



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 NUMBER 48 IN THE
TENTATIVE ORDER OF TESTIMONY**

Office of the Prosecutor

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

Counsel for Ramush Haradinaj

Mr Ben Emmerson, QC
Mr Rodney Dixon
Ms Susan L. Park

Counsel for Idriz Balaj

Mr Gregor Guy-Smith
Ms Colleen Rohan

Counsel for Lahi Brahimaj

Mr Richard Harvey
Mr Paul Troop

1. On 6 June 2007, the Prosecution applied for issuance of a *subpoena ad testificandum* for Witness number 48 in the tentative order of testimony.¹ According to the Prosecution, the witness refused to travel to The Hague to testify without his family which consists of eight children, his wife, and his mother.² He stated that he was concerned about their safety.³ The witness is expected to provide information relevant to Counts 21 and 22 of the indictment.⁴

2. On 7 June 2007, the Trial Chamber issued a subpoena for the witness to appear to testify.⁵ On 21 June 2007, the State in which the witness resides filed a memorandum of service, which noted that the witness was not willing to appear before the Tribunal because he was afraid for the safety of his family.⁶ According to the Memorandum, the witness was however willing to testify in a different manner from the territory of the State in which he resides “if possible via videolink or otherwise”.⁷ In light of this, the Trial Chamber invited the parties, on 5 July 2007, to make submissions on whether the witness should be heard via video-conference link.⁸

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 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.⁹

5. The Defence submitted that the witness has not shown that he is unable or unwilling for good reasons to come to The Hague to give testimony.¹⁰ In particular, the Defence argued that

¹ Prosecution’s Fourteenth Application for Issuance of a *Subpoena ad Testificandum*, 6 June 2007.

² *Ibid.*, para. 6, Annex A, para. 5, Annex B, paras 6-7.

³ *Ibid.*, Annex A, para. 5.

⁴ *Ibid.*, para. 5.

⁵ *Subpoena ad Testificandum*, 7 June 2007.

⁶ Memorandum of Service, 21 June 2007 (“Memorandum”), p. 2.

⁷ *Ibid.*

⁸ T. 6854-6855.

⁹ Decision on Prosecution’s Confidential Motion for Testimony to be Heard via Video-Conference Link, 21 March 2007, para. 3.

¹⁰ Submissions on Behalf of Ramush Haradinaj in Respect of Requests by [Two Witnesses] for Video-link Testimony, 11 July 2007; Opposition by Idriz Balaj to Request for Video-link Testimony by Two Witnesses, 11 July 2007 (and Corrigendum, 16 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

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 the witness.¹¹ The Defence further argued that the security concerns expressed by the witness could be addressed with an application for protective measures.¹² The Prosecution, by contrast, argued in its motion that the witness is unwilling to travel to The Hague to testify for good reasons relating to his personal situation and therefore requested that he should be heard via video-conference link on or about 10 September 2007.¹³ According to the Prosecution, the witness lives in extreme hardship and poverty and provides for a large extended family.¹⁴

6. Witness number 48 in the tentative order of testimony 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. The witness currently lives with his large extended family, including eight children, his wife and his elderly mother, in a basic shelter in a refugee settlement with no running water and poor sanitary facilities. He is the sole breadwinner of 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 the witness 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 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, and they do not know where they would live if this should happen.

8. The extreme economic and social hardship under which the witness lives and the fact that his large family is dependent solely 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

Permit Witness 10 and Witness 48 to Testify Via Video Link, 21 August 2007; Idriz Balaj's Consolidated Response Opposing Testimony by Video-Link of Witnesses No. 47 and No. 48 (In Order of Testimony), 21 August 2007; Submission of Joinder by the Defence for Lahi Brahimaj, 21 August 2007.

¹¹ 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).

¹² Haradinaj Submissions, para. 8; Haradinaj Reply, para. 13.

¹³ Prosecution's Motion for Testimony of Witness Number 48 (in the Tentative Order of Testimony) to be Heard via Video Link, 31 July 2007 ("Prosecution motion"), para. 4.

¹⁴ Ibid., para. 8.

conditions amount to good reasons for the witness'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.

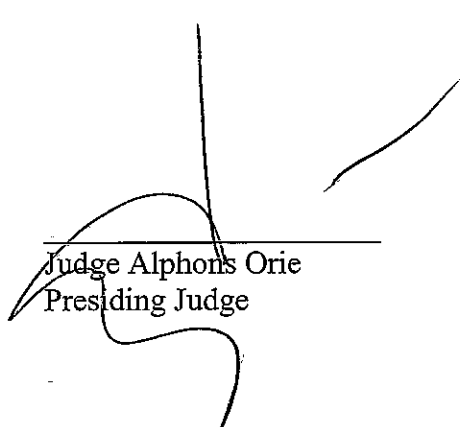
10. For the foregoing reasons, the Trial Chamber finds that it is consistent with the interests of justice to hear the testimony of Witness number 48 in the tentative order of testimony via video-conference link, and therefore

GRANTS the Prosecution motion; and

REQUESTS the Registrar to make the necessary arrangements for a video-conference link for testimony of Witness 48 in the tentative order of testimony 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]