

IT-04-84-T
D22227-D22224
07 SEPTEMBER 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: 7 September 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 September 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 18 May 2007, the Prosecution in *Prosecutor v. Ramush Haradinaj et al.* applied for the issuance of a subpoena for a proposed witness who refused to appear before the Tribunal (“Prosecution Application”).¹ According to the application, a Prosecution investigator visited the home of the witness on two occasions in February 2007, but did not manage to meet with the witness. On the first occasion, a relative of the witness told the investigator that the witness was not at home and that he would not be “at home for the ICTY”.² The relative also told the investigator that the witness “is an old man who does not know anything” and that the witness was suffering from high blood pressure.³ The relative stated that all contacts with the witness had to go through another relative in the village where the witness lives.⁴ On the second occasion, the Prosecution investigator visited this relative and was told by him that the witness did not want to talk to the ICTY and that he did not know anything about the subject on which he was supposed to testify.⁵

2. On 25 May 2007, the Chamber issued the requested subpoena addressed to the witness (“Subpoena”), ordering him to appear as a witness before this Chamber on 14 June 2007, and informing him of the consequences of a wilful failure to comply with the terms of the Subpoena without cause.

3. A Memorandum of Service of the subpoena completed by an UNMIK representative (“Memorandum”) was filed on 12 June 2007. According to the Memorandum, the Kosovo Police Service (“KPS”) had visited and served the subpoena on the witness. The witness had 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.⁶ The reasons given by the witness for this refusal were that he had nothing to add to what he had told Prosecution investigators and that he had serious health problems, including “heart and hypertension, and sight problems which are very serious”.⁷ Furthermore, the Chief of Witness Protection of the KPS reported in a note separate from the Memorandum that “As I met the witness I can’t keep myself from saying that the person is obviously in bad health condition”.⁸

¹ The witness is no. 74 in the tentative order of testimony in the Prosecution’s witness list of 20 June 2007.

² Prosecution Application, Annex A.

³ Ibid., para. 9, Annex A.

⁴ Ibid., Annex A.

⁵ Ibid., Annex A.

⁶ Memorandum, p. 1.

⁷ Ibid., p. 1.

⁸ Ibid., p. 3.

4. On 21 June 2007, the Tribunal's Victims and Witnesses Section ("VWS") informed the Chamber that a representative of the VWS had visited the witness's home. According to the VWS, the witness was not at home at the time. The VWS representative was told by a relative of the witness that the witness would never agree to testify voluntarily, not even via video-conference link. The relative also stated that the witness did not have a passport and was too ill to travel.

5. On 29 June 2007, the VWS informed the Chamber that a representative of the VWS had made direct contact with the witness. According to notes made by the VWS representative during this contact, the witness stated that he "could not say that he is willing to testify but he also did not want to say definitely that he will not testify" and that he had already given his reasons for not wanting to testify and wished that they would be taken into consideration. He also stated that he had no valid passport and that he was in poor health ("high blood pressure, heart problems").

6. On 16 July 2007, the Chamber invited the Prosecution to advise the Chamber on whether it should order the Prosecution to initiate contempt proceedings against the witness ("Chamber Invitation"). The Chamber asked the Prosecution to consider the circumstances relating to the witness, "including the value of his testimony, any impact his non-compliance might have upon other prospective witnesses, and the resource implications of an investigation for contempt".⁹ On 30 July 2007, the Prosecution requested the Chamber to issue an order to the Prosecution, pursuant to Rule 77(C)(i) of the Tribunal's Rules of Procedure and Evidence, to investigate the matter with a view to the preparation and submission of an indictment for contempt ("Prosecution Advice"). It also requested that such an order should be made public.¹⁰

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

⁹ Chamber Invitation, para. 7.

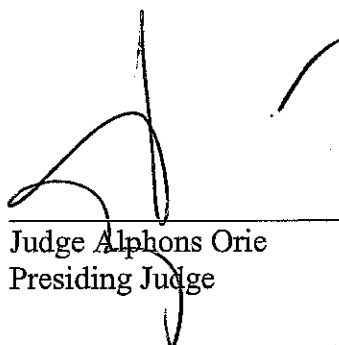
¹⁰ Prosecution Advice, para. 7.

8. 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.

9. Therefore, the Chamber, pursuant to Rule 77,

ORDERS the Prosecutor 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 7th day of September 2007
At The Hague
The Netherlands

[Seal of the Tribunal]