

IT-04-84-T
D23968-D23965
31 OCTOBER 2007

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AT



**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-T
Date: 31 October 2007
Original: English

IN TRIAL CHAMBER I

**Before: Judge Alphons Orie, Presiding
Judge Frank Höpfel
Judge Ole Bjørn Støle**

Registrar: Mr Hans Holthuis

Order of: 31 October 2007

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

ORDER PURSUANT TO RULE 77(C)(i) IN RELATION TO WITNESS 18

Office of the Prosecutor

Mr David Re
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Mr Richard Harvey
Mr Paul Troop

1. On 31 May 2007, the Prosecution applied for the issuance of a *subpoena ad testificandum* (order to appear to testify) for Witness 18 who has refused to appear before the Tribunal in this case.¹ Attached to this confidential application is Annex A, a declaration of a Prosecution investigator who sets out a detailed history of this witness's refusal to testify before the Tribunal.
2. On 1 June 2007, the Chamber issued the requested *subpoena ad testificandum* ("Subpoena") addressed to the witness, ordering him to appear as a witness before this Chamber on 21 June 2007, and informing him of the consequences of a wilful failure to comply with the terms of the Subpoena.
3. On 15 June 2007, a Memorandum of Service ("Memorandum") was filed by the Kosovo Police Service ("KPS") of the United Nations Interim Administration Mission in Kosovo ("UNMIK"). In it, the KPS reported that they had visited the witness at his house on 13 June 2007, and that the Subpoena was served on the witness who told the KPS that he understood the meaning of the document but that he remained unwilling to come to The Hague to give his testimony. The reasons given by the witness for this refusal are that he has "no facts", "he was not present" and only knows of rumours.
4. The KPS reported further that the witness stated that he is under medication and that he had been hospitalized twice at the neuropsychiatry department of a hospital, for a period of two weeks on each occasion.² The witness's wife stated that the witness has alcohol problems and that she can provide the medical reports of her husband if needed. Furthermore, in the Memorandum, the witness is recorded as stating that "I can provide you with all medical reports if it is necessary".³
5. On 21 June 2007, the Chamber was informed of a visit to the witness by the representatives of the Tribunal's Victims and Witnesses Section ("VWS"). According to the VWS, the witness persisted in his refusal to testify whether at The Hague or from Kosovo, as he felt that he did not know enough in order to testify before the Tribunal, and that he was fully aware of the possible consequences of his refusal to testify. The witness was further reported as saying that he has serious health problems, that he is under constant neuropsychiatric treatment and medication, that two years ago he was hospitalized for three

¹ Prosecution's Application for Issuance of Subpoena, 31 May 2007. The witness was assigned pseudonym "Witness 18" in the Decision on the Prosecution's Application for Pre-Trial Protective Measures for Witnesses of 20 May 2005.

² Memorandum, 15 June 2007, p. 3.

³ Ibid., p. 1.

months, and that he has regular check-ups every three months. The witness indicated to the VWS that he is in possession of all the relevant medical documents.

6. On 28 June 2007, the Chamber issued a request in which it directed the witness to provide a representative of UNMIK with all medical records in support of his claim that he is unable to testify before the Tribunal.⁴ Annex A to this request was a note to the witness clarifying the reasons for the request.

7. On 1 August 2007, UNMIK filed a report following the Chamber's request with a statement from the witness and two medical documents attached.⁵ According to this filing, the witness received and understood Annex A of the request and reiterated his understanding of the consequences of his non-compliance with the Subpoena and the possibility of punitive measures.⁶ The first medical document is a psychiatric report from 2004. It states that the witness was hospitalized in the psychiatric department of a hospital for alcohol intoxication but that he is not addicted to alcohol.⁷ The second document is a specialist psychiatric report from 2007. It states that the witness has complains of sleeplessness, headaches, breathing interruptions, languor, loss of appetite and other somatic complaints.

8. On 23 August 2007, the Chamber invited the Prosecution to consider all circumstances relating to this witness and to advise the Chamber whether the Prosecution should undertake a Rule 77(C)(i) investigation against him.

9. On 19 October 2007, the Prosecution informed the Chamber that it had contacted the witness through UNMIK and that he stated that he is unable to testify.⁸ The Prosecution submitted that in light of the witness's medical record and the fact that he is a serving policeman, there is no valid reason to excuse him from testifying.⁹ The Prosecution advised the Chamber that the Prosecution should be directed to undertake an investigation under Rule 77(C)(i).¹⁰

10. Rule 77(A) provides that the Tribunal may hold in contempt those who knowingly and willfully interfere with its administration of justice, including any person who without just excuse fails to comply with an order to attend before a Chamber. Paragraph (C)(i) of the same Rule provides that, when a Chamber has reason to believe that a person may be in contempt

⁴ Request for Medical Reports of a Subpoenaed Witness and Request for Judicial Assistance, 28 June 2007.

⁵ UNMIK filing of 1 August 2007.

⁶ *Ibid.*, p. 3.

⁷ *Ibid.*, p. 6.

⁸ Response to Invitation in Respect of [the witness], 19 October 2007, para. 6.

⁹ Addendum to Response to Invitation in Respect of [the witness], 19 October 2007, para. 4.

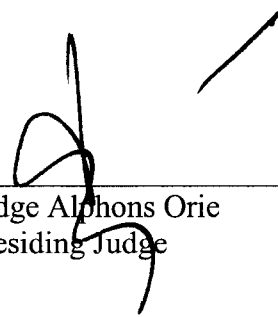
of the Tribunal, it may direct the Prosecution to investigate the matter with a view to the preparation and submission of an indictment for contempt.

11. The information received to date on this matter by the Chamber, and summarized above, gives the Chamber reason to believe that the witness in question may be in contempt of the Tribunal.

12. Therefore, the Chamber, pursuant to Rule 77(C)(i),

DIRECTS the Prosecution to investigate the witness's refusal to appear to testify with a view to the preparation and submission of an indictment for contempt.

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



Judge Alphons Orie
Presiding Judge

Dated this 31st day of October 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁰ Response to Invitation in Respect of [the witness], 19 October 2007, para. 7.