

IT-04-84-T
D23972-D23970
31 OCTOBER 2007

23972 AF



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

Decision of: 31 October 2007

PROSECUTOR

v.

RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ

PUBLIC

ORDER TO PROSECUTION TO INVESTIGATE WITH A VIEW TO
PREPARATION AND SUBMISSION OF AN INDICTMENT FOR CONTEMPT

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1. On 17 October 2007, the Prosecution applied for the issuance of a subpoena for a proposed witness,¹ who had refused to appear before the Tribunal in the *Haradinaj et al.* case (“Prosecution’s Application”).² According to the Prosecution’s Application, a Prosecution investigator had spoken with the witness several times by telephone.³ The witness has consistently refused to appear voluntarily, without providing any reason for doing so.⁴
2. On 19 October 2007, the Chamber issued the requested subpoena (“Subpoena”) addressed to the witness, ordering him to appear as a witness before this Chamber on 29 October 2007, and informing him of the consequences of a wilful failure to comply with the terms of the Subpoena without cause.⁵
3. On 29 October 2007, a Memorandum of Service of the Subpoena completed by an UNMIK representative was filed (“Memorandum”).⁶ According to the Memorandum, a representative of the Kosovo Police Service (“KPS”) visited and served the Subpoena on the witness on 25 October 2007. The witness read the briefing information attached to the Subpoena, and refused to sign the Memorandum.⁷ The witness told the KPS that he remained unwilling to appear before the Chamber to give testimony.⁸ The reason given by the witness for this refusal was that he feared for both his own and his family’s safety.⁹ The witness also stated that two of his brothers had been killed (he did not specify when or under which circumstances).¹⁰
4. On 30 October 2007, the Prosecution requested the Chamber for an order to the Prosecution to investigate the witness for contempt of the Tribunal.¹¹
5. 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

¹ The witness is no. 19 in the Prosecution’s witness list of 13 September 2007.

² Prosecution’s 22nd Application for a Subpoena ad Testificandum, 17 October 2007, (“Prosecution’s Application”).

³ Prosecution’s Application, Confidential Annexes A, B.

⁴ Ibid.

⁵ Subpoena ad Testificandum, 19 October 2007.

⁶ Memorandum of Service of Subpoena, 29 October 2007, (“Memorandum”).

⁷ Memorandum, p. 2.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Prosecution’s Acceptance of the Trial Chamber’s Invitation to Consider Initiating a Contempt Proceeding Against [the witness], 30 October 2007.

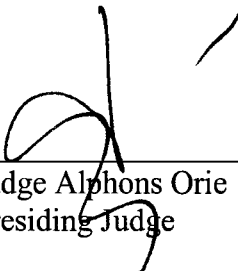
of the Tribunal, it may direct the Prosecution to investigate the matter with a view to the preparation and submission of an indictment for contempt.

6. 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.

THEREFORE, the Chamber, pursuant to Rule 77,

ORDERS 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]