



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: 30 October 2007  
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr Hans Holthuis

Decision of: 30 October 2007

PROSECUTOR

v.

RAMUSH HARADINAJ  
IDRIZ BALAJ  
LAHI BRAHIMAJ

*PUBLIC*

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DECISION ON PROSECUTION'S MOTION TO HAVE WITNESS 25  
SUBPOENAED TO TESTIFY

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**Office of the Prosecutor**

Mr David Re  
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Mr Philip Kearney

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Mr Gregor Guy-Smith  
Ms Colleen Rohan

**Counsel for Lahi Brahimaj**

Mr Richard Harvey  
Mr Paul Troop

1. This is a decision on the Prosecution's motion of 19 October 2007 for a subpoena to compel Witness 25's testimony.<sup>1</sup> The Prosecution informs the Chamber that the witness is refusing to testify despite repeated attempts by the Prosecution to persuade him to do so, and that his expected testimony is sufficiently important to justify the issuance of a subpoena. The Chamber has seen the witness's Rule 65 ter summary, filed on 2 March 2007, and agrees with the Prosecution that the witness's expected evidence meets the threshold for a subpoena.
2. However, another factor weighs against allowing the motion. The Prosecution itself acknowledges a complication which "may require a preliminary step before the issuance of a subpoena".<sup>2</sup> The witness apparently is experiencing extreme emotions. On 11 April 2007, the Tribunal's Victims and Witnesses Section reported to the Prosecution that it had tried but was finally unable to conduct a threat assessment of the witness. The VWS warned that there were "risks involved in using this person as a witness" without carrying out also another type of assessment specified in the report.<sup>3</sup> Between the date of the report and the date of the motion, the Prosecution did not, it seems, arrange for the suggested assessment. It would be imprudent of the Chamber to compel the witness's testimony under these circumstances.
3. The motion therefore is **DENIED**.

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



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Judge Alphonse Orié  
Presiding Judge

Dated this 30th day of October 2007  
At The Hague  
The Netherlands

[Seal of the Tribunal]

<sup>1</sup> Prosecution's 23rd Application for a Subpoena ad Testificandum, 19 October 2007.

<sup>2</sup> Ibid., para. 7.

<sup>3</sup> Ibid., Annex C.