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Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

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CHAMBERS

The Hague, 17 December 2008

Judgement Summary For Astrit Haraqija and Bajrush Morina

Please find below the summary of the Judgement read out today by Judge Orić:

The Trial Chamber is sitting today to deliver its Judgement in the case of Prosecutor versus Astrit Haraqija and Bajrush Morina.

For the purposes of this hearing, the Trial Chamber will briefly summarise the procedural history of the case, the applicable law, certain submissions of the parties and the Chamber's findings. We would like to emphasise that this is but a summary and that the only authoritative account of the Trial Chamber's findings is the written Judgement, which will be made available at the end of the session.

Procedural History and Indictment

The indictment against Astrit Haraqija and Bajrush Morina was filed by the Office of the Prosecutor on 8 January 2008 and was confirmed on 12 February 2008. It alleges that, in July and August 2007, the Accused, acting on their own initiative or at the request of others, incited or committed contempt of the Tribunal by having knowingly and wilfully interfered with the administration of justice by interfering with a protected witness in the case of Prosecutor v. Haradinaj et al. The protected witness will be called "Witness 2" for the purposes of this Judgement.

The indictment alleges that the Accused knew that Witness 2 was an important witness in the Haradinaj et al. case. It further alleges that in early July 2007, Astrit Haraqija, then Minister for Culture, Youth and Sport, instructed Bajrush Morina, who knew Witness 2, to organise a meeting in order to persuade Witness 2 not to testify against Ramush Haradinaj. The indictment alleges that although Astrit Haraqija initially planned to travel with Bajrush Morina to meet Witness 2, eventually only Bajrush Morina met him. According to the indictment, on 10 and 11 July 2007, Bajrush Morina and Witness 2 had two meetings, which were recorded by the police, in which Bajrush Morina pressured Witness 2 not to testify against Ramush Haradinaj. As an official of the Ministry for Culture, Youth and Sport at that time, Bajrush Morina required permission for his trip abroad. According to the indictment the expenses were paid by the Ministry.

Based on the foregoing, the Prosecution has charged

(1) Astrit Haraqija with one count of Contempt of the Tribunal, punishable under Rule 77(A)(iv) of the Rules of Procedure and Evidence of the Tribunal or, in the alternative, with one Count of Incitement to Contempt of the Tribunal, punishable under Rule 77(A)(iv) and (B) of the Rules; and

(2) Bajrush Morina with one count of Contempt of the Tribunal punishable under Rule 77(A)(iv) of the Rules.

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The trial was conducted from 8 September 2008 to 11 September 2008. During the trial, the Trial Chamber admitted 39 exhibits into evidence. It also received evidence from a total of 5 prosecution witnesses and 4 witnesses for the Haraqija Defence. Astrit Haraqija also made a statement pursuant to Rule 84 bis and testified as a witness. Counsel for Bajrush Morina did not call any witnesses.

Applicable Law

I will now move to the relevant law as applied in this case.

Despite the Statute's silence on Contempt of the Tribunal, it is firmly established that the Tribunal possesses an inherent jurisdiction to prosecute and punish Contempt. This inherent jurisdiction derives from the Tribunal's judicial power to ensure that its exercise of the jurisdiction given to it by the Statute is not frustrated and that its basic judicial functions are safeguarded.

Both Accused are charged pursuant to Rule 77(A)(iv) of the Rules. This provision provides that:

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

(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;

A "threat" is defined as a communicated intent to inflict harm or damage of some kind to a witness and/or the witness's property, or to a third person and/or his property, so as to influence or overcome the will of the witness to whom the threat is addressed. "Intimidation" consists of acts or culpable omissions likely to constitute direct, indirect or potential threats to a witness, which may interfere with or influence the witness's testimony. "Otherwise interfering with a witness" encompasses acts or omissions, other than threatening, intimidating, causing injury or offering a bribe, which are capable of and likely to deter a witness from giving full and truthful testimony or in any other way influence the nature of the witness's evidence. The person otherwise interfering with a witness must have acted willingly and with the knowledge that his conduct was likely to deter or influence the witness.

In the alternative, Astrit Haraqija is also charged with Incitement to commit Contempt of the Tribunal pursuant to Rule 77(B) of the Rules, according to which any person who knowingly and wilfully encourages and/or persuades another person to commit any act described in Rule 77(A) of the Rules shall be subject to the same penalties as one who commits the act.

The Requirement of Corroboration

I will now turn to the question raised by the Haraqija Defence, whether evidence relating to the acts and conducts of Astrit Haraqija in Bajrush Morina's suspect interview that was admitted into evidence, requires corroboration, and if so, whether the corroborating evidence may originate from the same witness. If the answer to both questions is in the affirmative, then the Trial Chamber must also consider the extent to which its findings may permissibly rely upon a statement which has not been subject to cross-examination.

The Appeals Chamber has confirmed the principle that a conviction based solely, or in a decisive manner, on the depositions of a witness, whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial,

constitutes an unacceptable infringement of the right of an accused to a fair trial. The right to confront witnesses applies to depositions made against an accused both by regular witnesses as well as co-accused. Therefore, evidence of a witness who has not been subject to cross-examination will require sufficient corroboration by significant evidence if relied upon to establish a conviction.

As the Rules and the Tribunal's jurisprudence are bereft of any case which deals with the requirements in relation to corroborative evidence, the Trial Chamber analysed the approaches taken by several national jurisdictions in that respect. As the Trial Chamber is not bound by any national rules of corroboration, it did so only in looking for guidance.

From the analysis that can be found in the Judgement, the Trial Chamber concluded that while some jurisdictions require that in order to be used as corroboration, the evidence must come from a separate and independent source, others take a less technical approach, requiring only that the corroborating evidence link a defendant with the commission of the crime, but not necessarily originate from a different source.

Mindful of its duty to apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law, the Trial Chamber determined that, in order for a piece of evidence to be able to corroborate non cross-examined evidence, it must not only induce a strong belief of truthfulness of the latter, i.e. enhance its probative value, but must also be obtained in an independent manner. Rejecting a technical approach to this issue, the Trial Chamber held that corroborating evidence might include pieces of evidence that, although originating from the same source, arose under different circumstances, at different times and for different purposes. Such evidence would indeed meet the requirement of sufficient corroboration, which is aimed at preventing an encroachment of the rights of the accused.

The Responsibility of Bajrush Morina

I will now address the Trial Chamber's findings in relation to the responsibility of Bajrush Morina.

The Trial Chamber heard evidence establishing that Bajrush Morina contacted Witness 2 on 2 July 2007 and subsequently travelled to meet him on 10 and 11 July. During the meetings, Bajrush Morina told Witness 2 that he had been sent by Astrit Haraqija to ask Witness 2 not to testify against Ramush Haradinaj in order to save Haradinaj. Bajrush Morina also told Witness 2 that other witnesses who had testified in the Haradinaj *et al.* case before the Tribunal were subsequently killed.

The Trial Chamber found that the evidence consistently shows that Bajrush Morina knew that Witness 2 was about to testify in the Haradinaj *et al.* case. The Trial Chamber dismissed the submission by the Defence that the Prosecution failed to prove beyond reasonable doubt that Bajrush Morina's conduct was likely to dissuade Witness 2 from giving evidence. Although the conduct of Bajrush Morina took the form of amicable advice and was staged in a friendly atmosphere, it was clear that Bajrush Morina's words were intended and could only be understood as a strong and unequivocal call on Witness 2 to refrain from testifying in the Haradinaj *et al.* case. In the Trial Chamber's view, such behaviour constituted intimidation, an interference of a nature proscribed by Rule 77(A)(iv) of the Rules. Bajrush Morina's failure to dissuade Witness 2 from testifying was immaterial for establishing Bajrush Morina's responsibility.

Likewise, the lack of motive alleged by the Defence could not have an impact in this case. Just as the existence of a motive to commit a crime is in itself of minimal, if any, probative value that the accused has committed it, the absence of a motive cannot disprove facts established through reliable evidence. The absence of a motive may, however, call for further exploration of the convincing potential of the evidence before establishing that the

crime was committed and that the accused committed it. In the present case, however, the evidence was strong and convincing.

Trial Chamber therefore found that Bajrush Morina's conduct constituted Contempt of the Tribunal pursuant to Rule 77(A)(iv) of the Rules.

The Responsibility of Astrit Haraqija

I will now move to the Trial Chamber's findings in relation to the responsibility of Astrit Haraqija.

The Trial Chamber first addressed the Prosecution's submission that, on 2 July 2007, Astrit Haraqija met Bajrush Morina at a cultural event in Peja and instructed him to organise a meeting with Witness 2. While the evidence was not conclusive, the Trial Chamber found that the date and place of such a conversation is immaterial for Astrit Haraqija's responsibility and subsequently turned to the question whether it had been established that Astrit Haraqija directed Bajrush Morina to interfere with Witness 2.

The Trial Chamber recalled its findings that Bajrush Morina's conduct constituted Contempt of the Tribunal. Whereas Astrit Haraqija's involvement follows most directly from Bajrush Morina's Suspect Interview and the Intercepts of the meetings between Bajrush Morina and Witness 2, the Trial Chamber found that it was also established by the totality of the evidence. The Trial Chamber was mindful that most pieces of evidence ultimately originated from Bajrush Morina. However, it considered them to be independent from the Suspect Interview, as well as from each other, since they arose under different circumstances, at different times and were generated for different purposes, as is explained in more detail in the Judgement.

In addition to regarding the different categories of evidence as sufficiently independent from each other and thus being capable of corroborating the Suspect Interview, the Trial Chamber also found that there was a high degree of consistency throughout the entire evidence regarding Astrit Haraqija's involvement. Moreover, the Trial Chamber found that evidence negated the alternative scenario, in which Bajrush Morina would have consistently implicated Astrit Haraqija under all circumstances and at all times when the incriminating evidence was generated. Moreover, Astrit Haraqija's diary and other travel commitments did not contradict the evidence concerning Astrit Haraqija's involvement since they do not contain any commitments on the relevant dates, which would be capable of raising a reasonable doubt as to Astrit Haraqija's participation.

Finally, considerations of an alternative motive for Bajrush Morina to meet with Witness 2 in order to interfere with his testimony also did not raise a reasonable doubt as to Astrit Haraqija's responsibility. The Trial Chamber found it highly unlikely that Bajrush Morina would have undertaken the trip on his own, considering his personal and financial background. Astrit Haraqija, on the other hand, had become involved in the defence of Ramush Haradinaj in the context of his political position within the Democratic Alliance of Kosovo ("LDK") and the coalition government under Haradinaj. Furthermore, Astrit Haraqija had repeatedly expressed discontent and lack of understanding with respect to the trial of Kosovars such as Ramush Haradinaj before this Tribunal.

In conclusion, the Trial Chamber was satisfied that the only reasonable inference to be drawn from the evidence in its totality, considering its mutually corroborating linkages and the circumstances as a whole, is that Astrit Haraqija knew that Witness 2 was a witness in the Haradinaj *et al.* trial before the Tribunal and instructed Bajrush Morina to call on Witness 2 with the specific task of interfering with his testimony.

Although Astrit Haraqija did not personally meet or interact with Witness 2, the Trial Chamber found that the evidence established beyond reasonable doubt that Astrit Haraqija, knowing that Witness 2 was about to give evidence before the Tribunal, exercised his

influence over Bajrush Morina, who accepted Haraqija's authority and followed his directions. Therefore, the Trial Chamber found that Astrit Haraqija's conduct formed an integral part of Bajrush Morina's criminal conduct and thus constitutes Contempt of the Tribunal pursuant to Rule 77(A)(iv) of the Rules.

Sentencing

I will now turn to the Trial Chamber's considerations of the sentence to be imposed.

The Trial Chamber noted in respect of both Accused that the intimidation of witnesses is particularly grave among the possible ways of interfering with the administration of justice. This assessment of gravity also took into account the importance of ensuring that the atmosphere of trials before the Tribunal allow for the proper administration of justice by protecting witnesses from interference. Therefore, the Trial Chamber did not further consider the particular situation, which the Trial Chamber in the Haradinaj et al. case faced in securing witness testimony in an atmosphere that many witnesses perceived to be unsafe, as an aggravating circumstance.

As an aggravating circumstance, the Trial Chamber found that Astrit Haraqija abused his high position in the structure of the government to put pressure on an employee of his ministry.

As mitigating circumstances for Bajrush Morina, the Trial Chamber considered his good character, the absence of a prior criminal record and his family situation. The Trial Chamber also considered the fact that in committing the Contempt of the Tribunal, Bajrush Morina was pressured by Astrit Haraqija and that Bajrush Morina was reluctant to carry out what Astrit Haraqija had told him to do and apologised for his behaviour to Witness 2.

As mitigating circumstances for Astrit Haraqija, the Trial Chamber considered his good character and his involvement in inclusive and conciliatory political projects, as well as his family situation.

Disposition

I will now read the relevant part of the disposition of the Judgement. Mr. Haraqija, Mr. Morina, would you please rise.

Pursuant to the Statute of the Tribunal and Rules 77 and 77 bis of the Rules:

The Accused Astrit Haraqija is **guilty** of Contempt of the Tribunal (Count 1), punishable under Rule 77(A)(iv) and Rule 77 (G) of the Rules;

Astrit Haraqija is hereby sentenced to a single sentence of five (5) months of imprisonment. Astrit Haraqija has been in custody for 36 days. Pursuant to Rule 101(C) of the Rules, he is entitled to credit for the period of time he has been in custody towards service of the sentence imposed.

The Accused Bajrush Morina is **guilty** of Contempt of the Tribunal (Count 1), punishable under Rule 77(A)(iv) and Rule 77 (G) of the Rules;

Bajrush Morina is hereby sentenced to a single sentence of three (3) months of imprisonment. Bajrush Morina has been in custody for 36 days. Pursuant to Rule 101(C) of the Rules, he is entitled to credit for the period of time he has been in custody towards service of the sentence imposed.

The Registrar is to take measures necessary for the enforcement of the sentence.

This concludes the delivery of the Judgement, which will now be made publicly available. The Chamber stands adjourned.
