

UNITED
NATIONS



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: 7 March 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: 7 March 2007

PROSECUTOR

v.

RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ

**Decision on Prosecution's Urgent Motion to Revoke UNMIK's Delegated Authority to
Monitor Ramush Haradinaj's Political Activities**

Office of the Prosecutor

Mr David Re
Mr Gramsci di Fazio
Mr Gilles Dutertre
Ms Katrina Gustafson

**United Nations Interim Administration
Mission in Kosovo**

Mr. Joachim Rucker, Special Representative
of the Secretary General

Counsel for Ramush Haradinaj

Mr Ben Emmerson, QC
Mr Rodney Dixon
Mr Michael O'Reilly

Counsel for Idriz Balaj

Mr Gregor Guy-Smith
Ms Colleen Rohan

Counsel for Lahi Brahimaj

Mr Richard Harvey
Mr Paul Troop

1. On 22 February 2006, the Prosecution filed an urgent motion requesting that the Trial Chamber revoke UNMIK's delegated authority to monitor and decide upon Ramush Haradinaj's ("Accused") political activities.¹ This was done in response to Request 51, submitted by the Accused to UNMIK, in which he requested permission to meet the Special Representative of the Secretary General ("SRSG"), Mr. Joachim Rucker, and to speak with the media after this meeting in the presence of the SRSG. The Prosecution argued firstly that this request created a conflict of interest, since it required UNMIK to make a judicial assessment of Haradinaj's ability to engage in political activity which UNMIK is itself involved in,² and secondly that such a meeting, held on the eve of trial, would send a signal that UNMIK and the international community were taking the Accused's side. The Prosecution reasoned that since UNMIK is the overall legal authority in Kosovo and has the ultimate responsibility for maintaining law and order, any public appearance by the SRSG alongside the Accused would have the effect of dissuading witnesses in Kosovo from testifying and would increase the existing risks to their safety.³ The Prosecution noted that over one-third of its witnesses have been granted some form of protective measures and informed the Chamber that recently two witnesses informed the Prosecution that they no longer wished to testify due to safety concerns.⁴

2. On 22 February the Trial Chamber denied the Motion in its entirety with written reasons to follow.⁵ Soon after this oral decision was rendered, UNMIK took a decision on the matter which granted the Accused permission to meet with the SRSG and then speak with the media,⁶ though the request to meet and to be photographed by the media in the presence of the SRSG was denied.⁷

3. The Prosecution's argument that the Chamber should "intervene to prevent UNMIK and the SRSG exercising delegated judicial authority where a clear conflict of interest exists between the respective roles of the judicial decision maker and the political authority",⁸ has no merit. The core task of UNMIK is to "establish an international civil presence in Kosovo in

¹ Prosecution's Urgent Motion to Revoke UNMIK's Delegated Authority to Monitor Ramush Haradinaj's Political Activities, 22 February 2007 ("Motion").

² Ibid. paras. 3, 11-15.

³ Ibid. paras. 5, 17-23.

⁴ Ibid. para. 19.

⁵ Communicated to the Parties by e-mail on 22 February 2007.

⁶ Confidential UNMIK Decision on the Request of Mr. Ramush Haradinaj, 22 February 2007. Filed on 26 February 2007.

⁷ This sequence of events is confirmed by UNMIK's Report on Compliance of Ramush Haradinaj on Provisional Release, 1 March 2007.

⁸ Motion, para. 11.

order to provide an interim administration for Kosovo [to] provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions”.⁹ By its very nature this core task involves UNMIK taking decisions in situations where it is involved as one of the parties.

4. Additionally, the responsibility to authorize any proposed public appearances or political activities undertaken by the Accused was delegated to UNMIK, on the basis that UNMIK was in the best position to determine what was in the interest of promoting peace and reconciliation in Kosovo.¹⁰ These conditions put in place in the Re-Assessment Decision were further upheld by the Appeals Chamber in the “Decision of Ramush Haradinaj’s Modified Provisional Release”.¹¹ The Trial Chamber also notes that the Prosecution previously raised similar concerns relating to victims and witnesses with the Appeals Chamber, which found that, while the Prosecution may ask the Trial Chamber to reconsider the delegation of judicial powers to UNMIK in relation to the Accused’s political activities should witnesses not be willing to testify, it cannot make such a decision based on some “vague unarticulated suspicion”.¹²

5. Furthermore, on 27 October 2006, the Trial Chamber found, pursuant to a request by the Prosecution similar to the one in the Motion, that UNMIK granted the Accused’s previous request to engage in political activities only after a careful consideration of all relevant factors, including the potential positive impact on Kosovo’s political and security situation, and the potential negative impact in terms of the physical and mental well-being of witnesses and alleged victims.¹³

6. Similarly, in this case the Prosecution has provided no concrete evidence that the Accused’s past or future political activities or public appearances have acted or will act as a deterrent for potential Prosecution witnesses. While the Prosecution mentions that two of its witnesses have recently taken the decision not to testify, no evidence has been provided showing that this was in any way a result of the Accused’s activities or UNMIK’s failure to provide security for them.

⁹ Security Council Resolution 1244 (1999), para.10.

¹⁰ Decision on Defence Motion on behalf of Ramush Haradinaj to Request Re-Assessment of Conditions of Provisional Release Granted 6 June 2005, 12 October 2005, page 6 (“Re-Assessment Decision”).

¹¹ Decision on Ramush Haradinaj’s Modified Provisional Release, 10 March 2006 (“Appeals Chamber Decision”).

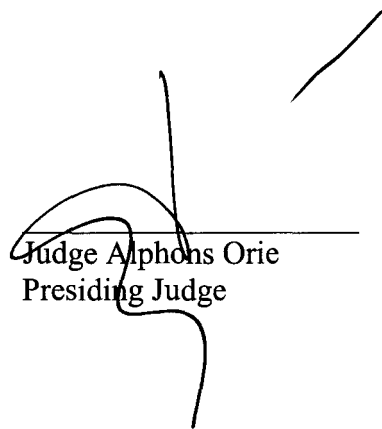
¹² Appeals Chamber Decision, para. 50.

¹³ Order Lifting Suspension on UNMIK Decision, 27 October 2006, page 6.

7. The Trial Chamber finds the Prosecution's argument to be without merit as the Prosecution has provided no new information which would lead the Trial Chamber to believe that UNMIK is no longer better placed than the Trial Chamber to make such determinations.
8. For the foregoing reasons, the Trial Chamber **DENIES** the Prosecution's motion.

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

Dated this seventh day of March 2007
At The Hague
The Netherlands



Judge Alphons Orie
Presiding Judge

[Seal of the Tribunal]