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Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

(Exclusively for the use of the media. Not an official document)

CHAMBERS

The Hague, 24 July 2008

Judgement Summary For Baton Haxhiu

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

This case concerns an allegation by the Prosecution that the Accused, Baton Haxhiu, a journalist from Kosovo, committed the crime of contempt of the Tribunal. In the scheduling order filed on 17 July 2008, the Accused was given the choice whether to be present today and the Chamber was duly informed by the Defence that the Accused has waived his right to be present during this hearing.

For the purposes of this hearing, the Chamber will briefly summarize the procedural history of the case, the applicable law, the submissions of the parties, and the Chamber's findings. We emphasize that this is a summary only, and that the authoritative account of the Chamber's findings is to be found in the written Judgement, which will be made available at the end of this session.

The Indictment against the Accused was confirmed on 10 April 2008. It alleges that the Accused wrote and published a newspaper article which revealed the identity of a protected witness, to whom I will refer to as the Witness. The Witness testified in the Haradinaj et al. case before the Tribunal. According to the Indictment, the Accused knowingly and wilfully interfered with the administration of justice in knowing violation of orders by a Trial Chamber of the Tribunal.

The trial against the Accused took place on 24 June 2008. The Accused gave an unsworn statement pursuant to Rule 84*bis* of the Rules, and the Prosecution called one witness.

I will now move to the law on contempt as applied in this case

Despite the Statute's silence on the subject, it is firmly established that the Tribunal possesses an inherent jurisdiction to prosecute contempt. This inherent jurisdiction derives from the Tribunal's judicial function to ensure that its exercise of the jurisdiction which is expressly provided for in the Statute, is not frustrated and that its basic judicial functions are safeguarded.

The Accused is charged pursuant to Rule 77 (A) (ii) of the Rules. This provision provides that:

The Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who: Discloses information relating to those proceedings in knowing violation of an order of a Chamber;

The elements of this form of contempt are the revelation to a third party or to the public, of confidential information in breach of an order of a Trial Chamber. The person revealing the information must have done so in the knowledge that it was done in violation of an order of a Trial Chamber.

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I will now move to the parties' submissions and the Chamber's discussion on the question whether the Accused disclosed confidential information relating to proceedings before the Tribunal in breach of an order of a Trial Chamber.

The Chamber found that the published newspaper article contains the real name of the Witness and describes him as a protected witness; that it refers to the supposed place of residence of the Witness; and that it also mentions that the Witness's name [quote] "was found on the list of witnesses who were to testify under full confidentiality against Ramush Haradinaj's group" [unquote]. The Trial Chamber further found that at the time of publication, the identity of the Witness remained protected by an Oral Decision of 28 August 2007, rendered by the Haradinaj Trial Chamber.

The parties have agreed, and the Chamber found, that the Accused was the author of the newspaper article, and that he accepted responsibility for its publication.

The Chamber was therefore convinced beyond a reasonable doubt that the Accused, by writing and publishing the newspaper article, revealed the name of the Witness, whose identity was protected by the Oral Decision of 28 August 2007, and that he thereby disclosed information relating to proceedings before the Tribunal in breach of an order of a Trial Chamber.

I will now move to the parties' submissions and the Chamber's discussion on the question whether the Accused knew that his disclosure of the name of the Witness was in violation of an order of a Trial Chamber.

The Prosecution submitted that the evidence of Mr Haxhiu's knowledge that he was publishing protected information is contained in the newspaper article itself. It further submitted that the Accused acknowledged in his interview with the Prosecution investigators that he was aware of the Tribunal's regulations and that he had violated the Rules.

The Defence argued that because the Oral Decision of 28 August 2007 was not specific enough, the Accused could not have known at the time what protective measures were in place and what exactly was protected, the witness's identity or the content of his testimony.

The newspaper article, written and published by the Accused, states that the Witness's name was found on a list of witnesses who were to testify under full confidentiality. It twice refers to the Witness as a protected witness. The Prosecution's request for protective measures for the Witness was filed publicly on 27 August 2007. In that request, the Prosecution requested that the Witness's pseudonym be retained and that the Witness testify with face and voice distortion. The request was granted on 28 August 2007. When it rendered its Decision, the Trial Chamber stated publicly that the requested protective measures for the Witness were granted; that the witness would be referred to by pseudonym; that the Witness face and voice could not be seen or heard by the outside world; but that the content of the Witness testimony would be public.

Therefore, the Trial Chamber made the nature of the protective measures granted to the Witness unambiguously clear to those present in the courtroom and to the public. By assigning a pseudonym to the witness, the Trial Chamber protected the Witness's identity.

In his interview with the Prosecution, the Accused agreed and admitted that it was against the law to publish the name of the Witness and that he had violated [quote] "the rule of the Tribunal" [unquote] by publishing it. The Accused added that because the Witness's name was known in Kosovo by a select group of people, he published the Witness's name to protect the Witness because the Tribunal had failed to do so. In this respect, the Chamber considered that individuals, including journalists, cannot decide to

publish information in defiance of protective measures orders, on the basis of their own assessment of the public interest in that information.

The Trial Chamber was convinced beyond a reasonable doubt that the Accused knew that his disclosure of the name of the Witness in the newspaper article was done in violation of an order of a Trial Chamber.

The Chamber therefore found the accused guilty of the crime of contempt as charged in the Indictment.

In its consideration of the sentence to be imposed, the Chamber considered a number of factors, including that the identity of the Witness was not published as the main subject of the newspaper article, but in the context of another matter covered by it and that the newspaper in question has a circulation of 5000. The Accused's conduct could have jeopardized the security of the Witness and his family. Moreover, it was of a kind to undermine confidence in the effectiveness of the Tribunal's protective measures orders, and to have the effect of dissuading witnesses from cooperating with the Tribunal.

The Chamber further considered the Accused's cooperation with the Prosecution, as represented by the Defence and undisputed by the Prosecution, in the investigation of the case against him, and also in the cases of Prosecutor v. Slobodan Milošević and Prosecutor v. Milutinović et al. The Chamber attached some, although limited, weight to the family circumstances of the Accused and the fact that the Accused has no past record of interfering with the administration of justice. The Trial Chamber has also considered the fact that the Accused spent five days in the United Nations Detention Unit when determining the amount of the fine to be imposed.

According to Rule 77 (G) of the Rules, the maximum penalty that may be imposed on a person found to be in contempt of the Tribunal shall be a term of imprisonment of seven years, a fine of 100,000 Euros, or both. The Prosecution recommended that the Chamber impose a fine of 15,000 Euros on the Accused. The Defence submitted that should the Accused be found guilty, an admonishment would suffice.

I will now read the relevant part of the disposition of the judgement:

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

The Accused, Mr Baton Haxhiu, is guilty of Contempt of the Tribunal, punishable under Rule 77 (A) (ii) and Rule 77 (G) of the Rules;

Mr Haxhiu is hereby sentenced to a fine of 7,000 Euros, full amount of which is to be paid to the Registrar of the Tribunal within 30 days of this Judgement. Alternatively, the fine may be paid by two instalments of 3,500 Euros each, the first to be paid by 24 August 2008, and the second by 24 November 2008;

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

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