

IT-04-84-T
D18129-D18127
19 APRIL 2007

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**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: 19 April 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: 19 April 2007

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

**DECISION ON PROSECUTION'S 5 APRIL 2007 REQUEST FOR CHAMBER
REVIEW OF RULE 70 UNMIK FILES POTENTIALLY SUBJECT TO RULE 68**

Office of the Prosecutor

Mr David Re
Mr Gramsci di Fazio
Mr Gilles Dutertre
Mr Philip Kearney

**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

Counsel for Idriz Balaj

Mr. Gregor Guy-Smith
Ms Colleen Rohan

Counsel for Lahi Brahimaj

Mr Richard Harvey
Mr Paul Troop

1. On 5 April 2007 the Prosecution requested that this Trial Chamber conduct an *ex parte* review of certain UNMIK documents protected by Rule 70 of the Tribunal's Rules of Procedure and Evidence ("Rules") to "assess their evidentiary value and consider appropriate security measures" with regard to the disclosure of three documents which, according to the Prosecution, contain potentially exculpatory material falling under Rule 68.¹ The Prosecution request comes in the context of an ongoing dialogue between the parties and UNMIK. This dialogue began on the record with the 12 January 2007 motion of Idriz Balaj requesting the Chamber to order UNMIK to lift Rule 70 constraints on investigation files CCIU 2002-00172 and CCIU 2002-00080, or to order the Prosecution to disclose these files to the Defence.² Subsequently, on 15 February 2007, Balaj requested that the Chamber delay its decision on the motion pending reassessment of the files by UNMIK³ as per the latter's submission of 12 February 2007.⁴ In its present request, the Prosecution indicates that it approached UNMIK on 9 February 2007 regarding disclosure of the three documents that may contain Rule 68 material but are protected by Rule 70 and thus require provider consent prior to disclosure.⁵ According to the Prosecution, UNMIK's response was that security concerns regarding the safety of individuals to whom these documents relate precludes authorization of their disclosure, although UNMIK also suggested a review of the documents by the Trial Chamber with the purpose of finding a solution to this issue.⁶

2. Rule 68(iv) of the Tribunal's Rules of Procedure and Evidence of this Tribunal provides:

the Prosecutor shall apply to the Chamber sitting *in camera* to be relieved from an obligation under paragraph (i) to disclose information in the possession of the Prosecutor, if its disclosure may prejudice further or ongoing investigations, or for any other reason may be contrary to the public interest or affect the security interests of any State, and when making such application, the Prosecutor shall provide the Trial Chamber (but only the Trial Chamber) with the information that is sought to be kept confidential.

¹ Prosecution Report on UNMIK Rule 70 Material Subject to Rule 68, 5 April 2007.

² Submission by the Defence for Idriz Balaj to Request the Chamber to Order UNMIK to Lift Rule 70 Constraints over Certain Documents with Confidential Annexes, 12 January 2007.

³ Idriz Balaj's Consolidated Reply to Prosecution and UNMIK Responses to Idriz Balaj's Motion Requesting the Chamber to Order UNMIK to Lift the Confidentiality of CCIU/UNMIK Investigation Files CCIU 2002-00172 and CCIU 2002-00080, 15 February 2007.

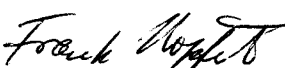
⁴ Submission by the United Nations Mission in Kosovo (UNMIK) to Motion by Defendant Idriz Balaj Requesting the Chamber to Order UNMIK to Lift Rule 70(B) Confidentiality Measures, 12 February 2007.

⁵ Prosecution Report on UNMIK Rule 70 Material Subject to Rule 68, 5 April 2007, para. 3.

⁶ *Ibid.*, para. 4.

3. While the Chamber therefore has the authority to conduct a review of the three documents identified by the Prosecution, the Chamber decides in the first instance to request UNMIK to assign an informed representative to appear before the Chamber in the week beginning 7 May 2007 to answer questions in relation to the range of issues that have arisen regarding the disclosure of case-related material in UNMIK's possession falling under Rules 68 or 70.

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



Judge Frank Höpfel

Dated this nineteenth day of April 2007
At The Hague
The Netherlands

[Seal of the Tribunal]