



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

Case No. IT-04-84-R77.5
Date: 24 July 2008
Original: English

IN TRIAL CHAMBER I

**Before: Judge Alphons Orie, Presiding
Judge Christine van den Wyngaert
Judge Ole Bjørn Støle**

Registrar: Mr Hans Holthuis

Judgement of: 24 July 2008

PROSECUTOR

v.

BATON HAXHIU

PUBLIC

JUDGEMENT ON ALLEGATIONS OF CONTEMPT

Office of the Prosecutor

Mr Dan Saxon
Mr Vincent Lunny

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I. PROCEDURAL HISTORY AND THE INDICTMENT

1. The Indictment for contempt against Baton Haxhiu (“the Accused”) was confirmed on 10 April 2008.¹ On 16 April 2008, Judge Orić, in his capacity as the Presiding Judge of Trial Chamber I, constituted the Trial Chamber hearing this case as it is currently composed and assigned himself as the Pre-Trial Judge.²

2. In its Order of 20 May 2008 lifting the confidentiality of the Indictment, the Trial Chamber made the Indictment in this case public and redacted the information revealing the date of the publication relevant to this case, the name of the newspaper where it was published, and the Accused's position with that newspaper at that time.³ On 9 June 2008, the Prosecution filed a confidential motion requesting that the Indictment be made public in its unredacted form and that the Accused's date and place of birth be corrected.⁴ In an addendum to that motion, filed on 11 June 2008, the Prosecution requested that the word “willingly” in the first sentence of the unnumbered paragraph on page 2 of the Indictment be changed to “wilfully”.⁵ The Defence did not object to these Prosecution requests.⁶ In an oral decision rendered on 24 June 2008, at the Pre-Trial Conference in this case, the Trial Chamber denied the request that the Indictment be made public in its unredacted form and it granted the Prosecution's other requests.⁷ The Prosecution was invited to file corrected versions of the Indictment, in both redacted and unredacted forms.⁸ The Prosecution did so on 27 June 2008.⁹

3. The Indictment alleges that the Accused wrote and published an article (“the Newspaper Article”)¹⁰ which revealed the identity of a protected witness (“the Witness”) who had appeared in *Prosecutor v. Haradinaj et al.* before the Tribunal. According to the Indictment, the Accused thereby knowingly and wilfully interfered with the administration of justice in knowing violation of orders by a Trial Chamber of the Tribunal.¹¹

¹ Decision on Review of Indictment, 10 April 2008.

² Order Composing a Chamber, 16 April 2008.

³ Order Lifting Confidentiality of the Indictment, 20 May 2008.

⁴ Motion Re Form of the Indictment, 9 June 2008.

⁵ Addendum to Motion Re Form of the Indictment, 11 June 2008.

⁶ Transcript page (“T.”) 15.

⁷ T. 15-16.

⁸ T. 16.

⁹ Prosecution's Submission of Redacted and Unredacted Amended Indictment with Public Annex A and Confidential Annex B, 27 June 2008.

¹⁰ The Newspaper Article is confidential exhibit P1.

¹¹ Amended Indictment (“Indictment”), 27 June 2008, p. 2.

4. The Accused was transferred to the seat of the Tribunal on 20 May 2008. He was assigned counsel on 21 May 2008.¹² His initial appearance was held on the same day and the Accused pleaded not guilty.¹³ The Accused was provisionally released on 23 May 2008 under certain terms, one of which required him not to discuss his case with anyone, including the media, other than his counsel.¹⁴

5. On 3 June 2008, the Pre-Trial Judge ordered the Prosecution and the Defence to file their Pre-Trial Briefs on 10 and 17 June 2008, respectively, and scheduled the trial to take place on 24 and 26 June 2008.¹⁵ The Pre-Trial Briefs were filed on the assigned dates.¹⁶

6. During the Accused's provisional release, UNMIK reported on his compliance with the terms of his release.¹⁷ On 31 May 2008, the Accused gave a television interview.¹⁸ On 9 June 2008, the Prosecution filed a motion arguing that the Accused had discussed his case with the media and requested that the Trial Chamber consider whether the Accused breached the terms of his provisional release by giving the television interview, and, if so, whether the provisional release should be revoked.¹⁹ The Defence responded that there had been no breach of the terms of the provisional release.²⁰ While these filings were pending, on 16 June 2008, the Defence filed a motion requesting that the conditions of the Accused's provisional release be modified in order to enable him to travel to The Hague for the trial, at his own expense.²¹ On 18 June 2008, the Prosecution filed its response opposing the modification.²² On 19 June 2008, in relation to the television interview given by the Accused, the Trial Chamber found that in light of the nature of this case and the impending start of the trial, there was no need to determine whether he was in breach of the terms of his provisional release because even if he was, the breach would not have been of such seriousness that it would have resulted in the

¹² Decision by the Deputy Registrar, 21 May 2008.

¹³ T. 1-13.

¹⁴ Decision on Provisional Release of Baton Haxhiu, 23 May 2008, para. 12 (6).

¹⁵ Order Scheduling Start of Trial, 3 June 2008, pp. 3-4.

¹⁶ Prosecution's Submission of Pre-Trial Brief, Witness List and List of Exhibits, 10 June 2008 ("Prosecution Pre-Trial Brief"); Defence Counsel Pre-Trial Brief with Confidential Annexes, 17 June 2008 ("Defence Pre-Trial Brief").

¹⁷ See e.g. UNMIK Reports of 29 May, 5 June, 12 June and 19 June 2008. UNMIK is an acronym for United Nations Interim Administration Mission in Kosovo.

¹⁸ UNMIK Report on Provisional Release of Baton Haxhiu, 5 June 2008; see also exhibits P9, P9.a, P9.a.1 (the video of the television interview and the transcript thereof in Albanian and English).

¹⁹ Motion on Baton Haxhiu's Compliance with Provisional Release, 9 June 2008.

²⁰ Defence Counsel Response to the Prosecutor's Motion on Baton Haxhiu's Compliance with Provisional Release, 10 June 2008, pp. 3-4.

²¹ Motion to Amend the Conditions of Provisional Release with Confidential Annexes, 16 June 2008.

²² Prosecution's Response to Defence "Motion to Amend the Conditions of Provisional Release with Confidential Annexes", 18 June 2008.

revocation of the provisional release.²³ The Trial Chamber also decided to modify the conditions of the Accused's provisional release, enabling him to travel to The Hague without being in custody and at his own expense, for the purpose of attending his trial.²⁴

7. On 23 June 2008, the parties submitted an agreement on facts not in dispute between them.²⁵

8. The Pre-Trial Conference and the trial took place on 24 June 2008.²⁶ The Accused made an unsworn statement pursuant to Rule 84 *bis* of the Rules of Procedure and Evidence ("Rules"), and the Prosecution called one witness.²⁷ The parties agreed that it was not necessary to file final trial briefs in this case.²⁸ The Trial Chamber will rely on the parties' submissions in the Pre-Trial Briefs and closing arguments when considering their positions on issues in dispute in this case.

II. APPLICABLE LAW

9. It is firmly established that the Tribunal possesses an inherent jurisdiction to prosecute contempt, despite the Tribunal Statute's silence on the subject.²⁹ This inherent jurisdiction derives from the Tribunal's judicial function to ensure that its exercise of the jurisdiction which is expressly provided for in the Statute, is not frustrated and that its basic judicial functions are safeguarded.³⁰ The Tribunal has assumed the right to punish for contempt since its creation, and contempt was included in the original version of the Tribunal's Rules.³¹ The current version of Rule 77 (A) of the Rules provides a non-exhaustive³² list of contumacious acts:

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

²³ Decision on the Prosecution Motion on Baton Haxhiu's Compliance with Provisional Release and Decision Modifying Conditions of Provisional Release, 19 June 2008.

²⁴ Ibid.

²⁵ Prosecution's Submission of Agreement on Facts not in Dispute between Prosecution and Accused Haxhiu with Confidential Annex A, ("Agreed Facts") 23 June 2008.

²⁶ T. 14-100.

²⁷ T. 17, 20-54.

²⁸ T. 16-17.

²⁹ *Vujin* Appeal Judgement, paras 13 and 18; *Nobilo* Appeal Judgement, para. 30; *Beqaj* Trial Judgement, para. 9; *Marijačić and Rebić* Trial Judgement, paras 13-15; *Jović* Trial Judgement, para. 11; *Marijačić and Rebić* Appeal Judgement, paras 23-24; *Margetić* Trial Judgement, para. 13.

³⁰ *Vujin* Appeal Judgement, paras 13 and 18; *Nobilo* Appeal Judgement, para. 30; *Beqaj* Trial Judgement, paras 9, 13; *Marijačić and Rebić* Trial Judgement, para. 13.

³¹ *Vujin* Appeal Judgement, para. 19.

³² *Nobilo* Appeal Judgement, para. 39; *Margetić* Trial Judgement, para. 13.

- (i) being a witness before a Chamber, contumaciously refuses or fails to answer a question;
- (ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber;
- (iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber;
- (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.

10. The Accused is charged pursuant to Rule 77 (A) (ii) of the Rules. The *actus reus* of this form of commission of contempt is the physical act of disclosure of information relating to proceedings before the Tribunal in breach of an order of a Trial Chamber.³³ Disclosure is to be understood as revelation of information that was previously confidential to a third party or to the public.³⁴ In the view of this Trial Chamber, this includes information the confidential status of which has not been lifted. An order by a Trial Chamber, which may be oral or written, must be objectively breached.³⁵ It is not necessary to prove that interference with the Tribunal's administration of justice actually occurred.³⁶

11. The *mens rea* required for the relevant form of commission of contempt in this case, is the knowledge of the Accused that his disclosure of particular information is done in violation of an order of a Trial Chamber.³⁷ The Appeals Chamber has held that mere negligence in failing to ascertain whether an order had been made granting protective measures to a particular witness could never amount to contempt.³⁸ However, it has also held that either wilful blindness or reckless indifference to the existence of the order granting protective measures to a witness is sufficiently culpable conduct to be dealt with as contempt.³⁹

³³ Rule 77 (A) (ii) of the Rules; *Marijačić and Rebić* Trial Judgement, para. 17; *Jović* Trial Judgement, para. 19; *Marijačić and Rebić* Appeal Judgement, para. 24; *Jović Appeal* Judgement, para. 30.

³⁴ *Marijačić and Rebić* Trial Judgement, para. 17; *Marijačić and Rebić* Appeal Judgement, para. 24.

³⁵ *Marijačić and Rebić* Trial Judgement, para. 17.

³⁶ *Marijačić and Rebić* Trial Judgement, para. 19; *Margetić* Trial Judgement, para. 14; *Jović Appeal* Judgement, para. 30.

³⁷ Rule 77 (A) (ii) of the Rules; *Marijačić and Rebić* Trial Judgement, para. 18; *Jović* Trial Judgement, para. 20.

³⁸ *Nobilo* Appeal Judgement, para. 45.

III. PARTIES' SUBMISSIONS AND DISCUSSION

A. Whether the Accused disclosed confidential information relating to proceedings before the Tribunal in breach of an order of a Trial Chamber

12. The Indictment alleges that the Accused revealed the identity of the Witness, “whose identity was protected by Orders of the Trial Chamber” in the Newspaper Article he wrote and published.⁴⁰

13. In its Pre-Trial Brief and in its closing arguments, the Defence argues that, at the time of the Newspaper Article’s publication, the Witness’s identity was protected by an order and not orders as alleged in the Indictment.⁴¹ The Defence submits that in its Decision of 20 May 2005, Trial Chamber II assigned a pseudonym to the Witness which was only applicable to the Witness “until further Order”.⁴² The Defence argues that this Decision was superseded by the Oral Decision of 28 August 2007, and as such was not in force at the time of the Newspaper Article’s publication.⁴³ Therefore the Accused, according to the Defence, could at most have violated one order.⁴⁴ The Prosecution maintains that the Accused violated two orders.⁴⁵

14. Since the parties have agreed that the identity of the Witness was protected at the time of the publication,⁴⁶ the question whether it was protected by one or two orders of the Tribunal is of limited importance. The Trial Chamber, however, accepts the Defence argument and finds that at the time of publication, the identity of the witness was protected only by the Oral Decision of 28 August 2007, issued in *Prosecutor v. Haradinaj et al.*, reasons for which were given on 3 September 2007, and it was not longer protected by the Decision of 20 May 2005.⁴⁷

15. The Defence submits that the publication of the name of a protected witness is not specifically prohibited by Rule 77 (A) (ii) of the Rules.⁴⁸ It argues that once information that

³⁹ Ibid., paras 45 and 54.

⁴⁰ Indictment, p. 2.

⁴¹ T. 56, 58, 85; Defence Pre-Trial Brief, pp. 2-3.

⁴² T. 58, 85; Exhibit P3 (*Prosecutor v. Haradinaj et al.*, Decision on Prosecution’s Application for Pre-Trial Protective Measures for Witnesses, 20 May 2005).

⁴³ T. 58, 85; Exhibit P5 (*Prosecutor v. Haradinaj et al.*, Oral Decision, 28 August 2007, T. 7545, and the Reasons given on 3 September 2007, at T. 7812-7814).

⁴⁴ T. 85; Defence Pre-Trial Brief, pp. 2-3.

⁴⁵ T. 70, 74, 78, 81.

⁴⁶ Agreed Facts, no. 6.

⁴⁷ P3; P5.

⁴⁸ T. 85.

should have remained confidential had become a “public secret”, known to many people, that information could not thereafter be disclosed, and therefore no violation of Rule 77 of the Rules was possible.⁴⁹ In support of its argument, the Defence tendered four statements of individuals who stated that it was a “public secret” in Kosovo/Kosova that the Witness was a witness in *Prosecutor v. Haradinaj et al.* trial prior to the publication of the Newspaper Article.⁵⁰ It also tendered a discussion on an internet forum concerning the Witness and that trial.⁵¹

16. The Prosecution submits that the publication of confidential material, such as the name of a protected witness in a newspaper, amounts to disclosure in the sense of Rule 77 (A) (ii) of the Rules.⁵² It argues that, if it is permissible that a name of a protected witness be published when a select group of people believe that they know the name, that would be contrary to the Tribunal’s jurisprudence and it would “eviscerate the authority of Tribunal orders protecting the identity of witnesses”.⁵³

17. The Newspaper Article was published in the newspaper on the date alleged in the Indictment.⁵⁴ The Newspaper Article contains “the true name” of the Witness and describes him as a “protected witness”.⁵⁵ It further refers to the supposed place of residence of the Witness.⁵⁶ It also mentions that the Witness’s name “was found on the list of witnesses who were to testify under full confidentiality against Ramush Haradinaj’s group”.⁵⁷

18. On 20 May 2005 and 28 August 2007, the Trial Chamber in *Prosecutor v. Haradinaj et al.* issued decisions which, *inter alia*, granted protective measures to the Witness.⁵⁸ The protective measures granted in 2005 included the use of a pseudonym and the Oral Decision of 28 August 2007 also granted the use of face and voice distortion for the duration of the Witness’s testimony in *Prosecutor v. Haradinaj et al.*⁵⁹ At the time of publication, the identity of the Witness remained protected.⁶⁰

⁴⁹ T. 85-87; See also Defence Pre-Trial Brief, p. 4.

⁵⁰ T. 59-63, 86; Exhibits D1, D2, D3, and D4 (statements tendered by the Defence); See also Defence Pre-Trial Brief, p. 4.

⁵¹ T. 63-64; Exhibit D5 (statement tendered by the Defence); See also Defence Pre-Trial Brief, pp. 4-5.

⁵² T. 69-70.

⁵³ T. 75-76.

⁵⁴ P1, Agreed Facts, no. 7.

⁵⁵ P1, pp. 1-3; Agreed Facts, no. 9.

⁵⁶ P1, p. 1; Agreed Facts, no. 10.

⁵⁷ P1, p. 1.

⁵⁸ Agreed Facts, no. 1; P3; P5.

⁵⁹ P3; P5; Agreed Facts, nos. 2-3.

⁶⁰ P5; Agreed Facts, nos. 6-7.

19. In other cases before this Tribunal dealing with contempt, journalists have been convicted for publishing information that revealed the identity of witnesses protected by a Chamber's orders.⁶¹ In one such case, the *Jović* case, the Appeals Chamber considered the same argument put forward by the Defence in this case, namely that the information published was already in the public domain at the time of its publication, and that there could have been no further harm caused to the Tribunal's administration of justice and that therefore no contempt could have been committed.⁶² The Appeals Chamber held that:

... [A]n order remains in force until a Chamber decides otherwise. The fact that some portions of the Witness's written statement or closed session testimony may have been disclosed by another third party does not mean that this information was no longer protected, that the court order had been *de facto* lifted or that its violation would not interfere with the Tribunal's administration of justice.⁶³

The Trial Chamber finds therefore that the strict interpretation of disclosure, as advanced by the Defence, is contrary to the Tribunal's jurisprudence. The Trial Chamber agrees with the Prosecution that if the Defence argument would be accepted, the authority of the Tribunal's orders on protective measures would consequently suffer to such an extent that similar orders could become ineffective.

20. In his statement before the Trial Chamber, the Accused said that he wrote the Newspaper Article, and referred to it as "my article".⁶⁴ He acknowledged writing the Newspaper Article with the aim of having it published.⁶⁵ In his statement to the Prosecution investigators on 6 February 2008, the Accused again stated that he wrote the Newspaper Article and that he takes responsibility for it.⁶⁶ The parties have agreed that the Accused was the author of the Newspaper Article, and he accepted responsibility for its publication.⁶⁷

21. On the basis of the foregoing, the Trial Chamber is convinced beyond a reasonable doubt that the Accused, by writing and publishing the Newspaper Article, revealed the name of a protected witness, namely the Witness, whose identity was protected by the Oral Decision of 28 August 2007, and that he thereby disclosed information relating to proceedings

⁶¹ See generally *Marijačić and Rebić* Trial Judgement; *Jović* Trial Judgement; *Marijačić and Rebić* Appeal Judgement; *Margetić* Trial Judgement; *Jović* Appeal Judgement.

⁶² *Jović* Appeal Judgement, para. 29.

⁶³ *Ibid.*, para. 30.

⁶⁴ T. 24-27.

⁶⁵ T. 26-27.

⁶⁶ Exhibit P6.a.1 (English transcript of Prosecution interview with the Accused), pp. 13-14.

⁶⁷ Agreed Facts, nos. 5, 7-8.

before the Tribunal in breach of an order of a Trial Chamber. It concludes that the *actus reus* requirements of contempt as charged in this case have been fulfilled.

B. Whether the Accused knew that his disclosure of the name of the Witness was in violation of an order of a Trial Chamber

22. The Prosecution submits that the evidence of Mr Haxhiu's knowledge that he was publishing protected information is contained in the Newspaper Article itself as it refers to the Witness as a protected witness and states that his name was found on the list of witnesses who were to testify under full confidentiality.⁶⁸ It adds that the Accused also knew that Stephen Schook, the former Deputy Head of UNMIK, had to leave his post because, at least in part, he mentioned the name of the Witness and that this was a strong indication for the Accused that the Witness's identity was protected.⁶⁹ Furthermore, it submits that prior to the publication of the Newspaper Article, Mr Haraqija, former minister for Culture, Youth and Sport of Kosovo/Kosova, informed the Accused that he, Mr Haraqija, was under investigation for possible intimidation of the Witness.⁷⁰ According to the Prosecution, the Defence evidence (and argument) that the Witness's name was a "public secret" in Kosovo prior to the Newspaper Article's publication is another indication that the Accused knew the Witness's identity was protected.⁷¹

23. The Prosecution further submits that the Accused acknowledged in his interview with the Prosecution investigators that he was aware of the Tribunal's regulations and that he violated the Rules.⁷² It argues that in the interview, the Accused affirmed that he knew that the Witness was protected and that moreover, "he chose to impose his own perception of the circumstances of the witness" as he published the Witness's name in the belief that publication was the best way of protecting the Witness.⁷³ According to the Prosecution, another reason the Accused gave for the publication of the Witness's name was to encourage people to testify openly.⁷⁴

24. The Prosecution argues that there is strong evidence that the Accused was wilfully blind and recklessly indifferent to the existence of orders protecting the identity of the

⁶⁸ T. 71.

⁶⁹ T. 72-73.

⁷⁰ T. 73.

⁷¹ T. 74-75.

⁷² T. 73.

⁷³ T. 78.

⁷⁴ T. 79.

Witness.⁷⁵ The Prosecution supports its argument by pointing to the Accused's experience and position, his view that the unlawful publication of the name was a "bureaucratic point", and his choice not to seek legal advice or to contact the Tribunal to check whether the Witness's identity was protected.⁷⁶

25. The Defence argues that because the Oral Decision of 28 August 2007 was not specific as to the protective measures granted to the Witness, and because no written decision was served on the Accused, he could not have known at the time what protective measures were in place.⁷⁷ The Defence adds that, in the reasons given on 3 September 2007, the Trial Chamber stated that "if the testimony of the witness were to be made public physical harm might result to the witness or the witness's family".⁷⁸ In the Defence's view, this ruling may have led the Accused to misunderstand the protective measures in place, and he may have been under a reasonable impression that it was the testimony of the Witness that was protected, and not the Witness's identity.⁷⁹ The Defence also argues that the Accused believed that he could publish the Witness's name after the Witness had testified.⁸⁰ The Prosecution replies that if a witness's testimony is protected, that does not mean that the identity of that witness is not protected.⁸¹ Relying on the Tribunal's jurisprudence, the Prosecution also submits that a person's misunderstanding of the law does not excuse a violation of it.⁸²

26. As noted above, the Newspaper Article, which the Accused wrote and published, states that the Witness's name was found on a list of witnesses who were to testify under full confidentiality and it twice refers to the Witness as a protected witness. The Prosecution's request for protective measures for the Witness was filed publicly on 27 August 2007.⁸³ In it, the Prosecution requested that the Witness's pseudonym be retained and that the Witness testify with face and voice distortion.⁸⁴ The request was granted by the Oral Decision of 28 August 2007, reasons for which were given on 3 September 2007.⁸⁵ When it rendered its Decision, the Trial Chamber stated publicly that:

⁷⁵ T. 73-74.

⁷⁶ T. 74.

⁷⁷ T. 87-89; Defence Pre-Trial Brief, pp. 5-7.

⁷⁸ T. 88.

⁷⁹ T. 88-89, 94-96; Defence Pre-Trial Brief, p. 7.

⁸⁰ T. 26-27; Defence Pre-Trial Brief, p. 5.

⁸¹ T. 98.

⁸² T. 77.

⁸³ Exhibit P4 (*Prosecutor v. Haradinaj et al.*, Prosecution's Twenty-Second Motion for Trial-Related Protected Measures, 27 August 2007).

⁸⁴ *Ibid.*, paras 1, 6.

⁸⁵ P5.

The Chamber has decided that the requested protective measures for [the Witness] are granted, reasons to follow. That means, Mr. Kearney, that we could start the examination of [the Witness] I think for him entering the courtroom the curtains have to be down in relation to face distortion, and then to be opened again once the witness has taken his seat.

...

Good morning, Witness [pseudonym], because that's how we will call you since the Chamber has granted the protective measures requested by the Prosecution just a while ago, protective measures being the use of pseudonym, that means that we'll call you Witness [pseudonym] rather than to use your own name; that your face cannot be seen by the outside world; your voice, your own voice, cannot be heard by the outside world, although the content of your testimony is public.⁸⁶

When it gave its reasons for this Decision, the Trial Chamber stated publicly that:

On the 27th of August, 2007, the Prosecution applied for retention of the pseudonym granted during the pre-trial phase of this case, and for face and voice distortion for [the Witness]. The Defence did not oppose the motion and the Chamber granted it on the 28th of August 2007.

...

According to the motion, [the Witness] has [during] numerous contacts with the Prosecution expressed concerns about his and his family's safety as a result of his scheduled testimony before the Tribunal. As specified in the motion, threats have been directed against the witness and a member of his family. The Chamber considers that the witness's fear is genuine and objectively based and that there is a risk that if the testimony of the witness were to be made public, physical harm might result to the witness or the witness's family.⁸⁷

27. On both occasions during these public pronouncements, the Trial Chamber made the nature of the protective measures granted to the Witness unambiguously clear to those present in the courtroom and to the public, in that by assigning a pseudonym to him, the Trial Chamber protected the Witness's identity. Additionally, the Witness's testimony in *Prosecutor v. Haradinaj* was not given in closed session, which is a measure available to Trial Chambers wishing to also protect a testimony's content. Therefore, the Defence argument that the Accused was under the impression that it was only the Witness's testimony that was protected, and not his identity, fails. Furthermore, the Defence argument that no written decision was served upon the Accused is without merit because the binding effect of the Trial Chamber's order does not depend on personal service of that order. It is not to be expected from the Tribunal to serve upon every journalist, or every member of the public, a written order that certain information cannot be published. Given its nature, a decision or order publicly issued by the Tribunal constitutes public notice. Furthermore, the Trial Chamber

⁸⁶ Transcript in *Prosecutor v. Haradinaj et al.*, 7545-7546; P5.

⁸⁷ Transcript in *Prosecutor v. Haradinaj et al.*, 7813-7814; P5.

notes that the parties have agreed that the Witness's identity was protected at the time of the publication.⁸⁸

28. In his interview with the Prosecution, the Accused stated that he was "aware of the Tribunal's regulations".⁸⁹ Although he did not specify those regulations, he agreed and admitted that it was against the law to publish the name of the Witness and that he violated "the rule of the Tribunal" by publishing it.⁹⁰ In the interview, the Accused added that because the Witness's name was known in Kosovo/Kosova by, "Ramush Haradinaj's people", "government ministers", and the public, he published the Witness's name to protect the Witness because the Tribunal had failed to do so.⁹¹ The Accused stated during the interview:

The name of [the Witness] was no secret. And because it was not a secret, the only defence, the only way of protecting him was to publish his name. I know the mentality of people here. I know the constellation of relationships between the people here. ... And I'm a hundred percent sure that I have defended, I have protected this person. Before his name was published in the newspaper, he was not protected.⁹²

The Trial Chamber recalls and agrees with the finding of the *Marijačić and Rebić* Trial Chamber that "individuals, including journalists, cannot ... decide to publish information in defiance [of protective measures] order[s], on the basis of their own assessment of the public interest in that information".⁹³ Bearing in mind the contents of the aforementioned Oral Decision of 28 August 2007 and its reasons, the Trial Chamber finds that the Accused's statements, acknowledging that he violated a rule of the Tribunal by publishing the name of the Witness and arguing that he was protecting the Witness by publishing his name, demonstrate his knowledge that the Witness's identity was protected when he published the Newspaper Article.

29. In relation to the argument that the Accused believed that he could publish the name of the Witness after the Witness had testified, the Trial Chamber did not find any circumstances in the Defence submissions which could be considered an excuse for the Accused's purported misunderstanding of the law. A person's misunderstanding of the law does not, in itself, excuse a violation of it.⁹⁴

⁸⁸ Agreed Facts, no. 6.

⁸⁹ P6.a.1, p. 15.

⁹⁰ Ibid., pp. 20-21.

⁹¹ Ibid., pp. 20-21.

⁹² Ibid., pp. 20.

⁹³ *Marijačić and Rebić* Trial Judgement, para. 39.

⁹⁴ *Prosecutor v. Milošević*, Decision on Interlocutory Appeal on Kosta Bulatović Contempt Proceedings, 29 August 2005, para. 11; *Jović* Trial Judgement, para. 21; *Jović* Appeal Judgement, para. 27.

30. Considering the Prosecution's argument that the Accused knew that Stephen Schook, the former Deputy Head of UNMIK, left his post because, at least in part, he mentioned the name of the Witness, the Trial Chamber finds that the Prosecution misinterpreted the Accused's statement in the interview given to the Prosecution investigators. The Accused stated that his attempt to verify with UNMIK whether Mr Schook had left UNMIK because he had mentioned the name of the Witness was unsuccessful.⁹⁵ The Newspaper Article states that "newspaper sources assert" that Stephen Schook discussed the name of the Witness one night, but considering all the evidence before the Trial Chamber, that is an insufficient basis to find that the Accused knew any or all of the reasons for Mr Schook's departure from UNMIK. Furthermore, the evidence does not show when the Accused is supposed to have acquired the suggested knowledge. The Trial Chamber therefore rejects this Prosecution's argument.

31. On the basis of the foregoing, the Trial Chamber is convinced beyond a reasonable doubt that the Accused knew that his disclosure of the name of the Witness in the Newspaper Article was done in violation of an order of a Trial Chamber. The Trial Chamber therefore finds that the *mens rea* requirements of contempt as charged in this case have been fulfilled.

C. Conclusion on the responsibility of the Accused

32. The Trial Chamber is convinced beyond a reasonable doubt that the Accused, by writing and publishing the Newspaper Article, disclosed confidential information relating to the proceedings in *Prosecutor v. Haradinaj et al.*, namely the identity of the Witness, and that the Accused knew that his disclosure was done in violation of an order of a Trial Chamber.

IV. SENTENCING

A. Factors considered in determination of the sentence

33. The Trial Chamber takes into account the Statute's Article 24, paragraph 2, and the factors mentioned in Rule 101 of the Rules when considering the sentence to be imposed.

34. The Trial Chamber bears in mind that the identity of the Witness was not published as the main subject of the Newspaper Article, but in the context of another matter the Newspaper Article covered. In writing and publishing the Newspaper Article, however, the Accused disclosed to the public the name of a witness, whose identity was protected by an

⁹⁵ P6.a.1, p. 23.

order of the Tribunal. The newspaper in which it was published has a circulation of 5000.⁹⁶ The Accused's conduct could have jeopardized the security of the Witness and his family and was of a kind to undermine confidence in the effectiveness of the Tribunal's protective measures orders, and to have the effect of dissuading witnesses from cooperating with the Tribunal. As noted by other Trial Chambers, "any deliberate conduct which creates a real risk that confidence in the Tribunal's ability to grant effective protective measures would be undermined amounts to a serious interference with the administration of justice. Public confidence in the effectiveness of such orders is absolutely vital to the success of the work of the Tribunal".⁹⁷ It is fundamental to the fulfilment of the Tribunal's mission that courageous individuals who come to tell their story before the Tribunal, often about traumatic or difficult experiences and away from their families and familiar surroundings, may apply to do so with the security provided by protective measures.

35. The Trial Chamber takes into account the Accused's cooperation with the Prosecution, as represented by the Defence and undisputed by the Prosecution, in the investigation of the case against him, and also in the cases of *Prosecutor v. Slobodan Milošević* and *Prosecutor v. Milutinović et al.* The Trial Chamber attaches some, although limited, weight to the family circumstances of the Accused (the young age of his children and his father's illness), the fact that the Accused has no past record of interfering with the administration of justice, and the Accused's good character as demonstrated by the newspaper articles tendered into evidence.⁹⁸

36. The Trial Chamber also takes into account the Accused's and his spouse's income.⁹⁹ The sentence to be imposed does not allow for the usual means of applying credit under Rule 101 (C) of the Rules, that is to subtract, for enforcement purposes, the time spent in pre-trial detention from the sentence to be imposed. The Trial Chamber has considered the fact that the Accused spent five days in the United Nations Detention Unit when determining the amount of the fine to be imposed.

B. Punishment to be imposed

37. According to Rule 77 (G) of the Rules, the maximum penalty that may be imposed on a person found to be in contempt of the Tribunal shall be a term of imprisonment of seven

⁹⁶ P6.a.1, p. 8.

⁹⁷ *Marijačić and Rebić* Trial Judgement para. 50; *Margetić* Trial Judgement, para. 87.

⁹⁸ Defence Pre-Trial Brief, p. 8; See Exhibit D7 (*Der Spiegel* Article) and Exhibit D8 (*The Independent* Article).

⁹⁹ Defence Pre-Trial Brief, p. 7.

years, a fine of 100,000 Euros, or both. The Rule gives discretion to the Trial Chamber to choose between a term of imprisonment, a fine, or a combination of the two.

38. The Prosecution recommended that the Trial Chamber impose a fine of 15,000 Euros on the Accused.¹⁰⁰ The Defence submitted that should the Accused be found guilty, an admonishment would suffice.¹⁰¹

39. In the instant case, considering the Tribunals's jurisprudence in cases of a similar nature,¹⁰² the gravity of the offence and taking due account of the factors considered above, the Trial Chamber considers that a fine of 7,000 Euros is appropriate in this case.

¹⁰⁰ T. 82.

¹⁰¹ T. 93.


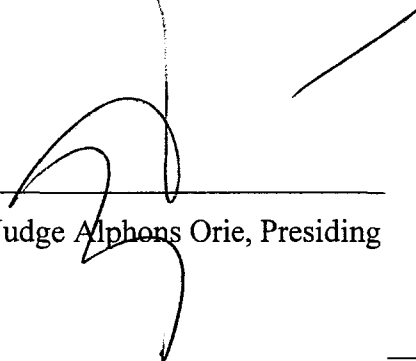
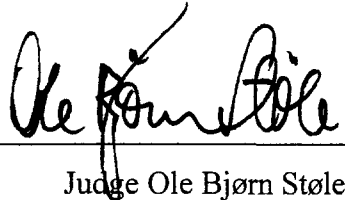
¹⁰² *Marijačić and Rebić* Trial Judgement, paras 1-2, 40, 45, 53; *Jović* Trial Judgement, paras 3, 19-20, 27; *Margetić* Trial Judgement, paras 1-2, 40, 83, 94.

V. DISPOSITION

40. For the foregoing reasons, having considered all of the evidence and the arguments of the parties, the Trial Chamber makes the following disposition pursuant to the Statute of the Tribunal and Rules 77 and 77 *bis* of the Rules:

1. The Accused, Mr Baton Haxhiu, is **guilty** of Contempt of the Tribunal, punishable under Rule 77 (A) (ii) and Rule 77 (G) of the Rules;
2. Mr Haxhiu is hereby sentenced to a fine of **7,000 Euros**, full amount of which is to be paid to the Registrar of the Tribunal within 30 days of this Judgement. Alternatively, the fine may be paid by two instalments of 3,500 Euros each, the first to be paid by 24 August 2008, and the second by 24 November 2008;
3. The Registrar is to take measures necessary for the enforcement of the sentence.

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

 <hr style="width: 80%; margin: 0 auto;"/> <p>Judge Christine van den Wyngaert</p>	 <hr style="width: 80%; margin: 0 auto;"/> <p>Judge Alphons Orié, Presiding</p>	 <hr style="width: 80%; margin: 0 auto;"/> <p>Judge Ole Bjørn Støle</p>
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Dated this 24th day of July 2008
 At The Hague
 The Netherlands

[Seal of the Tribunal]

VI. TABLE OF AUTHORITIES

<i>Beqaj</i> Trial Judgement	<i>Prosecutor v. Beqaj</i> , Judgement on Contempt Allegations, 27 May 2005.
<i>Jović</i> Trial Judgement	<i>Prosecutor v. Jović</i> , Judgement, 30 August 2006
<i>Jović Appeal Judgement</i>	<i>Prosecutor v. Jović</i> , Judgement, 15 March 2007
<i>Margetić</i> Trial Judgement	<i>Prosecutor v. Margetić</i> , Judgement on Allegations of Contempt, 7 February 2007
<i>Marijačić and Rebić</i> Trial Judgement	<i>Prosecutor v. Ivica Marijačić and Markica Rebić</i> , Judgement, 10 March 2006
<i>Marijačić and Rebić</i> Appeal Judgement	<i>Prosecutor v. Ivica Marijačić and Markica Rebić</i> , Judgement, 27 September 2006
<i>Nobilo</i> Appeal Judgement	<i>Prosecutor v. Aleksovski</i> , Judgement on Appeal by Anto Nobilo Against Finding of Contempt, 30 May 2001
<i>Vujin</i> Appeal Judgement	<i>Prosecutor v. Tadić</i> , Judgment on Allegations of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000