

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

(IT-04-84-R77.4)

HARAQIJA & MORINA**ASTRIT HARAQIJA***Acquitted*

Former Kosovo Minister for Culture, Youth and Sport

- Acquitted

Indictment	12 February 2008 (made public on 25 April 2008)
Initial appearance	29 April 2008, pleaded not guilty to all charges
Trial Chamber Judgement	17 December 2008, sentenced to five months' imprisonment
Appeals Chamber Judgement	23 July 2009, sentence reversed

BAJRUSH MORINA*Convicted of contempt of the Tribunal in the Haradinaj et al. case*

Political advisor to the Deputy Minister at the Kosovo Ministry for Culture, Youth and Sport of Kosovo; part-time editor of the Kosovo newspaper "Bota Sot"

- Sentenced to three months' imprisonment

*Crimes convicted of:***Contempt of the Tribunal (Rule 77(A)(iv) of the Rules of Procedure and Evidence of the Tribunal)**

- Morina knowingly and wilfully interfered with the administration of justice by pressuring a protected witness, witness PW, to persuade him not to testify for the Prosecution in the trial of Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj.

Indictment	12 February 2008 (made public on 25 April 2008)
Initial appearance	29 April 2008, pleaded not guilty to all charges
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STATISTICS

Trial days	4
Witnesses called by Prosecution	4
Prosecution exhibits	32
Witnesses called by Defence (Haraqija only)	3
Defence exhibits (Haraqija only)	9

TRIAL	
Commenced	8 September 2008
Closing arguments	11 September 2008
Trial Chamber I	Judge Alphons Orié (presiding), Judge Christine Van den Wyngaert, Judge Justice Moloto
Counsel for the Prosecution	Serge Brammertz, Daniel Saxon
Counsel for the Defence	For Astrit Haraqija: Karim Khan For Bajrush Morina: Jens Dieckmann
Judgement	17 December 2008

APPEAL	
Appeals Chamber	Judge Iain Bonomy (presiding), Judge Mehmet Güney, Judge Fausto Pocar, Judge Liu Daqun and Judge Andrésia Vaz
Counsel for the Prosecution	Barbara Goy
Counsel for the Defence	For Astrit Haraqija: Karim Khan For Bajrush Morina: Jens Dieckmann
Judgement	23 July 2009

RELATED CASES <i>by geographical area</i>
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 the 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 Haraqija and Morina was filed confidentially and *ex parte* on 8 January 2008. It was confirmed on 12 February 2008, and made public on 25 April 2008.

According to the indictment, in July 2007 Haraqija and Morina tried to persuade a protected witness, witness PW, not to testify for the Prosecution in the case of *Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj*.

The witness was granted protective measures on 20 May 2005. His unredacted witness statements were disclosed by the Prosecution to the Defence on 12 January and 13 February 2007. Only Haradinaj, Balaj, Brahimaj, and their defence teams had access to these documents. At the time Haraqija was the Kosovo Minister for Culture, Youth and Sport and one of the three co-founders of the "Defence committee for Ramush Haradinaj". Morina was an employee of Haraqija, working as the political advisor to the Deputy

Minister at the Kosovo Ministry for Culture, Youth and Sport and a part-time editor at the Kosovo newspaper “Bota Sot”. The indictment stated that upon learning the identity of the witness in July 2007, Haraqija instructed Morina to travel to witness PW’s country of residence in order to persuade him not to testify against Haradinaj. The indictment alleged that Morina met with the witness on 10 and 11 July 2007 and that his trip was paid for by the Ministry.

The indictment notes that the witness refused to succumb to the pressure and eventually testified.

Haraqija was charged with:

- Contempt of the Tribunal (Rule 77(A)(iv) of the Rules of Procedure and Evidence); or, in the alternative:
- Incitement to Contempt of the Tribunal (Rule 77(A) (iv) and (B) of the Rules of Procedure and Evidence)

Morina was charged with:

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

TRIAL

The trial took place between 8 and 11 September 2008. The Prosecution called four witnesses: Protected Witness 1 and Witness 2, Peter Mitford-Burgess (Investigator at the ICTY), and Angelina Krasniqi (employee of the Kosovo Ministry of Culture, Youth and Sport). The Defence for Morina did not call any witnesses. The Defence for Haraqija called and examined three witnesses: the accused himself, Edmond Kuqi (the accused’s driver), and Agim Kasapolli (advisor to the Kosovo Ministry of Culture, Youth and Sports).

TRIAL CHAMBER JUDGEMENT

The Trial Chamber heard evidence establishing that Morina contacted Witness 2 on 2 July 2007 and subsequently travelled to meet him on 10 and 11 July. During the meetings, Morina told Witness 2 that he had been sent by Haraqija to ask Witness 2 not to testify against Haradinaj. Morina also told Witness 2 that other witnesses who had testified in the Haradinaj *et al.* case before the Tribunal were subsequently killed. The Trial Chamber dismissed the submission by the Defence that the Prosecution failed to prove beyond reasonable doubt that Morina’s conduct was likely to dissuade Witness 2 from giving evidence. Although the conduct of Morina took the form of amicable advice and was staged in a friendly atmosphere, it was clear that Morina’s words were intended and could only be understood as a strong and unequivocal call on Witness 2 to refrain from testifying in the Haradinaj *et al.* case. In the Trial Chamber’s view, such behaviour constituted intimidation, an interference of a nature proscribed by Rule 77(A)(iv) of the Rules. Morina’s failure to dissuade Witness 2 from testifying was immaterial for establishing his responsibility. The Trial Chamber therefore found that Morina’s conduct constituted Contempt of the Tribunal pursuant to Rule 77(A)(iv) of the Rules.

Regarding the responsibility of Haraqija, the Trial Chamber was satisfied that the only reasonable inference to be drawn from the evidence in its totality, considering its mutually corroborating linkages and the circumstances as a whole, was that Haraqija knew that Witness 2 was a witness in the Haradinaj *et al.* trial before the Tribunal and instructed Morina to call on Witness 2 with the specific task of interfering with his testimony. Although Haraqija did not personally meet or interact with Witness 2, the Trial Chamber found that the evidence established beyond reasonable doubt that Haraqija, knowing that Witness 2 was about to give evidence before the Tribunal, exercised his influence over Morina, who accepted Haraqija’s authority and followed his directions. Therefore, the Trial Chamber found that Haraqija’s conduct formed an integral part of Morina’s criminal conduct and thus constituted Contempt of the Tribunal pursuant to Rule 77(A)(iv) of the Rules.

When assessing the gravity of the offence and considering aggravating and mitigating circumstances, the Trial Chamber noted that among the possible ways of interfering with the administration of justice, the intimidation of witnesses is particularly grave. The Prosecution suggested that the conduct of the two accused had been “particularly egregious” given the difficulty the Trial

Chamber in the Haradinaj et al. case faced with regard to securing witness testimony in an atmosphere that many witnesses perceived to be unsafe. However, 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 inducing them to withdraw from testifying. Therefore, this inherent aspect was not further considered as an aggravating circumstance.

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

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

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

On 17 December 2008, Trial Chamber rendered its judgement, convicting Haraqija and Morina with:

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

Sentence: five months' imprisonment for Haraqija and three months' imprisonment for Morina. Both were entitled to credit for time spent in custody.

APPEALS PROCEEDINGS

On 2 January 2009, the Prosecution and both Defence teams filed their notices of appeal.

On 19 January 2009, the Prosecution filed its appeal brief.

On 5 February 2009, the Defence of Haraqija filed a public version of its appeal brief.

On 9 February 2009, Morina was granted provisional release pending determination of the appeals.

On 8 April 2009, Haraqija was granted provisional release pending determination of the appeals.

On 23 June 2009, the Defence of Morina filed a public version of its appeal brief.

The Appeals Chamber accepted Haraqija's second ground of appeal, finding that the Trial Chamber gave too much weight to untested evidence, most of it based on "double or even triple hearsay", when it concluded that Haraqija had influence over Morina and instructed him to commit the crime of contempt. Therefore, the Chamber reversed Haraqija's conviction.

The Appeals Chamber dismissed all of Morina's grounds of appeal as well as those of the Prosecution.

On 23 July 2009, the Appeals Chamber rendered its judgement reversing the conviction of Haraqija and affirming the sentence of three months' imprisonment for Morina.