defence Motion Seeking Amendment of the Indictment” (“Response”) whereby it opposes the Motion on four grounds, claiming that the Indictment: (1) is sufficiently detailed, (2) properly states the material facts pertaining to the two counts against the Accused, (3) adequately differentiates between the facts supporting the counts against the Accused and the Co-Accused, and (4) sets forth an accurate timeframe. In support of its submissions, the Prosecution contends that the Indictment sets out “the material facts of this case, without pleading evidence, in a concise manner”.<sup>9</sup> Additionally, the Prosecution notes that the reasons behind the inclusion of the month of August in the Indictment were confidential and “not suitable for the public indictment” given that such information would likely have put PW in further danger.<sup>10</sup>

### **B. Applicable Law**

6. Regarding Count 1, the charge of Contempt of the Tribunal, Rule 77 (iv) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) sets forth:

The Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and willfully interfere with its administration of justice, including any person who [...]

(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 [...]

7. Rule 77(iv) is also applicable to Count 2, the charge of Incitement to Contempt of the Tribunal, as is Rule 77(B), which states that:

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.

8. With regard to the requirements for indictments, Article 21 (4)(a) of the Tribunal’s Statute sets forth that the accused shall be entitled “to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him”. Additionally, Rule 47(C) states:

<sup>7</sup> Motion, paras 1, 10-12.

<sup>8</sup> Motion, para. 15.

<sup>9</sup> Response, para. 6 (footnotes omitted).

<sup>10</sup> Response, paras 9, 21, 22.

The indictment shall set forth the name and particulars of the suspect, and a concise statement of the facts of the case and of the crime with which the suspect is charged.<sup>11</sup>

**C. Discussion**

9. The Indictment alleges that in July 2007, the Accused Haraqija, instructed the Co-Accused Morina to meet with PW and persuade PW not to testify in the *Haradinaj et al.* trial.<sup>12</sup> Further, it alleges that the Accused had originally planned on traveling with the Co-Accused to meet PW in the country of PW’s residence, however, only the Co-Accused, in fact, met with PW.<sup>13</sup> The Indictment asserts that, as instructed by the Accused, the Co-Accused “pressured PW to persuade him [PW] not to testify against Ramush Haradinaj”.<sup>14</sup> The Co-Accused, an employee of the Accused,<sup>15</sup> reported back to the Accused that “PW would not give in”.<sup>16</sup> Finally, the Indictment states that “PW refused to succumb to the pressure and eventually testified as a protected witness in the *Haradinaj* trial”.<sup>17</sup>

1. Defence’s Claim That the “Same Factual Description Supports the Charges Against Accused and Co-Accused”

10. The Trial Chamber finds that the facts alleged in the Indictment clearly and concisely differentiate which potentially violative conduct was committed by the Accused and which was committed by the Co-Accused. For example, the Prosecution clearly contends in the Indictment that the orders flowed in one direction (*i.e.*, from the Accused to the Co-Accused)<sup>18</sup> whereas the information was reported in the opposite direction.<sup>19</sup> Additionally, the Prosecution clearly alleges in the Indictment that the Co-Accused met with PW on two occasions during the Indictment’s applicable timeframe<sup>20</sup> and that the Accused had no such meetings, although he had originally planned to travel with the Co-Accused to meet PW.<sup>21</sup> These facts, as alleged in the Indictment, clearly demonstrate the conduct of the Accused, separate from that of the Co-Accused.

<sup>11</sup> See also Article 14 (3)(a) of the International Covenant on Civil and Political Rights (“ICCPR”) and Article 6 (3)(a) of the European Convention on Human Rights (“ECHR”), which were both cited by in para. 4 of the Motion and which state essentially the same requirements as set forth in the Statute and Rule 47(C).

<sup>12</sup> Indictment, para. 8.

<sup>13</sup> Indictment, para. 10.

<sup>14</sup> Indictment, para. 12.

<sup>15</sup> Indictment, para. 9.

<sup>16</sup> Indictment, para. 12.

<sup>17</sup> Indictment, para. 14.

<sup>18</sup> Indictment, para. 8.

<sup>19</sup> Indictment, paras 9, 12.

<sup>20</sup> Indictment, para. 10, which states that the Co-Accused met with PW on 10 and 11 July 2007.

<sup>21</sup> Indictment, para. 10.

11. Thus, the Trial Chamber is satisfied that the Indictment adheres to Article 21 (4)(a) of the Statute as well as Rule 47(C) of the Rules in that, counter to the Defence's claims, the Indictment does clearly separate the conduct attributed to the Accused and that to the Co-Accused as bases for their respective charges. The arguments of the Defence in this respect are dismissed.

2. Defence's Claim That the "Same Factual Description Supports the Two Separate Counts"

12. It is settled jurisprudence of this Tribunal that separate charging, such as alternative charging and cumulative charging, is permissible.<sup>22</sup> As such, the Prosecution permissibly pleaded charges in the alternative in the present case. The factual circumstances listed in the Indictment demonstrate that the underlying conduct in support of the Incitement to Contempt charge is the Accused's initial contact with the Co-Accused instructing the Co-Accused to persuade PW not to testify in the *Haradinaj et al.* trial. Furthermore, the factual circumstances in the Indictment noted in support of the Contempt charge include the Accused's alleged subsequent interactions with the Co-Accused (*i.e.*, the interactions between the Accused and the Co-Accused in between the Co-Accused's meetings with PW).<sup>23</sup> It is these subsequent interactions with the Co-Accused that clearly separate the Contempt charge from the lesser charge of Incitement to Contempt.

13. Thus, the Trial Chamber finds that the Indictment is clear as to which alleged conduct on the part of the Accused is offered to support the charge of Incitement to Contempt, and which alleged conduct is offered to support the alternative charge of Contempt. The Defence's arguments that the Indictment fails to distinguish the conduct supporting the Incitement to Contempt and Contempt charges are therefore dismissed.<sup>24</sup>

3. Defence's Claim That the "Timeframe of the Allegations Made in the Indictment is Too Wide in Scope"

14. A third point of contention raised in the Defence's Motion is that the timeframe of the alleged charges set forth in the Indictment is allegedly "too wide in scope".<sup>25</sup> The Trial Chamber notes that in the present case, the conduct underlying the charges was of a kind to extend its effect until PW gave his testimony in August 2007, as specified in the Confidential Annex to the Prosecution's Pre-Trial Brief.<sup>26</sup>

<sup>22</sup> *Prosecutor v. Naletilić and Martinović*, Case No. IT-98-34-A, Judgement, 3 May 2006, paras 103-105.

<sup>23</sup> Indictment, para. 12.

<sup>24</sup> Additionally, the Trial Chamber finds no merit in the argument made by the Defence in footnote 9 of the Motion that the differences between the charge of Contempt and that of Incitement to Contempt are analogous to the differences between individual responsibility and superior responsibility.

<sup>25</sup> Motion, para. 15.

<sup>26</sup> Confidential Annex A to Prosecution's Pre-Trial Brief, p. iv.

15. The Trial Chamber finds that the pleading of a period of two months is not unreasonable in relation to the counts charged in the Indictment. As far as the Defence's contention that the inclusion of the month of August is "unsupported",<sup>27</sup> the Trial Chamber finds that (1) the Prosecution justified the timeframe in its confidential supporting materials to the Indictment<sup>28</sup> as well as in its Response,<sup>29</sup> and (2) that the Prosecution need not plead such details in the Indictment, but rather during pre-trial discovery.<sup>30</sup> Thus, the Trial Chamber finds that the timeframe is neither too wide in scope nor unsupported.

#### **D. Disposition**

16. It follows that the Defence arguments in support of an amendment of the Indictment are without merit and therefore dismissed.

For the reasons set forth above, and pursuant to Rules 54, 47(C) and 77 of the Rules, the Trial Chamber

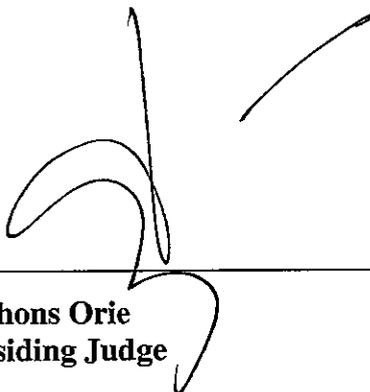
**DENIES** the Motion.

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

Dated this fifteenth day of August 2008

At The Hague

The Netherlands



Alphons Orié  
Presiding Judge

[Seal of the Tribunal]

<sup>27</sup> Motion, para. 15.

<sup>28</sup> Indictment: Confidential Supporting Materials Annex A, para. 37.

<sup>29</sup> See Response, paras 20-22.

<sup>30</sup> *Prosecutor v. Kupreškić*, IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 February 1999, para. 12; See also Rule 66 (Disclosure of the Prosecutor) of the Rules.