



United Nations
Nations Unies



International Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

(IT-04-84-R77.5)

BATON HAXHIU

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Convicted of contempt of the Tribunal for disclosing the identity of a protected witness in the Haradinaj et al. case



Former editor of a Kosovo newspaper

- Sentenced to a fine of 7,000 euros

Crimes convicted of:

Contempt of the Tribunal (Rule 77(A)(ii) of the Rules of Procedure and Evidence of the Tribunal)

- He knowingly and wilfully interfered with the administration of justice by revealing the identity of a protected witness in an article he wrote and published.

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|--------------------------------|--|
| Indictment | 10 April 2008 (made public on 20 May 2008); corrected indictment: 24 June 2008 |
| Initial appearance | 21 May 2008, pleaded not guilty |
| Trial Chamber Judgement | 24 July 2008, sentenced to pay a fine of 7,000 euros |

STATISTICS

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|---------------------------------|---|
| Trial days | 1 |
| Witnesses called by Prosecution | 1 |
| Prosecution exhibits | 9 |
| Witnesses called by Defence | 0 |
| Defence exhibits | 8 |

| TRIAL | |
|-----------------------------|---|
| Commenced | 24 June 2008 |
| Closing arguments | 24 June 2008 |
| Trial Chamber I | Judge Alphons Orié (presiding), Judge Christine Van den Wyngaert, Judge Ole Bjorn Stole |
| Counsel for the Prosecution | Dan Saxon, Vincent Lunny |
| Counsel for the Defence | Christian Kemperdick |
| Judgement | 24 July 2008 |

| APPEAL | |
|-----------------------------|---|
| Appeals Chamber | Judge Mohamed Shahabuddeen, Judge Mehmet Güney, Judge Andréia Vaz, Judge Theodor Meron and Judge Wolfgang Schomburg |
| Counsel for the Prosecution | Dan Saxon, Vincent Lunny |
| Counsel for the Defence | Christian Kemperdick |
| Judgement | None -- case closed |

| RELATED CASES <i>by geographical area</i> | |
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| HARADINAJ et al. (IT-04-84) | |

INDICTMENT AND CHARGES

In accordance with Rule 77 of its Rules of Procedure and Evidence, the Tribunal can conduct proceedings for contempt of court. The ICTY's jurisdiction in respect of contempt is not expressly outlined in the Statute. However, it is firmly established that the Tribunal possesses an inherent jurisdiction, deriving from its judicial function, to ensure that its exercise of the jurisdiction expressly given to it by the Statute is not frustrated and that its basic judicial functions are safeguarded. As an international criminal court, the Tribunal possesses this inherent power to deal with conduct interfering with its administration of justice. Such interference may be by way of conduct which obstructs, prejudices or abuses the Tribunal's administration of justice. Those who knowingly and wilfully interfere with the Tribunal's administration of justice in such a way may, therefore, be held in contempt of the Tribunal.

The indictment against Baton Haxhiu was filed on 1 April 2008. It was confirmed on 10 April 2008 and re-filed as *ex-parte* and confidential. The indictment was made public on 20 May 2008. On 24 June 2008, the Trial Chamber granted a Prosecution's request to make corrections in the indictment. The new, operative indictment was filed on 27 June 2008.

According to the indictment, in 2007 Baton Haxhiu obtained information about a witness whose identity was protected by orders of the Trial Chamber in the *Haradinaj et al.* trial and which he subsequently revealed in an article he wrote and published.

Baton Haxhiu is charged with:

- Contempt of the Tribunal (Rule 77(A)(ii) of the Rules of Procedure and Evidence)

PRE-TRIAL

On 23 May 2008, the accused was granted provisional release, only returning to The Hague to attend his trial (see below).

TRIAL

The trial took place on 24 June 2008.

TRIAL CHAMBER JUDGEMENT

The Chamber found that the published newspaper article contained the real name of the witness and described him as a protected witness; that it referred to the supposed place of residence of the witness; and that it also mentioned 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 et al.* 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.

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 had 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 had no past record of interfering with the administration of justice. The Trial Chamber 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.

On 24 July 2008, Trial Chamber rendered its judgement, convicting Baton Haxhiu with:

- Contempt of the Tribunal (Rule 77(A)(ii) and Rule 77 (G) of the Rules of Procedure and Evidence of the Tribunal)

Sentence: Fine of 7,000 euros, to be paid to the Registrar of the Tribunal within 30 days of the judgement.

APPEALS PROCEEDINGS

On 19 August 2008, Baton Haxhiu's counsel filed a notice of appeal. On 4 September 2008, the Appeals Chamber rejected the appeal as inadmissible because the notice was filed outside the prescribed time-limits. It accordingly declared the case closed.