

IT-04-84-T
D22231-D22229
07 SEPTEMBER 2007

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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: 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

**DECISION ON PROSECUTION'S MOTION FOR TESTIMONY VIA VIDEO-LINK
FOR WITNESS 54**

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 3 September 2007, the Prosecution filed a motion requesting that Witness 54 testify via video-link as he is a young teenager, does not have a valid travel document, should not be absent from school for a longer time than necessary, and should not travel to The Hague to testify about a very traumatic experience.¹

2. The Defence for Mr Brahimaj filed its confidential response objecting to the motion on 4 September.² It submits that the motion does not show that any steps were taken by the Prosecution to ensure that the witness obtain a valid travel document, and that the Prosecution has provided no evidence that the witness is unwilling to come to The Hague.³ It adds that it is “pure speculation” to assert that the witness is better off testifying about his experience via video-link rather than in the courtroom.⁴ The Defence for Mr Brahimaj adds further that it has an important issue to address with this witness, and that the nature of that issue makes testimony via video-link inappropriate.⁵ On 5 September, the two other defence teams informed the Chamber’s legal staff via email that they do not oppose the motion, but find that it has not been properly substantiated.

3. On 6 September, the Prosecution filed an assessment by the Tribunal’s Victims and Witnesses Section (“VWS”) in relation to the witness in question and his upcoming testimony.⁶ VWS reported that the witness and his family strongly prefer a testimony through video-link.⁷ It emphasized that if the witness would testify in The Hague, he would only be allowed to bring one support person, whereas a testimony through video-link would enable him to have the support of his entire family, thereby making his experience less fearful and less stressful.⁸ VWS advised that in view of the witness’s well-being and his young age, it would be preferable for him to testify in such way.⁹

4. 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”.

¹ Prosecution’s 4th Motion for Testimony via Video-Link, 3 September 2007 (“Motion”), Confidential Annex, paras 2-3, 6.

² Reply on Behalf of Lahi Brahimaj in Opposition to Prosecution’s Motion to Permit [the witness in question] to Testify via Video-Link, 4 September 2007.

³ *Ibid.*, paras 8, 11.

⁴ *Ibid.*, para. 12.

⁵ *Ibid.*, para. 14.

⁶ VWS Witness Assessment Relating to Prosecution’s 4th Motion for Testimony via Video-Link, 6 September 2007 (“Witness Assessment”).

⁷ Witness Assessment, Confidential Annex.

⁸ *Ibid.*

⁹ *Ibid.*

5. 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.¹⁰

6. The Chamber finds, taking into account the advice from VWS, that the combination of the witness's young age, his wish to remain in a familiar environment where his family will be able to take care of him and where he will be able to return home immediately after the testimony, constitute a good reason for his unwillingness to travel to The Hague.

7. The Chamber accepts that the witness is sufficiently important for the Prosecution's case as he is the only alleged eye-witness to a crime charged in the Indictment.

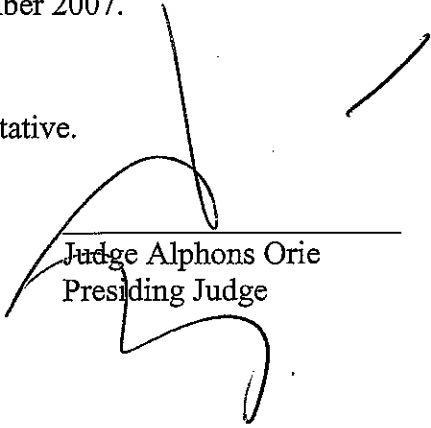
8. As to the concern expressed by Mr Brahimaj's Defence that it cannot properly raise a certain issue with the witness if his evidence is given through video-link, the Chamber is unable to assess the merit of that concern since it is not informed of its particulars. The Chamber finds that the Accused will not be prejudiced by video-link testimony of this witness.

9. For the foregoing reasons, the Chamber finds that it is in the interests of justice to hear the testimony of Witness 54 through video-link, and therefore

GRANTS the Motion; and

REQUESTS the Registrar to make the necessary arrangements for a video-conference link for testimony of the witness in question on or about 11 September 2007.

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


 Judge Alphons Orié
 Presiding Judge

Dated this 7th day of September 2007
 At The Hague
 The Netherlands

[Seal of the Tribunal]

¹⁰ *Prosecutor v. Ramush Haradinaj et al.*, Decision on Prosecution's Confidential Motion for Testimony to be Heard via Video-Conference Link, para. 3; *Prosecutor v. Ramush Haradinaj et al.*, Decision on Video-Conference Link, 28 August 2007, paras 3-4.