

IT-04-84-T
D22038-D22035
28 AUGUST 2007

22038 AT



**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: 28 August 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: 28 August 2007

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

DECISION ON VIDEO-CONFERENCE LINK FOR WITNESS 10

Office of the Prosecutor

Mr David Re
Mr Gramsci di Fazio
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Mr Gregor Guy-Smith
Ms Colleen Rohan

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Mr Richard Harvey
Mr Paul Troop

1. On 1 June 2007, the Prosecution applied for issuance of *subpoena ad testificandum* for Witness 10.¹ According to the Prosecution, the witness refused to testify “unless he could bring his entire family, consisting of eleven persons, with him [...] to the Hague”.² The witness was unwilling to leave the family behind because of concerns about the safety of the family members.³ He also stated that his two adult sons had to work during the days and were therefore not able to stay home and protect the family in his absence.⁴ The witness is expected to provide evidence relating to the development, organization, and command structure of the KLA in the Dukagjin zone; the actions of Ramush Haradinaj and other alleged JCE members during the indictment period; and Counts 21 and 22 of the indictment.⁵

2. On 6 June 2007, the Trial Chamber issued a subpoena for Witness 10 to appear to testify.⁶ On 21 June 2007, the State in which Witness 10 resides filed the memorandum of service, which noted that the witness was not willing to testify because he was afraid for the lives of his family members and that they had received death threats from unidentified persons in Kosovo.⁷ According to the Memorandum, Witness 10 was willing to testify via video-conference link from the territory of the State in which he was residing “under the condition that he and his family be protected”.⁸ In light of this, the Trial Chamber invited the parties, on 5 July 2007, to make submissions on whether Witness 10 should be heard via video-conference link.⁹

3. Rule 81 *bis* of the Tribunal’s Rules of Procedure and Evidence provides that, “At the request of a party or *proprio motu*, a Judge or a Chamber may order, if consistent with the interests of justice, that proceedings be conducted by way of video-conference link”.

4. As the Trial Chamber has set out previously, the criteria underlying the interests of justice are that: (a) the witness must be unable, or have good reasons to be unwilling, to come to the Tribunal, (b) the testimony of the witness must be sufficiently important to make it

¹ Prosecution’s Thirteenth Application for Issuance of a *Subpoena ad Testificandum*, 1 June 2007.

² *Ibid.*, para. 13.

³ *Ibid.*, para. 13, Annex A, paras 7-8.

⁴ *Ibid.*, Annex A, para. 7.

⁵ *Ibid.*, paras 6-11.

⁶ *Subpoena ad testificandum*, 6 June 2007.

⁷ Memorandum of service, 21 June 2007 (“Memorandum”), p. 4.

⁸ *Ibid.*

⁹ T. 6855.

unfair to the requesting party to proceed without it and, (c) the accused must not be prejudiced in the exercise of his or her right to confront the witness.¹⁰

5. The Defence submitted that Witness 10 has not shown that he is unable or unwilling for good reasons to come to The Hague to give testimony.¹¹ In particular, the Defence argued that none of the usual grounds on which video-conference link are granted, including that the witness is the sole caretaker of a seriously ill family member, are applicable to Witness 10.¹² The Defence further argued that the security concerns expressed by the witness could be addressed with an application for protective measures.¹³ The Prosecution, by contrast, argued in its motion that Witness 10 is unwilling to travel to The Hague to testify for reasons relating to his domestic situation and therefore requested that he should be heard via video-conference link on or about 10 September 2007.¹⁴ According to the Prosecution, the witness lives in extreme hardship and poverty and is the primary breadwinner for a large family.¹⁵

6. Witness 10 does not argue that he is unable to travel to The Hague to give testimony. He is, however, clearly unwilling to do so. The reasons put forward by the witness relate to a combination of personal, family and security concerns. Witness 10 currently lives with his large family consisting of eleven persons in a basic shelter in a refugee settlement with no running water and poor sanitary facilities. He is the primary breadwinner for the family and earns only a minimal income by taking jobs on a daily basis when opportunity arises. According to the witness, his absence from his family even for a short period of time would expose the family members to severe hardship.

7. Although some of the concerns expressed by Witness 10 could possibly be addressed through an application for protective measure, others could not. These concerns relate to living in extreme poverty in a refugee settlement in another country without having the

¹⁰ Decision on Prosecution's Confidential Motion for Testimony to be Heard via Video-Conference Link, 21 March 2007, para. 3.

¹¹ Submissions on Behalf of Ramush Haradinaj in Respect of Requests by [Two Witnesses] for Video-link Testimony, 11 July 2007 ("Haradinaj Submissions"); Opposition by Idriz Balaj to Request for Video-link Testimony by Two Witnesses, 11 July 2007; Response on Behalf of 3rd Defendant, Lahi Brahimaj, to Trial Chamber's Request for Submissions on Whether Witnesses SST7/10 and Another Witness Should Give Evidence by Video Link, 11 July 2007; Reply on Behalf of Ramush Haradinaj to Prosecution's Motions to Permit Witness 10 and Witness 48 to Testify Via Video Link, 21 August 2007 ("Haradinaj Reply"); Idriz Balaj's Consolidated Response Opposing Testimony by Video-Link of Witnesses No. 47 and No. 48 (In Order of Testimony), 21 August 2007 ("Balaj Consolidated Response"); Submission of Joinder by the Defence for Lahi Brahimaj, 21 August 2007.

¹² Balaj Consolidated Response, paras 11-12 (with reference to the Trial Chamber's Decision on Video-Conference Link for Quash Sadikaj of 27 March 2007).

¹³ Haradinaj Submissions, para. 8; Haradinaj Reply, para. 13.

¹⁴ Prosecution's Motion for Testimony of Witness SST7/10 (Witness Number 47 in the Tentative Order of Testimony) to be Heard via Video Link, 30 July 2007 ("Prosecution motion"), para. 4.

possibility of returning home. In addition, according to the witness, he has recently been informed that he and his family will soon be evicted from the refugee settlement where they live.

8. The extreme economic and social hardship under which Witness 10 lives and the fact that his large family is dependent primarily on him for their livelihood and security are conditions which, especially when considered jointly, are clearly comparable with the more usual grounds on which video-conference link are granted. The Trial Chamber finds that the conditions amount to good reasons for Witness 10's unwillingness to be absent for the considerable amount of time that travel to The Hague to give testimony entails.

9. The Trial Chamber accepts, and the parties have not disputed, that the testimony of the witness is important and that the Accused will not be prejudiced in the exercise of their right to confront the witness if testimony via video-conference link is granted.

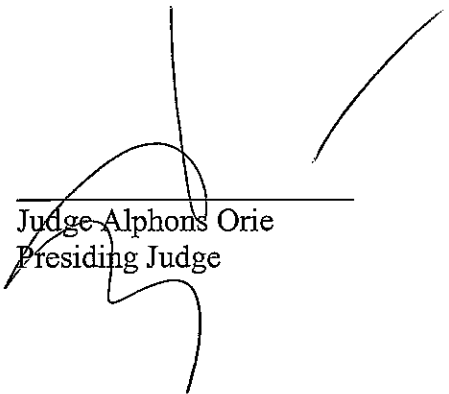
10. For the foregoing reasons, the Trial Chamber finds that it is consistent with the interests of justice to hear the testimony of Witness 10 via video-conference link, and therefore

GRANTS the Prosecution motion; and

REQUESTS the Registrar to make the necessary arrangements for a video-conference link for testimony of Witness 10 on or about 10 September 2007.

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

Dated this 28th day of August 2007
At The Hague
The Netherlands



Judge Alphons Orie
Presiding Judge

[Seal of the Tribunal]

¹⁵ Ibid., para. 10.