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-04-84-R77.4
Date: 17 December 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**

Judgement of: **17 December 2008**

PROSECUTOR

v.

ASTRIT HARAQIJA

and

BAJRUSH MORINA

PUBLIC

JUDGEMENT ON ALLEGATIONS OF CONTEMPT

The Office of the Prosecutor:

Mr. Daniel Saxon

Counsel for the Accused:

Mr. Karim A. A. Khan, Ms. Caroline Buisman and Ms. Gissou Azarnia for Astrit Haraqija
Mr. Jens Dieckmann for Bajrush Morina

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I. THE ACCUSED

A. Bajrush Morina

1. Bajrush Morina was born on 10 December 1962 in Vjeda/Vjeđa, Rahovec/Orahovac Municipality, Kosovo. At the time relevant to the Indictment, he was the political advisor to the Deputy Minister at the Ministry of Culture, Youth and Sport.[1]

B. Astrit Haraqija

2. Astrit Haraqija was born on 14 June 1972 in Gjakove/Đakovica, Gjakove Municipality, Kosovo. During the time period relevant to the Indictment, he was Minister of Culture, Youth and Sport.[2]

II. THE ALLEGATIONS

3. The indictment against Astrit Haraqija and Bajrush Morina ("Accused") was filed by the Office of the Prosecutor ("Prosecution") on 8 January 2008[3] and was confirmed on 12 February 2008.[4]

4. The Indictment was the result of an investigation conducted by the Prosecution upon an order of 27 August 2007 by the Trial Chamber in the case of *Prosecutor v. Haradinaj et al.* ("*Haradinaj et al.* case").[5]

5. The Indictment 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

[1] Indictment, 8 January 2008 ("Indictment"), para. 2; Ex. P19 (under seal), p. 4.
[2] Indictment, para. 1; Astrit Haraqija, Rule 84 *bis* Statement, T. 28.
[3] Indictment. The initial confidentiality of the Indictment was subsequently lifted by an order of the Trial Chamber, Order Lifting Confidentiality of the Indictment, 25 April 2008.
[4] Decision on Review of Indictment, 12 February 2008 (confidential). On 15 August 2008, the Trial Chamber denied a motion by Counsel for Astrit Haraqija ("Haraqija Defence") to amend the Indictment, *see* Decision on Astrit Haraqija's Motion Seeking Amendment of the Indictment, 15 August 2008.
[5] *Prosecutor v. Ramush Haradinaj et al.*, Case no. IT-04-84-T, Order to Prosecution to Investigate with a View to the Preparation and Submission of an Indictment for Contempt, 27 August 2007 (confidential and *ex parte*). The order was issued upon a request by the Prosecution in the *Haradinaj et al.* case, *see Prosecutor v. Ramush Haradinaj et al.*, Case no. IT-04-84-T, Prosecution's Motion for an Order Directing it to Investigate Potential Contempt of the Tribunal, 24 August 2007 (confidential and *ex parte*). During the investigation, a warrant was issued by the Trial Chamber in the *Haradinaj et al.* case, authorising the Office of the Prosecutor, in cooperation with UNMIK police to conduct a search in the offices at the Kosovo Ministry of Culture in Pristina, *see Prosecutor v. Ramush Haradinaj et al.*, Case no. IT-04-84-T, Warrant Authorising Search for and Seizure of Potential Evidence, 5 November 2007 (confidential). The *ex parte* status of this search warrant was lifted on 15 July 2008, Decision on Prosecution Motion to Lift Ex Parte Status of Warrant Authorising Search and Seizure, 15 July 2008 (confidential).

"knowingly and wilfully interfered with the administration of justice by interfering with a protected witness" ("Witness 2") in the *Haradinaj et al.* case.[6]

6. The Indictment alleges that by early July 2007 at the latest, the Accused knew that Witness 2 was an important witness in the *Haradinaj et al.* case.[7] It further alleges that in early July 2007, Astrit Haraqija instructed Bajrush Morina, who knew Witness 2, to organise a meeting with him in order to persuade the witness not to testify against Ramush Haradinaj.[8] The Indictment alleges that although Astrit Haraqija initially planned to travel with Bajrush Morina to meet Witness 2 in the country where the latter resided, eventually only Bajrush Morina met him.[9] 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.[10] As an official of the Ministry for Culture, Youth and Sport, Bajrush Morina required permission for his trip abroad. The expenses were paid by the Ministry.[11] Witness 2 refused to succumb to the pressure and eventually testified as a protected witness in the *Haradinaj et al.* case.[12]

7. On the basis of the foregoing, the Prosecution charges

(1) **Astrit Haraqija** with Contempt of the Tribunal (Count 1), punishable under Rule 77(A)(iv) of the Rules of Procedure and Evidence of the Tribunal ("Rules") or, in the alternative, Incitement to Contempt of the Tribunal (Count 2), punishable under Rule 77(A)(iv) and (B) of the Rules; and

(2) **Bajrush Morina** with Contempt of the Tribunal (Count 1), punishable under Rule 77(A)(iv) of the Rules.

III. PROCEDURAL HISTORY

A. Composition of the Trial Chamber

8. On 13 February 2008, the President of the Tribunal assigned the case to Trial Chamber I.[13] An order was subsequently issued for the Bench to be composed of Judge Alphons Orie, presiding,

[6] Indictment, paras 4-5. The witness had been granted pre-trial protective measures on 20 May 2005 in the *Haradinaj et al.* case and is listed as a witness in a confidential annex to the Prosecution's Pre-Trial Brief filed on 29 January 2007.
[7] Indictment, para. 7.
[8] Indictment, para. 8.
[9] Indictment, para. 10.
[10] Indictment, paras 11-12.
[11] Indictment, para. 13.
[12] Indictment, para. 14.
[13] Order Assigning a Case to a Trial Chamber, 13 February 2008 (confidential and *ex parte*).

Judge Christine Van den Wyngaert and Judge Bakone Justice Moloto, and designating Judge Moloto as pre-trial judge.[14]

B. Defence Counsel

9. On 29 April 2008, the Deputy Registrar assigned Mr. Karim Khan and Mr. Jens Dieckmann as counsel for Astrit Haraqija and Bajrush Morina, respectively.[15]

C. Initial Appearance

10. On 29 April 2008, Astrit Haraqija and Bajrush Morina made their initial appearance before Judge Orie. Both Accused pleaded not guilty to all charges of Contempt of the Tribunal contained in the Indictment against them.[16]

D. Detention and Provisional Release of the Accused

11. On 25 April 2008, the Trial Chamber issued warrants of arrest of and orders to surrender to the Accused.[17] Astrit Haraqija and Bajrush Morina were subsequently arrested and transferred to the United Nations Detention Unit ("UNDU") in The Hague. On 13 May 2008, the Trial Chamber granted the motions for provisional release of the Accused.[18] Following the completion of the trial, on 15 September 2008, both Accused were granted further provisional release.[19]

E. Evidence and the Trial

12. The trial was conducted from 8 September 2008 to 11 September 2008.[20] Prior to the commencement of the trial, the Prosecution and the Defence for both Accused submitted pre-trial

[14] Order on Composition of Trial Bench and Designating a Pre-Trial Judge, 15 February 2008 (confidential and *ex parte*).
[15] Decision by the Deputy Registrar, 29 April 2008 (regarding assignment of Mr Karim Khan as counsel); Decision by the Deputy Registrar, 29 April 2008 (regarding assignment of Mr Jens Dieckmann as counsel). *See also* Decision by the Deputy Registrar, 22 May 2008 (regarding assignment of Mr Karim Khan as counsel) and Decision by the Deputy Registrar, 22 May 2008 (regarding assignment of Mr Jens Dieckmann as counsel).
[16] Initial Appearance, 29 April 2008, T. 7.
[17] Warrant of Arrest and Order to Surrender of Astrit Haraqija, 25 April 2008 (confidential); Warrant of Arrest and Order to Surrender of Bajrush Morina, 25 April 2008 (confidential).
[18] Decision on Application for Provisional Release of Astrit Haraqija, 13 May 2008; Decision on Decision on Defence Motion for Provisional Release of the Accused Bajrush Morina, 13 May 2008. *See also* Order Recalling Astrit Haraqija and Bajrush Morina from Provisional Release, 15 August 2008.
[19] Decision on Defence Application for Provisional Release of the Accused Astrit Haraqija, 15 September 2008; Decision on Astrit Haraqija's Request to Vary Condition of Provisional Release, 7 October 2008; Decision on Defence Application for Provisional Release of the Accused Bajrush Morina, 15 September 2008; Decision on Bajrush Morina's Request to Vary Condition of Provisional Release, 14 October 2008.
[20] *See* Decision on Haraqija and Morina Requests for Reconsideration of Scheduling Order and for Certification of Appeal, 29 May 2008.

briefs.[21] During trial, the Prosecution offered into evidence the testimony of five witnesses. Statements of three of them were admitted pursuant to Rule 92 *ter* and one pursuant to Rule 92 *bis*.[22] The fifth witness testified *viva voce*.[23] Two of the Prosecution witnesses testified with protective measures.[24] The Haraqija Defence offered into evidence the testimony of five witnesses. The Statement of one of them was admitted pursuant to Rule 92 *ter*, whereas statements of two were admitted pursuant to Rule 92 *bis*.[25] The fourth witness testified *viva voce*, as did Astrit Haraqija.[26] Astrit Haraqija also made a statement pursuant to Rule 84 *bis*.[27] Counsel for Bajrush Morina ("Morina Defence") did not call any witnesses.

13. On 28 August 2008, before the commencement of trial, the Trial Chamber dismissed a joint Defence motion seeking to declare inadmissible the interview of 26 October 2007 with Bajrush Morina ("Suspect Interview") on the grounds that Bajrush Morina had not been properly informed about the nature of the charge against him and that he had not waived his right to counsel prior to or during the Suspect Interview. The Trial Chamber found that Bajrush Morina had been informed of the factual nature of the allegations against him and that he was a suspect in a Contempt of the Tribunal matter. The Trial Chamber further found that Bajrush Morina had been sufficiently informed of his rights before and during the Suspect Interview, that he understood these rights, made an informed decision to proceed without legal representation and that there was no indication that he had changed his position during the Suspect Interview.[28]

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[21] Prosecution's Submission of Pre-Trial Brief, List of Witnesses and List of Exhibits, 21 July 2008 (confidential); Astrit Haraqija's Submission of Pre-Trial Brief, List of Witnesses and List of Exhibits with Confidential Annexes A-F, 11 August 2008 (confidential) ("Haraqija Defence Pre-Trial Brief"); Addendum to: Astrit Haraqija's Submission of Pre-Trial Brief, List of Witnesses, List of Exhibits with Confidential Annexes A-F, Additional Annexes F-H, 13 August 2008 (confidential); Defence Pre-Trial Brief filed on behalf of Bajrush Morina pursuant to Rule 65 *ter*(F), 11 August 2008; Astrit Haraqija's Addendum to Pre-Trial Brief Submitted 11 August 2008 with Confidential Annexes I, J and K, 19 August 2008 (confidential).

[22] *See* Decision on Prosecution Motion for Admission of Evidence to Rule 92 *bis* and/or Rule 92 *ter*, 2 September 2008 (confidential).

[23] Witness 1, T. 44 *et seq.*

[24] Witness 1 was granted protective measures by an oral decision of 8 September 2008, *see* T. 38-39, whereas the protective measures granted to Witness 2 in the *Haradinaj et al.* case continued to apply pursuant to Rule 75(F)(i) of the Rules.

[25] *See* Decision on Astrit Haraqija's Motion to Admit Evidence Pursuant to Rule 92 *bis*, 5 September 2008 (confidential). The statement of Stephen Schook was admitted into evidence under the condition that the Defence submits the necessary attestation pursuant to Rule 92 *bis* of the Rules. On 11 September 2008, the Trial Chamber gave the Defence additional 7 days for presenting the necessary attestation, Hearing, T. 336. The Trial Chamber notes that it has not received the necessary documents and therefore finds that the statement of Mr. Schook does not form part of the trial record. Moreover, the statement of Veli Bytyqi was admitted into evidence subject of the witness appearing for cross-examination. Due to the fact that this condition was not fulfilled, the Defence moved the Trial Chamber to admit this evidence through the witness Peter Mitford-Burgess. The Trial Chamber did not allow the admission, Trial Hearing, 11 September 2008, T. 336. Also, the Haraqija Defence did not lead all witnesses first offered in the Haraqija Defence Pre-Trial Brief.

[26] Astrit Haraqija, T. 233 *et seq.*; Agim Kasapolli, T. 303 *et seq.*

[27] Astrit Haraqija, Rule 84 *bis* Statement, T. 26 *et seq.*

[28] Decision on Bajrush Morina's Request for a Declaration of Inadmissibility and Exclusion of Evidence, 28 August 2008. A subsequent request by both Defences for reconsideration of the 4 September decision was denied by the Trial

14. On 4 September 2008, the Trial Chamber dismissed a joint Defence motion seeking to declare the audio and video intercepts of the conversations between Bajrush Morina and Witness 2 ("Intercepts") inadmissible on the grounds that the surveillance of these conversations was conducted without legal basis and even contrary to relevant domestic law. The Trial Chamber reiterated the jurisprudence of the Tribunal that evidence obtained in violation of domestic law is not, *a priori*, inadmissible in the proceedings before the Tribunal. Rather, the manner and surrounding circumstances in which evidence is obtained, as well as its reliability and effect on the integrity of the proceedings, are criteria for determination of its admissibility. After an analysis of the surrounding circumstances, the Trial Chamber found that even on the assumption that the audio and video surveillance was unlawful under domestic law, admitting such material into evidence would in and of itself neither damage the integrity of the proceedings, nor cause the probative value of the Intercepts to be substantially outweighed by the need to ensure a fair trial.[29]

IV. APPLICABLE LAW

15. Contempt of the Tribunal is described in Rule 77(A) and (B) of the Rules which provides:

> (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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> (i) being a witness before a Chamber, contumaciously refuses or fails to answer a question;
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> (ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber;
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> (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 a Chamber.
>
> (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.

16. The Tribunal's jurisdiction in respect of Contempt is not expressly articulated in the Statute of the Tribunal ("Statute"). It is however well-established that the Tribunal possesses the inherent

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Chamber, *see* Decision on Astrit Haraqija and Bajrush Morina's Joint Request for Reconsideration of the Trial Chamber's Decision of 28 August 2008, 14 October 2008.

[29] Decision on Morina and Haraqija Second Request for a Declaration of Inadmissibility and Exclusion of Evidence, 24 November 2008 (public redacted version). A subsequent request by both Defence for reconsideration of the 4 September decision was denied by the Trial Chamber, *see* Decision on Astrit Haraqija and Bajrush Morina's Joint Request for Reconsideration of the Trial Chamber's Decision of 4 September 2008, 24 September 2008.

jurisdiction to prosecute and punish Contempt. This jurisdiction derives from the Tribunal's inherent power to ensure that the exercise of the jurisdiction given to it by the Statute is not frustrated and that its basic judicial functions are safeguarded.[30]

17. Both Accused in this case are charged with Contempt of the Tribunal under Rule 77(A)(iv) of the Rules for interfering with a witness who was about to give evidence in proceedings before the Tribunal. Astrit Haraqija is charged, in the alternative, with Incitement to Contempt under Rule 77(A)(iv) and (B) of the Rules.

18. The conduct punishable pursuant to Rule 77(A)(iv) of the Rules includes threatening, intimidating, causing injury, offering a bribe to or otherwise interfering with a 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.[31] "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.[32] "Otherwise interfering with a witness" is an open-ended provision which encompasses acts or omissions, other than threatening, intimidating, causing injury or offering a bribe, 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.[33] Finally, for the purposes of establishing the responsibility of the accused, it is immaterial whether the witness actually felt threatened or intimidated, or was deterred or influenced.[34]

19. The *mens rea* requires proof that the accused acted willingly and with the knowledge that his conduct was likely to deter or influence the witness.[35]

20. Incitement to commit Contempt of the Tribunal is punishable, as such, by virtue of Rule 77(B) of the Rules. Whereas commission requires that the person's acts form part of the *actus reus* element of the offence, without however being limited to direct and physical perpetration,[36] incitement relates to actions that encourage or persuade another to commit the offence.[37] It follows that any person who knowingly and wilfully encourages and/or persuades another person to commit

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[30] *Vujin* Judgement, paras 13, 18; *Nobilo* Appeal Judgement, para. 30; *Beqaj* Trial Judgement, para. 9; *Marijačić* and *Rebić* Trial Judgement, paras 13-15; *Marijačić* and *Rebić* Appeal Judgement, paras 23-24; *Margetić* Trial Judgement, para. 13.
[31] *See Beqaj* Judgement, para. 16.
[32] *See Prosecutor v. Radoslav Brđanin* Concerning Allegations Against Milka Maglov, IT-99-36-R77, Decision on Motion for Acquittal Pursuant to Rule 98 *bis*, 19 March 2004 ("*Maglov* Rule 98 *bis* Decision"), para. 22; *Beqaj* Judgement, para. 17.
[33] *Maglov* Rule 98 *bis* Decision, para. 27.
[34] *Beqaj* Trial Judgement, para. 21; *Maglov* Rule 98 *bis* Decision, paras 22 and 27.
[35] *Margetić* Trial Judgement, paras 16 and 66; *Beqaj* Trial Judgement, para. 22; *Maglov* Rule 98 *bis* Decision, para. 28.
[36] *Seromba* Appeal Judgement, paras 161, 171-172, 187, 189-190. *See also Gacumbitsi* Appeal Judgement, para. 60.

any act described in Rule 77(A) of the Rules shall be subject to the same penalties as one who commits the act.[38]

V. THE REQUIREMENT OF CORROBORATION

21. The Haraqija Defence submits that the totality of the evidence used by the Prosecution against Astrit Haraqija derives from the co-accused Morina, whether directly from Bajrush Morina in the form of prior statements or indirectly from witnesses who repeated to investigators or in their testimony what was stated to them by Morina. The co-accused Morina did not testify at trial. As a consequence, the Haraqija Defence did not have an opportunity to cross-examine him. It is therefore argued that the Trial Chamber may not base a conviction solely or substantially upon such evidence.[39]

22. The central questions raised by the Haraqija Defence submission are whether evidence relating to the acts and conduct of Astrit Haraqija in the Suspect Interview of Bajrush Morina 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.

A. Whether There is a Need for Corroboration

23. At the outset, the Trial Chamber notes that the Appeals Chamber has confirmed the principle – derived from the jurisprudence of the European Court of Human Rights ("ECtHR")[40] – 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.[41] As a consequence, evidence of a witness who has not been subject to cross-examination and which is relevant to the acts and conduct of the accused will require "sufficient corroboration" if relied upon

[37] *Akayesu* Trial Judgement, para. 555.
[38] *See Beqaj* Trial Judgement, para. 26. *See also Nahimana et al.* Appeal Judgement, para. 678.
[39] Defence Closing Argument, T. 349-350.
[40] The jurisprudence of ECtHR gives some guidance as to the admissibility and evaluation of evidence. Case law relating to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms contains similar safeguards for a fair trial as contained in Article 21 of the Statute. *See Prosecutor v. Prlić et al.*, IT-04-74-AR73.6, Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence, 23 November 2007 ("*Prlić* Decision"), para. 51.
[41] *See* the following cases referred to below: *Lucà v. Italy*, no. 33354/96, paras 39-45, ECtHR 2001-II; *A. M. v. Italy*, no. 37019/97, para. 25, ECtHR 1999-IX; *Saïdi v. France*, no. 14647/89, paras 43-44, ECtHR 1993; *Unterpertinger v. Austria*, no. 9120/80, paras 31-33, ECtHR, 1986; *Prlić* Decision, para. 53.

to establish a conviction.[42] The Trial Chamber recalls that the ECtHR has stated that the right to confront witnesses applies to depositions made against an accused both by regular witnesses as well as co-accused.[43]

24. The ECtHR jurisprudence does not clearly delineate the boundary beyond which a conviction is based "solely, or in a decisive manner" on the testimony of a witness who could not have been confronted by the accused (what the Trial Chamber will refer to as "untested evidence").[44] The ECtHR held that an accused's right to a fair trial will be violated where a court relies on no other evidence to convict the accused than the untested evidence.[45] The mere existence of corroborating evidence, however, does not preclude a conviction from being based to a decisive extent on untested evidence.[46] The issue is not one of quantity, but of quality; in other words, how much importance was attached to the corroborating evidence in convicting the accused.[47]

B. The Requirements in Relation to Corroborative Evidence

25. Having established the need for the untested evidence to be corroborated, in looking for guidelines, the Trial Chamber will analyse the approaches taken by both international tribunals and national jurisdictions in respect of the requirements in relation to corroborative evidence.

26. The Trial Chamber recognises that the jurisprudence of the international tribunals is bereft of any case which deals squarely with the requirements in relation to corroborative evidence. Even so, the Trial Chamber notes a suggestion made by the Prosecution of the ICTR in the *Bagilishema* case that "mutual corroboration" of separate statements made by the same witness should be disallowed.[48] However, the Appeals Chamber in that case held that by looking into these statements, the ICTR Trial Chamber was simply seeking to establish the consistency of the said

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[42] *See Prlić* Decision, paras 58-59, stressing that the term "acts and conduct of the accused" covers any "critical element" of the Prosecution case. In other words, any fact that is indispensable for a conviction, including those used as an aggravating circumstance in sentencing. *See also Prosecutor v. Popović et al.*, IT-05-88-AR73.1, Decision on Appeals Against Decision Admitting Material Related to Borovčanin's Questioning, 14 December 2007, para. 48. "Corroboration" is defined in Black's Law Dictionary to mean "confirmation or support by additional evidence or authority", Black's Law Dictionary (8th ed. 2004).

[43] As the court stated in *Lucà v. Italy,* "the fact that the depositions were, as here, made by a co-accused rather than by a witness is of no relevance [...] Thus, where a deposition may serve to a material degree as the basis for a conviction, then, irrespective of whether it was made by a witness in the strict sense or by a co-accused, it constitutes evidence for the prosecution to which the guarantees provided by Article 6 §§ 1 and 3 (d) of the Convention apply", *Lucà v. Italy*, no. 33354/96, para. 41, ECtHR 2001-II.

[44] The Trial Chamber notes that the right to confront a witness cannot be equated with the right to cross-examination as the latter is a technical term covering only one of several ways in which the right to confront a witness can materialise.

[45] *Delta v. France*, no. 11444/85 para. 37, ECtHR 1990.

[46] *Unterpertinger v. Austria* no. 9120/80 para. 33, ECtHR 1986; *Lüdi v. Switzerland* no. 12433/86 paras 45-47, ECtHR. 1992.

[47] *Asch v. Austria,* no. 12398/86 para. 30 ECtHR 1991; *Unterpertinger v. Austria* no. 9120/80 para. 33, ECtHR 1986; *P.S. v. Germany,* no. 33900/96 paras 30-31 ECtHR 2001. *See also Lucà v. Italy*, no. 33354/96, para. 40, ECtHR 2001-II; *A. M. v. Italy*, no. 37019/97, para. 25, ECtHR 1999-IX.

[48] *See Bagilishema* Appeal Judgement, para. 80.

evidence, hence, the credibility of the testimony, which is part of the main responsibilities of a trier of fact. Consequently, that Trial Chamber's findings were to be viewed within the context of its overall assessment of the consistency and credibility of the evidence.[49]

27. The Trial Chamber notes that it is not bound by any national rules of corroboration.[50] However, due to the absence of the jurisprudence of the Tribunal regarding the requirements for corroborative evidence, the Trial Chamber will analyse how this issue has developed in several national jurisdictions which know such notion, especially the ones that introduced corroboration requirements.

28. In England, the case law takes a "common sense" approach to the issue of corroboration. Rather than establishing strict rules as to what type of evidence can be considered corroborative,[51] corroborative evidence will be evidence making the primary evidence more probative:

> There is nothing technical in the idea of corroboration. When in the ordinary affairs of life one is doubtful whether or not to believe a particular statement one naturally looks to see whether it fits in with other statements or circumstances relating to the particular matter; the better it fits in the more one is inclined to believe it. The doubted statement is corroborated to a greater or lesser extent by the other statements or circumstances with which it fits in.[52]

29. Independent corroboration is thus not a requirement by English courts.[53] In some situations (where there is a basis for suggesting that the evidence of the witness may be unreliable), it may be appropriate for a judge to give a warning to the jury in respect of the dangers of convicting on the basis of uncorroborated evidence. In cases of accomplice evidence and of sexual offences, this warning is however a matter of judicial discretion.[54]

30. In the Scottish legal system, there is a requirement that evidence must be independently corroborated before a person can be convicted of a crime.[55] By way of example, in the case of *Callan v. HM Advocate*, the Court held that:

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[49] *Bagilishema* Appeal Judgement, para. 80.
[50] Rule 89(A) of the Rules. *See also Musema* Appeal Judgement, para. 37; *Tadić* Trial Judgement, paras 538-539; *Čelebići* Appeal Judgement, para. 506; *Kupreškić et al.* Appeal Judgement, paras 33, 135; *Kordić and Čerkez* Appeal Judgement, paras 274-276, also stating that circumstantial evidence can be corroborative. *Akayesu* Trial Judgement, paras 132-133.
[51] *See* the earlier case of *R. v. Baskerville,* [1916] 2 K.B. 658, p. 667.
[52] *Director of Public Prosecutions v. Kilbourne* [1973] A.C. 729, p. 750, applied in *R. v. Gerald Craven McInnes* (1990) 90 Cr. App. R. 99, p. 104; *Elliott Hugh Lanford v. General Medical Council* [1990] 1 A.C. 13, p. 20; *Attorney General. of Hong Kong v. Wong Muk Ping* [1987] A.C. 501.
[53] *R. v. Chance* [1988] Q.B. 932, p. 943, applied in *R. v. Gilbert (Rennie)* [2002] 2 A.C. 531.
[54] *See R. v. Makanjuola* [1995] 1 W.L.R. 1348, p. 1352, applied in *R. v. Gilbert (Rennie)* [2002] 2 A.C. 531. *See also R. v. Chance* [1988] Q.B. 932, pp 942-943, referring to *R. v. Turnbull* [1977] Q.B. 224. Pursuant to Section 32 of the Criminal Justice and Public Order Act 1994 (UK), the requirement for such a warning in cases involving sexual offences or accomplice evidence was abolished.
[55] *Morton v. HM. Advocate,* 1938 J.C. 50, p. 52. Also cited in *B P Appellant v. Gordon Williams* [2005] HCJAC 20 and *HM Advocate v. Al-Megrahi,* 2002 J.C. 99. *See also Campbell v. HM Advocate,* 2004 J.C. 1, p. 8.

> Corroboration is not an easy concept for lay persons to understand [...] several witnesses speaking quite independently of each other about distinct incriminating admissions uttered by the appellant on different occasions could not be regarded as independent sources of evidence sufficient in law to establish guilt [...] it was, in our opinion, essential for the trial judge to make it plain to the jury that the evidence of those persons who claimed to have heard incriminating admissions from the appellant shortly after the stabbing was all evidence which ultimately proceeded from the same source, namely from the accused himself. It was essential therefore, to indicate to the jury that, although these witnesses could support each other in relation to proof of the fact that the appellant was admitting that he had stabbed the deceased, they could not and did not provide evidence sufficient in law to prove that he had in fact stabbed the deceased.[56]

31. This requirement for corroboration by an independent source has been interpreted in a wide manner by the courts in some situations, such as of sexual offences. In *Smith v. Lees,* a case of rape, the court held that the aspects of evidence given by the victim could be corroborated by her state of distress. Evidence of distress is considered to be a potential source of corroboration if the jury is convinced that the distress was "caused by the rape and that evidence of that distress is therefore so independent of the complainer's account as to amount to a separate source of evidence that a rape had occurred."[57]

32. In Australia, corroborative evidence is independent evidence which tends to confirm a significant detail of the evidence that the crime was committed and that the accused committed the crime.[58] It is stated that:

> The essence of corroborative evidence is that it "confirms", "supports" or "strengthens" other evidence in the sense that it "renders [that] other evidence more probable" [...] It must do that by connecting or tending to connect the accused with the crime charged in the sense that, where corroboration of the evidence of an accomplice is involved, it "shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, but that it was committed by the accused.[59]

33. An analysis of the case law of the United States of America in relation to whether the corroborative evidence must be independent indicates that jurisdictions at State level generally require independent corroboration, however adopt a lenient approach to evidence which constitutes

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[56] *Callan v. HM Advocate*, 1999 S.L.T. 1102, para. 1105. *See also Campbell v. HM Advocate*, 1998 J.C. 130, holding at p. 178 that "[t]he concept of an independent source is well understood in the context of corroboration. For example, in a rape case the corroboration of the complainer's evidence cannot come from another witness speaking to what he or she was told by the complainer, the source in both instances being the same."
Smith v. Lees, 1997 J.C. 73, para. 89, citing *Moore v. HM Advocate,* 1990 J.C. 371, p. 377 and applied in *Fox v. HM Advocate,* 1998 J.C. 94, *McCrann v. HM Advocate*, 2003 S.C.C.R. 722 and *McKearney v. HM Advocate,* 2004 J.C. 87. *See also Schlichting-Werft, A. G. v. Tait & Sons*, 1963 S.C. 624, paras 632-633, holding that "[t]he facts and circumstances relied on for corroboration must have been contributed from a source quite independent of the witness whose evidence is to be corroborated. They may consist of facts deponed to by other witnesses or of writings or other real evidence in the case when these forms of evidence are of such a character as to lead to an inference of the probable existence of the facts deponed to by the witness".

[58] *R. v. Baskerville* [1916] 2 K.B. 658, p. 667; *DPP v. Kilbourne* [1973] A.C. 729, p. 758, applied in *Doney v. The Queen* (1990) 171 CLR 207, p. 211; *R. v. Holmes* [2008] VSCA 128 (Unreported, 23 July 2008); *BRS v.The Queen.* (1997) 191 CLR 275, p. 283; *R. v. McLachlan*, 1999 2 V.R. 553.

[59] *Doney v. The Queen* (1990) 171 CLR 207, p. 211, citing *DPP v. Kilbourne* [1973] A.C. 729, p. 758 and *R. v. Baskerville* [1916] 2 K.B. 658, p. 667, applied in *Druett v. The Queen* [1994] 123 FLR 249, p. 286, *BRS v. The Queen,*

corroboration. For example, the Court of Criminal Appeals of Tennessee in the case of *Hawkins v. State* explained the corroboration rule as follows:

> The rule, simply stated, is that there must be some fact testified to, entirely independent of the accomplice's testimony, which, taken by itself, leads to the inference, not only that a crime has been committed, but also that the defendant is implicated in it; and this independent corroborative testimony must also include some fact establishing the defendant's identity [...] It is not necessary that the corroboration extend to every part of the accomplice's evidence. The corroboration need not be conclusive, but it is sufficient if this evidence, of itself, tends to connect the defendant with the commission of the offence, although the evidence be slight and entitled, when standing alone, to but little consideration. [60]

34. As the Court of Appeals of New York has shown in *People v. Kress,* the independence of the corroborative evidence is of paramount importance, as the "corroborative evidence to have any value must be evidence from an independent source of some material fact tending to show that defendant was implicated in the crime".[61] Furthermore, the independent evidence

> may not depend for its weight and probative value upon the testimony of the accomplice. It need not, alone and by itself, establish that defendant committed the crime. But where the corroborative evidence standing alone has no *real* tendency to connect defendant with the commission of the crime, it is insufficient.[62]

35. In the case of *Howard v. Com,* the Court of Appeals of Kentucky held that evidence of a police officer of what an accomplice had said was insufficient to corroborate the evidence of the accomplice. According to their evidence rules, it is necessary that:

> [t]he testimony of an accomplice be 'corroborated by other evidence tending to connect the defendant with the commission of the offence.' This rule contemplates that such 'other' evidence be that of someone other than that of an accomplice; otherwise, the rule would lose its meaning and purpose [...]
>
> The testimony of the accomplice as to Howard is very convincing, and we have little doubt of his guilt. However, established rules of long standing, like all rules, must be followed. We hold that as to appellant Howard the evidence is insufficient to convict. [63]

36. However, the Supreme Court of Nevada in *LaPena v. State* held the following:

> Since Weakland is an accomplice we must determine what evidence is present independent of the accomplice testimony to connect LaPena and Maxwell with the crime. The necessary

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(1997) 191 CLR 275, pp 283, 297, 324; *R. v. Holmes* [2008] VSCA 128 (Unreported, 23 July 2008). *See also R. v. Lacey* (1982) 29 SASR 525, p. 547.

[60] *Hawkins v. State,* 469 S.W.2d 515 (1971), para. 520. Also cited in *State v. Green* 915 S.W.2d 827 (1995), para. 831, *State v. Lewis,* 36 S.W.3d 88 (2000), paras 94-95, and *State v. Jackson,* 52 S.W.3d 661 (2001), paras 665-666. *See also* Californian jurisprudence: *People v. Luker,* 63 Cal.2d 464 (1965), para. 469, stating that "the prosecution must introduce independent evidence which of itself connects the defendant with the crime without any aid from the testimony of the accomplice". Also cited in *People v. Szeto,* 29 Cal.3d 20 (1981), para. 27 and *People v. Cooks,* 141 Cal.App.3d 224 (1983), para. 236. *See also* Oregon jurisprudence: *State v. Brake,* 195 P. 583, (1921) para. 585. Also cited in *State v. Sagdal,* 61 P.3d 975, (2003), para. 976 and *State v. Foster,* 188 P.3d 440 (2008), para. 443.

[61] *People v. Kress,* 284 N.Y. 452 (1940), para. 460. Also cited in *People v. Hayes,* 37 A.D.2d 375 (1971), para. 377.

[62] *People v. Kress,* 284 N.Y. 452 (1940), para. 460. Also cited in *People v. Chernauskas,* 524 N.Y.S.2d 497 (1980), para. 499 and *People v. Rodriguez,* 564 N.Y.S.2d 757 (1991), para. 759.

[63] *Howard v. Com,* 487 S.W.2d 689 Ky. (1972), paras 690-691. Also cited in *Sheriff, Clark County v. Gordon,* 606 P.2d 533 (1980), para. 534.

> corroboration need not be found in a single fact or circumstance, rather several circumstances in combination may satisfy the statute. If circumstances and evidence from sources other than the testimony of the accomplice tend on the whole to connect the accused with the crime charged, it is enough.[64]

37. In the Canadian case of *Vetrovec v. The Queen*, it was held that the law of corroboration was unnecessarily complex and technical, and it should rather be a matter of common sense.[65] The fact that some of the evidence did not directly relate to overt acts testified to by the accomplice was held to be irrelevant. What was relevant is whether such evidence is capable of inducing a rational belief that the accomplice was telling the truth.[66] In addition, the court held in *R. v. B. (G.)*, that there was no rule that corroboration of unsworn evidence required independent evidence that implicates the accused. The Court stated that

> [t]his court has clearly rejected an ultra-technical approach to corroboration and has returned to a common sense approach which reflects the original rationale for the rule and allows cases to be determined on their merits.[67]

38. In Italy, Article 192(1) of the Criminal Procedural Code affirms the principle of free evaluation of evidence subject to the condition that the Italian judge is obliged to provide the reason in support of his/her evaluation. A special regime is however provided for the statements made by a co-accused for the same crime or by an accused in a connected case. Article 192(3) stipulates that such statements can only be used by a judge if they are confirmed by other evidence. The jurisprudence of the Italian supreme court has clarified that a judge, in evaluating a statement of a co-accused, needs to be satisfied that such statement: (i) is trustworthy and convincing in light, *inter alia*, of the surrounding circumstances related to the credibility of the accused who provided the statement ("intrinsic corroboration"); and (ii) is corroborated by external evidence ("*ab externo* corroboration").[68]

39. In respect of this second requirement, the jurisprudence has affirmed the principle of "freedom of external corroboration". This means that the judge is, in general, free to evaluate which piece of evidence is suitable to corroborate *ab externo* the statement.[69] A corollary of this principle is, for instance, "the mutual corroboration" in relation to statements of different accused which corroborate each other.[70]

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[64] *LaPena v. State*, 544 P.2d 1187 (1976), para. 1188. Also cited in *Cheatham v. State*, 761 P.2d 419 (1988), para. 422.
[65] *Vetrovec v. The Queen*, [1982] 1 S.C.R. 811, para. 40. Also cited in *R. v. Potvin* [1989] 1 S.C.R 525, para. 41; *R. v. Nazim*, 2008 ONCJ 485, para. 10 and *R. v. Rojas*, 2008 SCC 56, para. 16.
[66] *Vetrovec v. The Queen*, [1982] 1 S.C.R. 811, para. 45. Also cited in *R. v. Kehler*, 2003 ABCA 104, paras 13, 40 and *R. v. Wong*, 2007 BCPC 297, para. 16.
[67] *R. v. B. (G.)* [1990] 2 S.C.R. 3, para. 46.
[68] *See, e.g., Court of Cassation*, Section I, 5 November 1998, *Alletto case*; 12 December 2002, *Contrada case*; Section VI, 22 May 2008 n. 20663.
[69] *See, e.g., Court of Cassation*, Section VI, 22 May 2008 n. 20663.
[70] *See, e.g., Court of Cassation*, Section VI, 15 June 2000, *Madonia case.*

40. The analysis above shows 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.[71]

41. When determining which of the two approaches should be followed, the Trial Chamber is 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".[72] In the view of the Trial Chamber, in order for a piece of evidence to be able to corroborate untested 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 holds that corroborating evidence may 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",[73] which is aimed at preventing an encroachment on the rights of the accused.

VI. RESPONSIBILITY OF BAJRUSH MORINA

A. Preparations for the July 2007 Meetings with Witness 2

42. Around 1 July 2007, Bajrush Morina contacted a friend of Witness 2 to get the latter's telephone number. Witness 2 allowed his friend to give that number to Bajrush Morina.[74]

43. On 2 July 2007, Bajrush Morina contacted Witness 2 and asked for a meeting on the following day to talk "on behalf of the Rugova family".[75] Bajrush Morina did not want to specify the reasons for the meeting any further through the phone, although he indicated that he knew that Witness 2 was about "to travel to The Hague" and that Minister Haraqija wanted to talk to him.[76]

44. Bajrush Morina knew Witness 2 from a meeting in July 2002 in Pristina, Kosovo.[77] At that time, Bajrush Morina conducted an interview with Witness 2, which was subsequently published.[78] Witness 2 was a strong supporter of the late President Rugova.[79]

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[71] *See supra*, paras 28 *et seq.*
[72] Rule 89(B) of the Rules.
[73] *See supra*, para. 23.
[74] Witness 2, T. 125-127; Ex. P8 (under seal), paras 2-4; Ex. P7 (under seal), paras 1-2.
[75] Witness 2, T. 127-128; Ex. P8 (under seal), para. 8; Ex. P7 (under seal), para. 3.
[76] Witness 2, T. 128, 133; Ex. P8 (under seal), paras 6, 8, 11; Witness 1, T. 47-48.
[77] Witness 2, T. 113-114. *See also* Witness 2, T. 119.

45. Witness 2 told Bajrush Morina that he could not meet him the following day, but agreed to meet Bajrush Morina on 10 July 2007.[80] At the same time, he informed the authorities of his country of residence responsible for the security about his conversation with Bajrush Morina.[81] In spite of the objections of the authorities, Witness 2 insisted on meeting Bajrush Morina, threatening that he would otherwise refuse to give evidence before the Tribunal.[82] According to Witness 1, who was responsible for the security of Witness 2, the latter was not afraid of meeting Bajrush Morina.[83] Finally, the local police in consultation with the Prosecution agreed that Witness 2 could go to the meeting, under the condition of full audio and video surveillance.[84]

46. Over the next days, Bajrush Morina sent text messages to ask Witness 2 to reserve a hotel.[85] Evidence was presented showing a travel request and documents in justification thereof, as well as Bajrush Morina's train and flight tickets for the specified travel dates from Pristina to the city where Bajrush Morina met with Witness 2.[86]

B. Meetings of July 2007 Between Morina and Witness 2

47. The first meeting between Witness 2 and Bajrush Morina took place on 10 July 2007 in Witness 2's country of residence ("10 July meeting").[87] The following day, they met again ("11 July meeting").[88]

48. During the 10 July meeting, Bajrush Morina mentioned to Witness 2 that he had been asked to speak to Witness 2 in order to tell him to withdraw from testifying.[89] On that occasion, Bajrush Morina indicated that Witness 2 could "save" Ramush Haradinaj.[90] Finally, he told Witness 2 that other witnesses who had testified before the Tribunal were subsequently killed.[91] Bajrush Morina mentioned the following:

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[78] The article was about how the operative units worked under the command of the Ministry of Defence of the Republic of Kosovo, the entry of Serbian military into Kosovo in June 1998 and developments from July to September 1998 in Kosovo, Witness 2, T. 115, 123-124, 144-145 (private session); Ex. P8 (under seal), para. 5; Witness 1, T. 77 (private session).
[79] Ex. P8 (under seal), para. 8; Ex. P7 (under seal), para. 3.
[80] Witness 2, T. 128-129; Ex. P8 (under seal), paras 8, 10; Ex. P7 (under seal), para. 3.
[81] Ex. P8 (under seal), para. 15; Ex. P7 (under seal), para. 4; Witness 1, T. 46-47, 81.
[82] Ex. P8 (under seal), para. 16.
[83] Witness 1, T. 82.
[84] Ex. P7 (under seal), para. 4; Witness 1, T. 50-52, 81-82, 94.
[85] Ex. P4 (under seal), pp 3-4; Ex. P7 (under seal), para. 3; Ex. P8 (under seal), paras 17-18. *See infra*, para. 66.
[86] Ex. P22 (under seal).
[87] Ex. P8 (under seal), para. 19; Ex. P7 (under seal), para. 5; Witness 1, T. 53. *See also* Witness 1, T. 58; Ex. P2 (under seal).
[88] Ex. P8 (under seal), para. 34; Ex. P7 (under seal), para. 5. *See also* Witness 1, T. 60; Ex. P3 (under seal).
[89] Ex. P12 (under seal), p. 17
[90] Ex. P12 (under seal), p. 21; Ex. P8 (under seal), para. 23.
[91] Ex. P12 (under seal), p. 23.

> [a witness] withdrew from testifying, [after having testified in another case] as a protected witness, against Ramush he came up openly and said he didn't want to give evidence because all kind of crimes have happened in Kosovo, what I have written stands, I now /inaudible/ since all the witnesses have been killed, I have a family and I don't want to give evidence [...][92]

49. During his Suspect Interview, Bajrush Morina initially stated that he travelled to meet with Witness 2 in order to check the veracity of an article he had written following his interview with Witness 2 in 2002.[93] However, confronted with the audio recordings of the 10 July meeting, Bajrush Morina stated that his real intention had been to meet Witness 2 following a direction from his ultimate superior, Minister Haraqija.[94] Bajrush Morina further stated that Astrit Haraqija had instructed him to visit Witness 2 in order to dissuade him from giving evidence.[95] Bajrush Morina also explained that Astrit Haraqija had told him that Witness 2 was one of three persons who could save Ramush Haradinaj.[96]

C. Facts Presented in Relation to Motive

50. The Morina Defence argues that Bajrush Morina did not have any motive to commit an offence under Rule 77 of the Rules by interfering with Witness 2.[97]

51. The Trial Chamber notes that as a journalist, Bajrush Morina wrote critical articles about Ramush Haradinaj and his political party.[98] According to witnesses, Morina was never a public supporter of Haradinaj or a member of his party.[99] Moreover, Bajrush Morina had a dispute with his superior at the newspaper publisher for which he used to work because he did not want to interview Haradinaj without being allowed to ask critical questions.[100]

52. At the same time, the Trial Chamber notes the evidence concerning Bajrush Morina's personal circumstances, namely that he supports a wife and four children and takes care of his elderly parents who are of failing health.[101] In his conversation with Witness 2, Bajrush Morina mentioned that he and his family were not in a comfortable financial situation.[102]

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[92] Ex. P12 (under seal), p. 23. The Trial Chamber notes that on that occasion, Bajrush Morina additionally mentioned other specific examples of witnesses being threatened or even killed, *ibid.*
[93] Peter Mitford-Burgess, T. 209; Ex. P19 (under seal) pp 7, 11, 13, 17.
[94] Peter Mitford-Burgess, T. 210; Ex. P19 (under seal) pp 18 *et seq.*
[95] Ex. P19 (under seal), p. 28.
[96] Ex. P19 (under seal), pp 21-22.
[97] Morina Defence Closing Argument, T. 343.
[98] Angjelina Krasniqi, T. 162; Agim Kassapolli, T. 312.
[99] Angjelina Krasniqi, T. 162; Agim Kassapolli, T. 312. At the end of his conversation with Witness 2, Morina even said that "I do not want to hear the name of Haradinaj /inaudible/ I don't give a fuck you know. Now you know how I think", Ex. P13 (under seal), p. 43.
[100] Ex. P12 (under seal), p. 20.
[101] Angjelina Krasniqi, T. 162.
[102] Ex. P12 (under seal), p. 9. According to his own statement during the conversation, he earned 350 Euros as a political consultant in the Ministry and he had to pay 300 Euros for his flat, Ex. P12 (under seal), p. 24. Krasniqi

53. Finally, the Trial Chamber notes that during the 10 July meeting, Bajrush Morina stated that he was forced by Minister Haraqija to meet Witness 2 and that Astrit Haraqija said to Bajrush Morina "[y]ou, horse, go otherwise it won't be good for you".[103]

D. Discussion and Conclusions

54. The Morina Defence argues that the Prosecution failed to prove beyond reasonable doubt that Bajrush Morina's conduct was likely to dissuade Witness 2 from giving evidence, therefore his conduct cannot be deemed "interference" pursuant to Rule 77(A)(iv) of the Rules.[104] In support of this argument, the Defence submits that Witness 2 had confirmed that Bajrush Morina did not scare him and that Witness 2, in fact, wanted to meet Bajrush Morina.[105] Moreover, the Defence submits that it has not been proved that Bajrush Morina acted with the required intent since no evidence shows that he actually knew that Witness 2 was about to give testimony before the Tribunal.[106]

55. The Trial Chamber finds that the evidence consistently shows that Bajrush Morina knew that Witness 2 was about to testify in the *Haradinaj et al.* case. Proof of it can be found in the communications between Bajrush Morina and Witness 2 before the meeting of 10 July 2007.[107] Likewise, the recording of the 10 July meeting leaves no doubt that Bajrush Morina was aware that Witness 2 was about to give evidence before the Tribunal.[108] The Trial Chamber finds that the fact that Witness 2 did not mention in one of his statements that Bajrush Morina asked him prior to the July meeting "when are you going to the Hague?"[109] whereas he did so in other statements,[110] does not raise a reasonable doubt as to the finding that Bajrush Morina knew about the status of Witness 2 as a witness before the Tribunal.[111]

56. During the 10 July meeting, Bajrush Morina explained that he was sent to convince Witness 2 not to give evidence before the Tribunal. He also indicated that Witness 2 was the person who by refusing to testify could "save" Ramush Haradinaj. Finally, Bajrush Morina also mentioned the killings of the people who had decided to testify.[112]

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confirmed that Bajrush Morina earned approximately 400 Euros a month as an advisor to her, Angjelina Krasniqi, T. 166.
[103] Ex. P12, p. 24; Ex. P8, para. 32.
[104] Morina Defence Closing Argument, T. 338.
[105] Morina Defence Closing Argument, T. 340.
[106] Morina Defence Closing Argument, T. 342-343.
[107] *See* Ex. P8, paras 6, 8, 11; Witness 2, T. 133 (private session).
[108] *See supra*, para. 48.
[109] *See* Ex. P7 (under seal).
[110] *See* Ex. P8 (under seal), para. 11; Witness 2, T. 133 (private session).
[111] *See* Defence Closing Argument, T. 341-342.
[112] *See supra*, para. 48.

57. Witness 2 testified that he "didn't feel intimidated or under pressure because the meeting with Bajrush was a friendly meeting. We met as two old friends".[113] At the same time, the Trial Chamber notes that, Witness 2, when describing his reaction to Bajrush Morina's initial telephone call stated:

> When Bajrush made it plain that my identity as a witness was known, there was immediate fear mixed in with all my other emotions. Everyone knows that some people who committed crimes in Kosovo are still living there at liberty, and that they would be after me for the rest of my life. I was so upset I didn't know what to do at that moment.
>
> In addition, when Bajrush mentioned the Minister's name, Astrit Haraqia, and that he wanted to meet me urgently in the name of the Rugova family, and then in the same breath he asked me when I was going to The Hague, I became very upset and fearful. The brother of Ramush Haradinaj, Daut, had been on trial in Kosovo with Idriz Balaj, also known as Toger, and Toger had said that all witnesses who come to testify would be liquidated. I know for a fact that some of the witnesses were indeed killed [...] So when I knew that I had been identified as a witness, I understood the danger. This is why it is difficult to get witnesses from Kosovo. People are reluctant to risk their lives.[114]

58. In the Trial Chamber's assessment, the words of Bajrush Morina addressed to Witness 2 during the 10 July meeting can be understood as an appeal that Witness 2 not testify against Ramush Haradinaj. Bajrush Morina's conduct was aimed at evoking Witness 2's compassion for him, since he was compelled to accomplish a mission on behalf of Minister Haraqija. By alluding to the fate suffered by previous witnesses who appeared before the Tribunal, Bajrush Morina clearly played on the intimidating effect on a prospective witness.

59. The Trial Chamber finally stresses that 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 is strong and convincing.

60. Although the conduct of Bajrush Morina took the form of amicable advice and was staged in a friendly atmosphere, it is clear that Bajrush Morina's words were intended and could only be understood as a strong and unequivocal call on Witness 2, invoking powerful authority of third parties and alluding to severe negative consequences, 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.

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[113] Witness 2, T. 140 (private session).
[114] Ex. P8 (under seal), paras 13-14.

61. In line with the jurisprudence of the Tribunal, the fact that Witness 2 was unafraid to meet with Bajrush Morina, and that Morina's conduct did not result in dissuading Witness 2 from testifying, is immaterial, as such a result is not an element of the crime in question.[115] The Trial Chamber therefore finds that Bajrush Morina's conduct constitutes Contempt of the Tribunal pursuant to Rule 77(A)(iv) of the Rules.

VII. RESPONSIBILITY OF ASTRIT HARAQIJA

A. The Theatre Premiere in Peja/Peć

62. The Prosecution alleges 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 so that Astrit Haraqija could talk to Witness 2 about his testimony in the *Haradinaj et al.* case.[116]

63. The evidence shows that Astrit Haraqija was present during the opening of a theatre in Peja on 2 July 2007.[117] Prior to the theatre premiere, Astrit Haraqija sat with a group of people in a café.[118] After the performance, Astrit Haraqija attended a dinner at which some forty persons were present.[119] While there is no doubt that Bajrush Morina also attended these events,[120] several witnesses stated that the atmosphere was light-hearted throughout the evening and that the name of Witness 2 or proceedings before the Tribunal did not come up.[121] According to these witnesses, Astrit Haraqija always sat between his wife and Agim Kasapolli and never engaged in private conversations at these occasions.[122]

64. In his Suspect Interview, Morina said that the conversation with Minister Haraqija about Witness 2 took place either in Pristina or at a cultural event in Peja.[123] The Trial Chamber finds that whether a conversation with the alleged contents took place in Pristina or in Peja is immaterial for the determination of Astrit Haraqija's responsibility. The Trial Chamber will therefore turn to the relevant question whether it has been established that Astrit Haraqija directed or encouraged Bajrush Morina to interfere with Witness 2.

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[115] *See supra*, para. 18.
[116] Prosecution Pre-Trial Brief, para. 12.
[117] Ex. D7 (under seal), pp 2-3; Ex. D8, 92 *bis* statement of Zana Haraqija, 18 July 2008, p. 2; Agim Kasapolli, T. 306.
[118] Ex. D7 (under seal), p. 2; Ex. D8, 92 *bis* statement of Zana Haraqija, 18 July 2008, p. 2; Agim Kasapolli, T. 307, 319.
[119] Ex. D7 (under seal), p. 3; Ex. D8, 92 *bis* statement of Zana Haraqija, 18 July 2008, p. 2; Agim Kasapolli, T. 308.
[120] Ex. D7 (under seal), pp 2-3; Agim Kasapolli, T. 306.
[121] Ex. D7 (under seal), pp 2-3; Ex. D8, 92 *bis* statement of Zana Haraqija, 18 July 2008, p. 2; Edmond Kuqi, T. 293; Agim Kasapolli, T. 307-309. *See also* Peter Mitford-Burgess, T. 201-202 referring to an investigative interview he conducted with Veli Bytyqi.

B. Haraqija's Alleged Initiative and Role in the Interference with Witness 2

1. Morina's Suspect Interview

65. In the Suspect Interview, Bajrush Morina stated that the instructions to meet with Witness 2 and to dissuade him from testifying in the *Haradinaj et al.* case originated from "Minister Haraqija, because I heard this for the first time from him".[124] Bajrush Morina confirmed this several times during the interview.[125]

2. Preparations for the Meetings with Witness 2

66. When Bajrush Morina first contacted Witness 2 on 2 July 2007, he said that the Minister Haraqija wanted to talk to Witness 2.[126] About half an hour later, Bajrush Morina called again and explained that he and the Minister would come to see Witness 2 the next day because they had something important and urgent to talk about.[127] Over the next days, Bajrush Morina sent text messages to confirm that he and the Astrit Haraqija would be arriving on 10 July 2007 and to ask Witness 2 to reserve two hotel rooms for them.[128]

67. A travel request dated 6 July 2007 and purportedly sent by Bajrush Morina to the Permanent Secretary within the Ministry of Culture, Youth and Sport, Mon Zhubi, specifies travel details for Minister Haraqija and Bajrush Morina. They were both to depart on 10 July 2007 from Pristina. Astrit Haraqija was to return to Tirana[129] on 12 July 2007, while Bajrush Morina was to return to Pristina on 12 July 2007.[130] A document, which was a copy of this travel request, was admitted into

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[122] Ex. D5, Photograph Showing Three Tables with Seating Arrangements; Ex. D6, Photograph Showing Several Tables with Seating Arrangements; Edmond Kuqi, T. 288-290; Ex. D7 (under seal), pp 2-3; Ex. D8, 92 *bis* statement of Zana Haraqija, 18 July 2008, p. 2.
[123] Ex. P19 (under seal), pp 18, 22, 30.
[124] Ex. P19 (under seal), p. 28.
[125] Ex. P19 (under seal), pp 18-19, 21-24, 30.
[126] Ex. P7 (under seal), para. 3; Ex. P8 (under seal), para. 6.
[127] Ex. P8 (under seal), para. 7.
[128] Ex. P4 (under seal), pp 3-4; Ex. P7 (under seal), para. 3; Ex. P8 (under seal), paras 17-18. In one text message, Morina even asked Witness 2 to "[b]ear in mind though that this Haraqija is "choosy" and wouldn't accept to stay at any Hotel.", Ex. P4 (under seal), p. 3. *See also* Witness 1, T. 47-48, 61-62 confirming that Witness 2 received messages containing this information.
[129] The Trial Chamber notes that the English translation wrongly refers to Pristina instead of Tirana as contained in the Albanian original version.
[130] Ex. P22 (under seal), p. 1. In this context, the Trial Chamber notes that documents of the Ministry of Economy and Finance dated 9 July 2007 make a "Depozit [*sic*] for Official Travel" of 1374,00 Euro available for the project "Albanian Forum in [the city of the meeting between Witness 2 and Bajrush Morina] on 10 Jul 2007 and 11 Jul 2007" authorised by Mon Zhubi, *ibid.*, pp 3-7; *cf. infra*, para. 75. This amount was withdrawn on 10 July 2007, *ibid.*, p. 13. In addition, there is also a similar travel request sent by Bajrush Morina to Mon Zhubi on 6 July 2007 containing only Bajrush Morina's travel request that was approved by Mon Zhubi on the same day, *ibid.*, p. 17. An "Estimation of the Expenditures for Official Travel" of Bajrush Morina, which was approved by Mon Zhubi, calculates an "Amount Approved/Deposit" of 662.00 Euro, that is 712.00 Euro less than the amount for the entire project, *ibid.*, p. 8.

evidence containing a handwritten annotation by Deputy Minister Krasniqi that "[t]he request was approved by the minister".[131]

68. While Krasniqi stated that as a rule, "the Minister approves all official journeys either orally or in writing",[132] she testified that she did not know whether there was written permission from the Minister Haraqija and that she never discussed this issue with him.[133] According to Krasniqi, she had been informed by Bajrush Morina about the "personal" nature of his journey and that he had permission from the Minister Haraqija to travel on Ministry business.[134]

69. Krasniqi stated that this behaviour – official travel for personal reasons – constituted an "abuse of office",[135] although it apparently did not trigger any further thoughts as to the character of the trip.[136]

70. Haraqija testified that he had neither planned to visit Witness 2, nor had he requested anyone to book a trip to Witness 2's country of residence.[137]

71. The Trial Chamber notes that the Prosecution has produced official travel and expense claim documents for Astrit Haraqija concerning a visit to Tirana from 6 to 10 July 2007.[138] However, the Trial Chamber finds that nothing tends on that evidence, even though, as noted above, the travel request of 6 July 2007 contains travel details for Astrit Haraqija to depart from Pristina on 10 July 2007 and to return to Tirana on 12 July 2007.[139]

72. Astrit Haraqija's official diary does not contain any entry from 10 July 2007 at 12:30 hours until 12 July 2007 at 09:30 hours.[140] In this context, the Trial Chamber is mindful of Haraqija's explanation that, generally, not all of his commitments were entered into his official diary, and, on the other hand, the existence of an invitation in his diary does not mean that he actually attended.[141]

73. Astrit Haraqija testified that regular meetings with members of the Democratic Alliance of Kosovo ("LDK") took place every Wednesday at 12:00 hours.[142] However, the official diary from 2 April 2007 to 29 July 2007, reflects such entries only on Wednesday 11 April 2007 and Wednesday

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[131] Ex. P22 (under seal), p. 1.
[132] Ex. P9 (under seal), p. 7.
[133] Ex. P9 (under seal), pp 2-4, 6; Angjelina Krasniqi, T. 165-166.
[134] Ex. P9 (under seal), pp 2-3, 5-6; Angjelina Krasniqi, T. 165.
[135] Ex. P9 (under seal), p. 5.
[136] Angjelina Krasniqi, T. 170.
[137] Astrit Haraqija, T. 245-246.
[138] Ex. P31, Travel and Expense Claim Documents for Astrit Haraqija for Travel to Tirana in July 2007.
[139] *See supra*, para. 67.
[140] Ex. P32, Copy of Agenda of Astrit Haraqija for the Period April to July 2007, p. 1; Astrit Haraqija, T. 271.
[141] Astrit Haraqija, T. 271-273, 278-279.
[142] Astrit Haraqija, T. 272.

30 May 2007 for a "Meeting of the Parliamentary Group of LDK" and a "Meeting of the Party", respectively.[143] Moreover, there are several entries for meetings with the parliamentary group of the LDK scheduled to take place on other dates and times.[144]

74. By contrast, the "Government's Meeting", another event regularly held on Wednesdays, is specified in the official diary every week with the exception of Wednesday 11 July 2007 and 11 and 18 April 2007, the latter date reflecting an itinerary for the Minister to travel to Strasbourg.[145] In the weeks of 16-20 April 2007 and 9-13 July 2007, the Government's Meeting was scheduled for a Thursday or Friday rather than the usual Wednesday.[146]

75. Finally, the Trial Chamber notes that the travel documents contain an undated invitation by an "Albanian Forum", in the city where the meeting between Bajrush Morina and Witness 2 took place, to Astrit Haraqija and Bajrush Morina on the occasion of a "consulting debate" to be held on 10 and 11 July 2007.[147] Subsequent investigative efforts by the Prosecution to verify the authenticity of the invitation leave no doubt that it is a fake invitation. The purported host organisation does not exist and such a debate never took place.[148]

76. In this context, the Trial Chamber notes that an intercepted telephone conversation between Bajrush Morina and Krasniqi shows that they created invitations for visa purposes, although this evidence does not necessarily relate to this case.[149]

3. The Meetings of July 2007 Between Morina and Witness 2

77. At the 10 July meeting, Bajrush Morina explained to Witness 2 that Astrit Haraqija had initiated the efforts to persuade him not to give testimony in the *Haradinaj et al.* case.[150]

78. From the totality of his interaction with Witness 2, it seems that Bajrush Morina did not feel at ease with his task. Bajrush Morina told Witness 2 that he had asked Astrit Haraqija not to "spread the word that [Witness 2] is giving evidence, it's not good now, whether that's the case or not, but

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[143] Ex. P32, Copy of Agenda of Astrit Haraqija for the Period April to July 2007. While the meeting of 30 May 2007 is scheduled to take place at 12:00 hours, the meeting of 11 April 2007 is scheduled to start at 11:00 hours.
[144] Such entries appear for Tuesday 8 May 2007, Thursdays 21 and 28 June 2007 and 12 and 27 July 2007, as well as Fridays 13 April 2007 and 27 July 2007, Ex. P32, Copy of Agenda of Astrit Haraqija for the Period April to July 2007. According to Haraqija, there were party meetings twice a week, Astrit Haraqija, T. 272.
[145] Ex. P32, Copy of Agenda of Astrit Haraqija for the Period April to July 2007.
[146] Apart from the meetings on Thursday 19 April 2007 and Friday 13 July 2007, only one further government's meeting was held on a day other than Wednesday, namely on Friday 20 July 2007, Ex. P32, Copy of Agenda of Astrit Haraqija for the Period April to July 2007.
[147] Ex. P22 (under seal), p. 12; Peter Mitford-Burgess, T. 178 (private session).
[148] Peter Mitford-Burgess, T. 178-180 (private session); Ex. P14 (under seal).
[149] *See* Ex. P18, Intercept of Telephone Conversation Between Angjelina Krasniqi and Bajrush Morina, 29 October 2007, pp 1-2.

even if it's not the case it is not good".[151] According to Bajrush Morina, the Minister put him under pressure by saying "[y]ou, horse, go otherwise it won't be good for you".[152] Bajrush Morina suggested that he personally did not want to influence Witness 2 and only agreed to prepare the ground for introducing Astrit Haraqija to him.[153]

79. At the end of the 11 July meeting, Bajrush Morina said to Witness 2:

> I am not...I am not...I do not want to get involved...Thank you. Everything that is...man for me...I am telling you that they told me to come and in order to do that for them I came. I would have never come. The reason is not that I said /unintelligible/ and I am telling you too. We are friends, I would like to meet you again tomorrow...*Now I know that I did not really do a good thing and that I probably should not have come, but I couldn't...not to*...I don't want to say that I do not want to or that I cannot...that is something else.[154]

In his last words before leaving Witness 2, Bajrush Morina apologised by saying "Sorry...sorry I'm sorry. Is it ok? Thank you. Bye, bye".[155]

4. After the Meetings of July 2007

80. Subsequent to his trip, Bajrush Morina published an article on his journey from a tourist's perspective in the newspaper Bota Sot.[156] This article does not mention any debate or forum of the Albanian community, which had been the object of the fake invitation and was used to justify the official trip.[157] Neither does it mention anything about Witness 2's previously published article which was claimed to be a reason for the trip.[158]

81. Bajrush Morina continued to refer to Astrit Haraqija's initiative to persuade Witness 2 not to testify after he returned from his trip. Krasniqi stated that Bajrush Morina was surprised to learn that Astrit Haraqija was denying any knowledge of it.[159] She also confirmed that she expressed sympathy for Bajrush Morina and some frustration about the fact that the Minister was not taking responsibility for his own conduct.[160]

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[150] Ex. P12 (under seal), pp 16-18. *See also* Ex. P8 (under seal), paras 22-29 in which Witness 2 confirms what Bajrush Morina said during the meeting.
[151] Ex. P12 (under seal), p. 22.
[152] Ex. P12 (under seal), p. 24.
[153] Ex. P12 (under seal), p. 24.
[154] Ex. P13 (under seal), p. 40 (emphasis added).
[155] Ex. P13 (under seal), p. 44.
[156] Ex. P15 (under seal).
[157] Ex. P15 (under seal); Peter Mitford-Burgess, T. 181 (private session). *See supra*, para. 75.
[158] *See supra*, para. 49.
[159] Ex. P9 (under seal), p. 12.
[160] Ex. P10 (under seal), pp 9-10.

C. Facts Presented in Relation to Motive

82. Astrit Haraqija was neither a close political ally nor a social friend of Ramush Haradinaj.[161] Astrit Haraqija was a member of the LDK and not a member of Haradinaj's Alliance for the Future of Kosovo ("AAK") party.[162] In fact, Astrit Haraqija ran as a candidate against the AAK in political elections and, as such, considers Haradinaj to be his rival.[163] Even so, as a member of the LDK Presidium, Astrit Haraqija supported a coalition proposed by Haradinaj and became a member of the government under Prime Minister Haradinaj.[164]

83. Astrit Haraqija was a founding member and deputy chairman of the Committee for the Defence of Ramush Haradinaj, a fund established to raise funds in order to pay the costs of Ramush Haradinaj's defence in the proceedings before the Tribunal.[165] During his own testimony, Haraqija explained that

> I'm a member of the Democratic Alliance of Kosova, member of the Presidency. At the time, the late-President Rugova told me that I had to join this fund because the party led by the former Minister Haradinaj had a very small electorate, only 8 per cent; and at that time, our electorate was 45 per cent. So that's why he wanted me to join the fund and assist it, the Haradinaj fund, and in a way to assist the war, because you cannot equalise the victim with the offender.[166]

He later added that he also joined the fund because his party and President Rugova were often accused of being "collaborators with the Serbs in Belgrade".[167]

84. When first interviewed by the Prosecution, Astrit Haraqija explained that the purpose of the fund "was to defend values of the war and to pay for a lawyer".[168] As to the reasons for joining, Haraqija stated that

> I took part because I was authorized by President Rugova and I took part because it was good not to equate the executioner with his victim. I still today have friends and members of my family and we don't know where they are buried.[169]

Asked to elaborate on what he meant by "equating the executioner and his victim", Haraqija explained that

> Milošević had his entire state apparatus and he killed 1,800 people in Đakova like a butcher going among the lambs and looking at the number of accused that are put on trial it doesn't seem to be right to me to have the same number on the Serbian side and the same number from among us.[170]

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[161] Ex. P20 (under seal), p. 13.
[162] Astrit Haraqija T. 240-242.
[163] Astrit Haraqija, T. 242-244.
[164] Ex. P20 (under seal), p. 13. *See also* Astrit Haraqija, T. 240.
[165] Ex. P26, Documents from "Defence Committee for Ramush Haradinaj"; Astrit Haraqija, T. 240-241.
[166] Astrit Haraqija, T. 240-241.
[167] Astrit Haraqija, T. 244.
[168] Ex. P20 (under seal), p. 12.
[169] Ex. P20 (under seal), p. 12.

85. In a different investigation conducted by the United Nations Interim Administration Mission in Kosovo ("UNMIK") in April 2007, Astrit Haraqija gave the same reasons for joining the fund. He further explained that he was the LDK representative and that he was elected deputy chairman for "marketing reasons".[171] However, Astrit Haraqija also declared that "as a matter of fact, after the second meeting I didn't have anything to do with the committee".[172]

D. Discussion and Conclusions

86. At the outset, the Trial Chamber recalls its findings that the conduct of Bajrush Morina constitutes Contempt of the Tribunal.[173] 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, it is also established by the totality of the evidence. As the Trial Chamber has not declared the Suspect Interview inadmissible and subsequently admitted it into evidence, in assessing its weight, the Trial Chamber had due regard to whether the information contained therein[174] is corroborated by independent evidence, either derived from the same source, but in an independent manner, or originating from different sources altogether.[175]

87. Even though most pieces of evidence ultimately originate from Bajrush Morina, the Trial Chamber considers 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.

88. As regards the circumstances in which the elements of evidence were generated, the Trial Chamber distinguishes between statements given consciously by Bajrush Morina in the context of a criminal investigation on the one hand, and conduct, statements and documents that Bajrush Morina undertook, made or produced in a live, authentic or spontaneous way, without knowing that he was subject to criminal investigation on the other hand. The first category of evidence includes the Suspect Interview,[176] whereas Witness 2's account of Bajrush Morina's telephone calls ahead of the meetings, intercepted text messages,[177] audio-visual recordings of the meetings with Witness 2,[178]

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[170] Ex. P20 (under seal), p. 13.
[171] Ex. D4, Interview with Astrit Haraqija, 3 April 2007, pp 7-8, 10.
[172] Ex. D4, Interview with Astrit Haraqija, 3 April 2007, p. 9.
[173] *See supra*, para. 61.
[174] *See supra*, para. 13.
[175] *See supra*, para. 41.
[176] Ex. P19 (under seal).
[177] Ex. P4 (under seal).
[178] Ex. P12 (under seal); Ex. P13 (under seal).

travel request/documentation,[179] as well as the intercepted telephone conversation between Bajrush Morina and Angjelina Krasniqi[180] fall within the second category.

89. In respect of time, the Trial Chamber distinguishes between the time span prior to the first meeting with Witness 2, when Bajrush Morina had reason to believe that Astrit Haraqija would travel to the city where Witness 2 resided, the meeting itself when Bajrush Morina explained to Witness 2 that the Minister would not be coming and finally, the period after Bajrush Morina learned that he was investigated for Contempt of the Tribunal. The first period of time encompasses all telephone and text message communication in preparation for the meeting, the travel request and the fake invitation submitted in justification thereof. The Intercepts of the meetings between Bajrush Morina and Witness 2 form part of the second timeframe. Finally, the Suspect Interview and the intercepted telephone calls between Bajrush Morina and Angjelina Krasniqi fall within the last span of time.

90. Turning to the purpose for which the different elements of evidence were generated, the Trial Chamber distinguishes between evidence relating to (i) Witness 2's consent to meet with Bajrush Morina, (ii) approval of the journey and reimbursement, (iii) dissuading Witness 2 from testifying, (iv) forensic purposes; and finally (v) conversations for various other purposes. The first category consists of the telephone and text message communication between Bajrush Morina and Witness 2. The second group includes the travel request and related documents provided in justification thereof. The audio-visual record of the two meetings between Bajrush Morina and Witness 2 belongs to the third category. The Suspect Interview was made for forensic purposes. Finally, the last category includes telephone calls between Bajrush Morina and Angjelina Krasniqi.

91. The Trial Chamber regards these pieces of evidence characterised in relation to the circumstances, time and purpose as sufficiently independent from each other and thus being capable of corroborating the Suspect Interview. Moreover, the Trial Chamber finds that there is a high degree of consistency in the evidence thus characterised, which induces a strong belief of truthfulness of Bajrush Morina's statements in the Suspect Interview in the case against Astrit Haraqija, without impairing Astrit Haraqija's right to a fair trial.

92. With regard to the consistency of the evidence, the Trial Chamber notes that already when Bajrush Morina contacted Witness 2 for the first time, he mentioned that the Minister Haraqija wanted to talk to Witness 2. Bajrush Morina was anxious to make sure that Astrit Haraqija be

[179] Ex. P22 (under seal).
[180] Ex. P18, Intercept of Telephone Conversation Between Angjelina Krasniqi and Bajrush Morina, 29 October 2007.

properly accommodated during his trip.[181] The Trial Chamber has also considered the possibility that Bajrush Morina used the Minister's name and rank as an inducement for Witness 2 to consent to the meetings, without Astrit Haraqija's knowledge and consent. As Witness 2 did not know Astrit Haraqija, nor is it obvious that he would be impressed by his position, the merits of such an explanation are at best doubtful. Rather, Bajrush Morina referred to the late President Rugova and his family, who was revered by Kosovars in general and respected by Witness 2 in particular, to underline the urgency and importance of his request.[182]

93. When requesting official authorisation and funding for his purportedly private trip to visit a friend, Bajrush Morina not only told his immediate superior, Angjelina Krasniqi, that he was travelling on Ministry business and with the Minister's permission, but also included the Minister himself in the official request he submitted.[183] The fake invitation used as justification to travel equally contained the Minister's name.[184]

94. Throughout his entire interaction with Witness 2, Bajrush Morina indicated that the only reason he travelled to talk about the testimony in the *Haradinaj et al.* case was because he was under instruction – and even put under pressure – to do so by the Minister, who was the most senior person at his workplace at that time. Bajrush Morina felt sorry and apologised for his behaviour.[185] Moreover, Bajrush Morina's behaviour toward Witness 2 suggests that he respected and appreciated Witness 2.

95. After the trip was completed, and subsequent to the initiation of investigative proceedings by the Prosecution, Bajrush Morina expressed his discontent with Astrit Haraqija's denial of knowledge about Bajrush Morina's travel. This was communicated to Krasniqi, who was conversant with the circumstances of the case, and was sympathetic towards Bajrush Morina.[186]

96. In addition to the consistency in the evidence originating from Bajrush Morina, Astrit Haraqija's involvement is further confirmed by the evidence surrounding the travel approval. This evidence negates the alternative scenario that Bajrush Morina would have consistently and falsely implicated Astrit Haraqija under all circumstances and at all times when the incriminating evidence was generated. Indeed, Bajrush Morina's course of action when including the Minister in his official travel request would be palpably unwise had Bajrush Morina acted on his own account. Moreover, it would have been obvious to anyone that such an action would not remain unnoticed or

[181] *See supra*, para. 66, fn. 128.
[182] *See* Ex. P7 (under seal), para. 3; Ex. P8 (under seal), para. 8; Angjelina Krasniqi, T. 166.
[183] *See supra*, paras 67-69.
[184] *See supra*, para. 75.
[185] *See supra*, paras 43, 48, 66, 78-79.
[186] *See supra*, para. 81.

undetected if it was really performed in violation of the Ministry's rules, namely for a purely personal journey without official authorisation.

97. Whereas the Prosecution is under an obligation to positively establish an accused's guilt beyond reasonable doubt, in evaluating the evidence, the Trial Chamber has also scrutinised evidence that would call incriminating evidence into question. Such negative indicators, if any, would require the Trial Chamber to consider whether and to what extent they affect the convincing potential of the incriminating evidence. In this context, the Trial Chamber notes that Astrit Haraqija's diary and other travel commitments, such as his visit to Tirana, evidenced by independent documents, do not contradict Astrit Haraqija's involvement since they do not contain any commitments on the relevant dates, which would be capable of raising a doubt as to Astrit Haraqija's involvement.[187] Not only was there no entry for the LDK party meeting in question, although the diary indicates that Astrit Haraqija did not regularly attend them.[188] More importantly, the periodic government's meeting was held two days later than usual. A postponement or cancellation of this meeting occurred only rarely in the period accounted for in Astrit Haraqija's diary.[189]

98. Finally, considerations of an alternative motive for Bajrush Morina to meet with Witness 2 in order to interfere with his testimony also do not raise a reasonable doubt as to Astrit Haraqija's responsibility. As the Trial Chamber has pointed out, motive is in itself of minimal, if any, probative value, although the absence of motive may call for further exploration of the convincing potential of evidence.[190] Bajrush Morina has a large family to support and lives in humble financial conditions.[191] Again, it is highly unlikely that he would have taken upon himself the financial risk of having to reimburse the costs of a personal trip undertaken in violation of the Ministry's rules, or maybe even facing disciplinary action, in order to travel for a meeting with Witness 2 for personal reasons. Bajrush Morina was not a supporter of Ramush Haradinaj or his party and lacked any apparent reason to risk his family and finances in order to support Haradinaj at trial, absent instructions by Haraqija.[192] Nor is it likely that Bajrush Morina would arrange an urgent and costly personal trip to obtain professional confirmation (which he could have obtained telephonically) of an article written five years earlier. Such an argument strains credulity.

99. Astrit Haraqija, on the other hand, had become involved in the defence of Ramush Haradinaj in the context of his political position within the LDK and the coalition government

[187] *See supra*, paras 72-74.
[188] *See supra*, paras 72-73.
[189] *See supra*, para. 74.
[190] *See supra*, para. 59.
[191] *See supra*, para. 52.

under Haradinaj.[193] Furthermore, Astrit Haraqija repeatedly expressed discontent and lack of understanding with respect to the trial of Kosovars such as Ramush Haradinaj before this Tribunal.[194]

100. In conclusion, the Trial Chamber is 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.

101. The Trial Chamber notes that Astrit Haraqija did not personally meet or interact with Witness 2, as some evidence suggests to have been the original plan. The Trial Chamber notes, however, that it is immaterial whether Astrit Haraqija committed Contempt of the Tribunal in person or through an intermediary acting under his orders and/or on his behalf. According to the jurisprudence, commission of an offence requires participation in the *actus reus* of the offence. This is, however, not limited to direct and physical perpetration, as long as the conduct in question is as much an integral part of the offence as was the direct and physical perpetration itself.[195]

102. The evidence establishes beyond reasonable doubt that Astrit Haraqija exercised his influence over Bajrush Morina who accepted Astrit Haraqija's authority and followed his directions. Astrit Haraqija knew that Witness 2 was about to give testimony in the *Haradinaj et al.* case and instructed Bajrush Morina to contact Witness 2 and organise a meeting with him to dissuade him from testifying before the Tribunal. Therefore, the Trial Chamber finds 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.

VIII. SENTENCING

A. Sentencing Law and Purpose

103. Article 24(2) of the Statute and Rule 101(B) of the Rules provide factors to be taken into account in the determination of sentence, although they do not constitute "binding limitations on a chamber's discretion to impose a sentence".[196] It is well-established in the jurisprudence of the Tribunal that "the two most important factors to be taken account of in determining the appropriate

[192] *See supra*, para. 51.
[193] *See supra*, paras 82-85.
[194] *See supra*, paras 83-85.
[195] *See supra*, para. 20.

penalty in contempt cases are the gravity of the conduct and the need to deter repetition and similar action by others."[197]

104. The Trial Chamber has also considered whether there are any aggravating and mitigating circumstances. Aggravating circumstances must be proven beyond reasonable doubt,[198] whereas the standard of proof for mitigating circumstances is "the balance of probabilities".[199]

B. Bajrush Morina

1. Gravity of the offence

105. The Trial Chamber notes that among the possible ways of interfering with the administration of justice, the intimidation of witnesses is particularly grave.

2. Aggravating circumstances

106. The Prosecution submits that Bajrush Morina's conduct is "particularly egregious" given the situation with which the Trial Chamber in the *Haradinaj et al.* case was faced in securing witness testimony in an atmosphere that many witnesses perceived to be unsafe.[200] The Trial Chamber notes that this problem was pointed out by the Chamber in the *Haradinaj et al.* case.[201]

107. In assessing the gravity of the offence, the Trial Chamber took into account the importance of ensuring the proper administration of justice by protecting witnesses from any interference aimed at changing their testimony or even withdrawal from testifying. Therefore, this inherent aspect is not further considered as an aggravating circumstance.

3. Mitigating circumstances

108. As mitigating circumstances, the Morina Defence refers to: (i) the good character of Bajrush Morina; (ii) the absence of a prior criminal record; (iii) his "cooperation" during the period of provisional release; and (iv) his family situation, where he is not only a father of four children, but also cares for his elderly parents who are of failing health.[202]

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[196] *Krstić* Appeal Judgement, paras 241-242; *Simić* Appeal Judgement, para. 234. *See also Čelebići* Appeal Judgement, paras 715, 717-718, 780.
[197] *Margetić* Trial Judgement, para. 84; *Jović* Trial Judgement, para. 26; *Marijačić and Rebić* Trial Judgement, para. 46.
[198] *Blaškić* Appeal Judgement, para. 686, citing *Čelebići* Appeal Judgement, para. 763; *Beqaj* Trial Judgement, para. 61.
[199] *Babić* Sentencing Appeal Judgement, para. 43; *Beqaj* Trial Judgement, para. 63.
[200] Prosecution Closing Argument, T. 334.
[201] *See Haradinaj et. al.* Trial Judgement, para. 6.
[202] Morina Defence Closing Argument, T. 348.

109. Two witnesses confirmed Bajrush Morina's good character and professionalism in his work.[203] The Trial Chamber accepts the absence of a prior criminal record and Bajrush Morina's family circumstance.[204] These factors are taken into consideration as mitigating circumstances. However, the Trial Chamber does not consider Bajrush Morina's compliance with the terms of the provisional release as a mitigating factor, since an accused is expected to comply with all the conditions of provisional release.

110. The Trial Chamber also considers as a mitigating circumstance the fact that in committing the Contempt of the Tribunal, Bajrush Morina was pressured by Astrit Haraqija. The Trial Chamber notes in this respect that Bajrush Morina was in a difficult financial situation and was professionally dependent on Astrit Haraqija through the fact that he was a political advisor employed by the Ministry of which Astrit Haraqija was the head.

111. Finally, the Trial Chamber considers as a mitigating circumstance the fact that Bajrush Morina was reluctant to carry out what Astrit Haraqija had told him to do and apologised for his behaviour to Witness 2.[205]

C. Astrit Haraqija

1. Gravity of the offence

112. The Trial Chamber notes that among the possible ways of interfering with the administration of justice, the intimidation of witnesses is particularly grave.

2. Aggravating circumstances

113. In relation to Astrit Haraqija, the Prosecution likewise refers to the difficulties 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.[206] According to the Prosecution, in this context, the conduct of Astrit Haraqija is "particularly egregious".[207] The Prosecution further submits that Astrit Haraqija "abused his authority as a government minister" when he committed the offences.[208]

114. In assessing the gravity of the offence, the Trial Chamber took into account the importance of ensuring the proper administration of justice by protecting witnesses from any interference aimed

[203] Angjelina Krasniqi, T. 161-162; Agim Kasapolli, T. 311-312.
[204] Angjelina Krasniqi, T. 162.
[205] Ex. P13 (under seal), pp 40, 44. *See supra*, para. 79.
[206] Prosecution Closing Argument, T. 334.
[207] Prosecution Closing Argument, T. 334.
[208] Prosecution Closing Argument, T. 334.

at changing their testimony or even withdrawal from testifying. Therefore, this inherent aspect is not further considered as an aggravating circumstance.

115. The Trial Chamber notes that Astrit Haraqija abused his high position in the structure of the government of Kosovo to put pressure on the employee of his ministry, who was in a difficult financial situation, to interfere with the protected witness.[209] The Trial Chamber finds this to be an aggravating circumstance.

3. Mitigating circumstances

116. The Haraqija Defence refers to the good character of Astrit Haraqija as a mitigating circumstance.[210] According to the Defence, he is a man who "worked hard to foster co-existence among people in Kosovo".[211] The Defence also asserts that he is "a young man" who would contribute to the future of Kosovo through his political career.[212]

117. A witness testified that he "was impressed by [Astrit Haraqija's] decisiveness, commitment in work and his high professionalism demonstrated during his work in the ministry". This witness also stated that Astrit Haraqija "is a humane person," mentioning three instances where Astrit Haraqija rendered financial support to persons suffering from diseases.[213] The evidence also shows that Astrit Haraqija was involved in projects to assist ethnic minorities in Kosovo, including the building of a school and other infrastructure for Roma, Egyptian and Ashkali minorities,[214] and the re-building of Serbian Orthodox churches.[215] The Trial Chamber considers these factors to be mitigating circumstances. However, in the Trial Chamber's view, his age of thirty-six and the importance of his expected political career to Kosovo's future do not serve as mitigating factors. Although Astrit Haraqija's family situation was not raised by the Defence, the Trial Chamber takes into account as a mitigating circumstance that Astrit Haraqija has two children of eight and four years of age.[216]

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[209] *See Hadžihasanović and Kubura* Appeal Judgement, para. 320, where the Appeals Chamber held that abuse of authority may be taken into consideration as an aggravating circumstance.
[210] Haraqija Defence Closing Argument, T. 363.
[211] Astrit Haraqija's Submission of Pre-Trial Brief, List of Witnesses and List of Exhibits with Confidential Annexes A-F, 11 August 2008 (confidential), para. 22. *See also* Haraqija Defence Closing Argument, T. 362-363.
[212] Haraqija Defence Closing Argument, T. 361-362.
[213] Agim Kasapolli, T. 309-310. *See also* Ex. D7, Witness Statement of Edmond Kuqi, 19 July 2008, p. 4.
[214] Astrit Haraqija, Rule 84 *bis* Statement, T. 32-35; Ex. D8, Witness Statement of Zana Haraqija, 18 July 2008, pp 2-3; Ex. D9, Witness Statement of Zija Rugova, 23 July 2008, pp 2-3.
[215] Astrit Haraqija, T. 236-240; Ex. D3, DVD Showing Rebuilding Damaged Church. In this context, Astrit Haraqija closely cooperated with the Serbian Orthodox Patriarch and met, as the first Minister from Kosovo to be received in Belgrade, with his Serbian counterpart, Ex. D8, Witness Statement of Zana Haraqija, 18 July 2008, p. 3.
[216] Ex. D8, Witness Statement of Zana Haraqija, 18 July 2008, p. 2.

D. Punishment to be Imposed

118. Rule 77(G) of the Rules provides 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.

119. The Prosecution recommends that the Trial Chamber sentence Astrit Haraqija to a term of imprisonment of two years, and Bajrush Morina to a term of imprisonment of one year.[217]

120. In the instant case, taking due account of the gravity of the offences and the other factors referred to above, and in view of the Tribunal's jurisprudence in cases of a similar nature,[218] the Trial Chamber considers that a single term of imprisonment of three (3) months for Bajrush Morina and a single term of imprisonment of five (5) months for Astrit Haraqija are appropriate in this case.

121. Pursuant to Rule 101(C) of the Rules, credit shall be given to the convicted person for the period during which he was detained pending surrender to the Tribunal or pending trial. Both Astrit Haraqija and Bajrush Morina spent 36 days in the United Nations Detention Unit. Therefore, against the sentence to be imposed, Astrit Haraqija and Bajrush Morina are entitled to credit of 36 days.

[217] Prosecution Closing Argument, T. 334.
[218] *See Beqaj* Trial Judgement; *Vujin* Trial Judgement; *Margetić* Trial Judgement.

IX. DISPOSITION

122. 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 Astrit Haraqija is **guilty** of Contempt of the Tribunal (Count 1), punishable under Rule 77(A)(iv) and Rule 77 (G) of the Rules;
2. 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.
3. 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;
4. 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.
5. The Registrar is to take measures necessary for the enforcement of the sentence.

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

Judge Alphons Orie, Presiding

Judge Christine Van den Wyngaert

Judge Bakone Justice Moloto

Dated this seventeenth day of December 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

X. TABLE OF ICTY AND ICTR JUDGEMENTS

Akayesu Trial Judgement	*Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998
Babić Sentencing Appeal Judgement	*Prosecutor v. Milan Babić*, Case No. IT-03-72-A, Judgement on Sentencing Appeal, 18 July 2005
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Marijačić and Rebić Trial Judgement	*Prosecutor v. Ivica Marijačić and Markica Rebić*, IT-95-14-R77.2, Judgement, 10 March 2006
Marijačić and Rebić Appeal Judgement	*Prosecutor v. Ivica Marijačić and Markica Rebić*, IT-95-14-R77.2-A, Judgement, 27 September 2006
Musema Appeal Judgement	*Prosecutor* v, *Alfred Musema*, Case No. ICTR-96-13-A, Judgement, 16 November 2001
Nahimana et al. Appeal Judgement	*Prosecutor v. Ferdinand Nahimana et al.*, Case no. ICTR-99-52-A, Judgement, 28 November 2007
Nobilo Appeal Judgement	*Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR77, Judgement on Appeal by Anto Nobilo Against Finding of Contempt, 30 May 2001
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Tadić Trial Judgement	*Prosecutor v. Duško Tadić* aka "Dule", Case No. IT-94-1, Judgment, 7 May 1997
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