

UNITED
NATIONS



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: 6 November 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: 6 November 2007

PROSECUTOR

v.

RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ

PUBLIC

DECISION ON PROSECUTION'S 30TH AND 31ST MOTIONS FOR TRIAL-
RELATED PROTECTIVE MEASURES

Office of the Prosecutor

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Mr Richard Harvey
Mr Paul Troop

1. On 7 September 2007, the Chamber admitted the statements of three witnesses pursuant to Rule 92 *bis* and requested the Prosecution to inform the Chamber concerning the security situation of the three witnesses within seven days.¹ On 14 September 2007, the Prosecution applied for trial-related protective measures for two of the witnesses. The Prosecution requested that Witness 16 be allowed to retain his pseudonym, and that only the redacted version of his evidence be made public.² The Prosecution requested that the 76th witness in the tentative order of testimony be allocated a pseudonym, and that only the redacted version of his evidence be made public.³

2. Protective measures may be granted if there is an objectively grounded risk to the security or welfare of the witness or the witness's family should it become known that the witness has given evidence before the Tribunal.⁴ The party seeking protective measures for a witness can satisfy this standard by showing that a threat was made against a witness or a witness's family, or by demonstrating a combination of three conditions: (i) the witness's testimony may antagonise persons who reside in a specific territory; (ii) the witness, or his or her family live or work in the territory, or have property in the territory; and (iii) there exists an unstable security situation in that territory which is particularly unfavourable to witnesses who appear before the Tribunal.

3. The Prosecution did not report that any threats have been made against either of the witnesses considered here. The Chamber will therefore examine whether the three above-mentioned conditions have been met. The Chamber has accepted the parties' agreement that there exists an unstable security situation in Kosovo/Kosova which is particularly unfavourable to witnesses who appear before the Tribunal.⁵

4. Witness 16 lives in Kosovo/Kosova,⁶ and so the second and third conditions of the test have been met in his regard. The witness is expected to provide evidence of the alleged detention of Luz Gjoka by KLA soldiers in Jablanica/Jabllanicë village.⁷ The witness's evidence therefore may antagonise people who reside in Kosovo/Kosova. Thus, the Chamber is satisfied that the first condition has also been met.

¹ Decision on Third Batch of 92 *bis* and 92 *ter* Witnesses, 7 September 2007.

² Prosecution's 30th Motion for Trial-related Protective Measures, 14 September 2007.

³ Prosecution's 31st Motion for Trial-related Protective Measures, 14 September 2007.

⁴ See for example: T. 694-695, 8371.

⁵ T. 3955-3956, 5083.

⁶ Prosecution's 30th Motion for Trial-related Protective Measures, 14 September 2007, Confidential Annex B, para. 3.

⁷ *Ibid.*, Public Annex A, ICTY witness statement of 6 May 2004.

5. As for the second witness, he and his family live in Kosovo/Kosova,⁸ and so the second and third conditions of the test have been met in his regard. However, the Chamber is not satisfied that the first condition of the test has been met. The witness is not expected to provide evidence of the alleged abduction, imprisonment, mistreatment or murder of Pal Krasniqi, stating merely that Pal Krasniqi wanted to join the KLA and that he last saw Pal Krasniqi in the Jablanica/Jabllanicë village.⁹ The Chamber fails to see how the witness's evidence may antagonize people who reside in Kosovo/Kosova.

THEREFORE, pursuant to Rule 75 of the Rules, the Chamber:

GRANTS the Prosecution's 30th motion for protective measures;

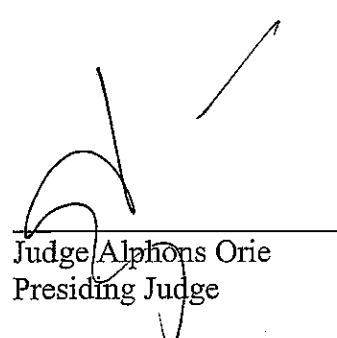
ORDERS that Witness 16 retains his pseudonym;

ORDERS that only the redacted version of Witness 16's evidence be made public;

DENIES the Prosecution's 31st motion for protective measures;

ORDERS the Registrar to make public the unredacted version of the evidence of the witness concerned in that motion, unless the Prosecution informs the Registrar and the Chamber by 5.00 p.m. on 7 November 2007 that it chooses instead to withdraw the witness's evidence.

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



Judge Alphons Orié
Presiding Judge

Dated this 6th day of November 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

⁸ Prosecution's 31st Motion for Trial-related Protective Measures, 14 September 2007, Confidential Annex B, para. 2.

⁹ Ibid., Public Annex A, ICTY witness statement of 18 April 2007, paras 4, 14.