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28 November 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 the Former Yugoslavia
since 1991

Case No. IT-04-84-T
Date: 28 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: 28 November 2007

PROSECUTOR

v.

RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ

PUBLIC

DECISION ON ADMISSION INTO EVIDENCE OF DOCUMENTS TENDERED
DURING TESTIMONY OF WITNESS 69

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1. Witness 69, a Serb police officer stationed in Kosovo/Kosova during the indictment period, testified on 29 October 2007. During his testimony, the Prosecution tendered into evidence certain documents marked for identification as P1175 through P1184.¹ The documents are described below, in paragraph 4 and onwards.

2. The Defence objects to the admission of some of these documents because they were not included in the Prosecution's Rule 65ter exhibit list and because the Prosecution has not requested leave to add them or shown good cause why they were not included in the original list.² The Chamber will dispose of this argument immediately. The Prosecution is allowed to add without leave documents to its Rule 65ter exhibit list, except if they are of a substantive nature, in which case a formal motion for amendment of the Rule 65ter exhibit list is in order.³ No such formal motion was made in this case. The purpose of the requirement is timely notification of new documents to be used by the Prosecution, so as not to cause prejudice to the Defence. The Chamber will therefore consider whether any prejudice was caused to the Defence. The Defence has been in possession of the documents since at least July 2007. The Defence has not argued that it suffered any prejudice from the Prosecution's late addition of these documents to its 65ter exhibit list. The Chamber has no reason to believe that the Defence suffered any such prejudice, and therefore grants the Prosecutions leave to add those exhibits to the list.

3. The Defence also advances four substantive arguments against the admission of some of the documents tendered by the Prosecution. Firstly, the Defence argues that all documents that include allegations about acts and conduct of the Accused should be denied admission.⁴ Secondly, the Defence argues that seeking to introduce as exhibits statements by persons not called as Prosecution witnesses circumvents the Defence's right to cross-examine these persons.⁵ The Prosecution responds that statements not taken for the purposes of proceedings

¹ T. 9866-9872.

² Idriz Balaj's Objection to Portions of the 92ter Statement of [Witness 69], 26 October 2007 ("Balaj's First Objection"), paras 3-6; Lahi Brahimaj's Joinder to First Defendant's Motion to Exclude Portions of the Statement of [Witness 69] and Certain of the Attachments to His Statement, 29 October 2007 ("Brahimaj's First Joinder"), paras 2-3.

³ Trial Chamber's Clarification on Whether the Prosecution Must Request Leave to Amend Its Rule 65ter Exhibit List, 25 May 2007, para. 6.

⁴ Motion on Behalf of Ramush Haradinaj to Exclude Portions of the Statement of [Witness 69] and Certain of the Attachments to His Statement, 29 October 2007 ("Haradinaj's Motion"), paras 6-7; Balaj's First Objection, para. 6; Brahimaj's First Joinder, paras 1, 3.

⁵ Idriz Balaj's Objections to Admission of Certain Exhibits Tendered through [Witness 69], 7 November 2007 (Balaj's Further Objections), para. 11, and Corrigendum, 8 November 2007; Lahi Brahimaj's Joinder to Idriz Balaj's Objection to Certain Exhibits Tendered through [Witness 69], 9 November 2007 ("Brahimaj's Second Joinder"), paras 1-2; Haradinaj's Motion, para. 5.

at the Tribunal are admissible in this way.⁶ Thirdly, the Defence argues that Witness 69's testimony could not assist the Chamber in determining the degree of hearsay contained in the documents and therefore fails to establish whether they are sufficiently reliable to be admissible.⁷ The Prosecution responds that hearsay evidence is admissible before the Tribunal.⁸ Fourthly, the Defence argues that there is reason to suspect that some of these statements were obtained through methods which violated the human rights of the persons questioned, thereby rendering them so unreliable as to be inadmissible.⁹ The Prosecution replies that the Defence has failed to particularize its allegation with reference to individual statements.¹⁰ The Chamber will consider these arguments below, to the extent that they affect each exhibit.

4. **P1175** consists of a map of the area of responsibility of the Đakovica/Gjakovë Secretariat of Internal Affairs ("SUP") in 1998.¹¹ The Defence does not object to its admission. The Chamber considers it to be relevant for assessing the testimony of Witness 69 and therefore admissible under Rule 89(C) of the Rules of Procedure and Evidence. P1175 is **admitted** into evidence, **under seal** because it contains the signature of Witness 69.

5. **P1176** consists of a list of villages within the area of responsibility of the Đakovica/Gjakovë SUP.¹² The Defence does not object to its admission. Again, the Chamber considers it to be relevant for assessing the testimony of Witness 69 and therefore admissible. P1176 is therefore **admitted** into evidence, **under seal** because it contains the signature of Witness 69.

6. **P1177** consists of a Đakovica/Gjakovë SUP criminal charge report against unknown kidnappers of Nikola Jovanović and Rade Popadić, dated 26 May 1998.¹³ The Defence makes no substantive objections to the admission of this document. It relates to SUP criminal investigations opened in May 1998 into facts alleged in paragraph 79 of the Indictment. The Chamber considers it to be relevant and probative, and P1177 is therefore **admitted** into evidence, **under seal** because it contains the signature of Witness 69.

⁶ Prosecution's Response to Balaj's Objections to Admission of Certain Exhibits Tendered through [Witness 69], 12 November 2007 ("Prosecution's Response"), paras 2-3; see also paras 7-8.

⁷ Balaj's Further Objections, para. 12; Brahimaj's Second Joinder, paras 1-2.

⁸ Prosecution's Response, para. 5.

⁹ Balaj's Further Objections, para. 13; Brahimaj's Second Joinder, paras 1-2.

¹⁰ Prosecution's Response, para. 6.

¹¹ P1231 (Witness 69, witness statement, 20 June 2007), para. 7; T. 9846, 9866-9867.

¹² P1231 (Witness 69, witness statement, 20 June 2007), para. 7; T. 9846, 9867.

¹³ P1231 (Witness 69, witness statement, 20 June 2007), para. 29; T. 9846, 9868.

7. **P1178** consists of various documents relating to the identification of the mortal remains of Rade Popadić, and their handover to his widow, Jasmina Mitrović.¹⁴ The Defence makes no substantive objections to the admission of these documents. Again, the Chamber finds that the documents are relevant and probative. P1178 is therefore **admitted** into evidence, **under seal** because it contains the signature of Witness 69.

8. **P1179** consists of a map showing a “no-go” area for the Serbian police between mid-1998 and September 1998.¹⁵ The Defence does not object to its admission. The Chamber considers it to be probative, and relevant to the question of territorial control by parties to the conflict. P1179 is therefore **admitted** into evidence, **under seal** because it contains the signature of Witness 69.

9. **P1180** is a report of the Đakovica/Gjakovë SUP Crime Police Department, dated 4 July 2006, identifying the people present during a visit to the Lake Radonjić/Radoniq mass grave on 8 September 1998.¹⁶ The Defence makes no substantive objections to its admission. The Chamber finds that such a report on a topic on which better evidence is already before the Chamber, and which is dated long after the event took place, does not assist the Chamber. P1180 is therefore **not admitted** into evidence.

10. **P1181** is a report of the Đakovica/Gjakovë SUP Crime Police Department, dated 28 September 1998.¹⁷ It contains a large number of different kinds of documents, including witness statements taken by SUP officers. The Defence objects to the admission of some of these statements, which the Chamber will consider individually.

11. **Đakovica/Gjakovë SUP Crime Police official note of an interview with Zoja Seferaj, dated 18 May 1998 [ERN number U0168255]**. The Defence objects to the admission of this document through Witness 69, who was not able to shed any light on it, rather than through the person who was the purported source of the information contained in the document, and who could have been called as a witness.¹⁸ The Defence also argues that admission should be denied because the document contains allegations of criminal acts and conduct by the Accused.¹⁹ The Chamber notes that the document carries no sign of having been confirmed as a true and accurate statement by the person allegedly interviewed.

¹⁴ Ibid.

¹⁵ P1231 (Witness 69, witness statement, 20 June 2007), para. 32; T. 9846, 9868-9869.

¹⁶ P1231 (Witness 69, witness statement, 20 June 2007), para. 64; T. 9846, 9870.

¹⁷ P1231 (Witness 69, witness statement, 20 June 2007), paras 60-61; T. 9846, 9870-9871.

¹⁸ Balaj's Further Objections, paras 22-23; Brahimaj's Second Joinder, paras 1-2.

¹⁹ See *supra*, note 4.

Moreover, it does not appear to be directly relevant to any counts of the Indictment. It concerns the disappearance of a person whose ethnicity is not clearly indicated. Finally, Witness 69's testimony did not shed any light on the document. The document is therefore not admitted into evidence.

12. **Official Đakovica/Gjakovë SUP Crime Police note of an interview with Vendim Hoxha, dated 6 July 1998 [ERN number U0168256].** The Defence objects to the admission of this document through Witness 69, who was not able to shed any light on it, rather than through the person who was the purported source of the information contained in the document, and whom the Prosecution unsuccessfully tried to have called as a Chamber witness.²⁰ The Defence also argues that admission should be denied because the document contains allegations of criminal acts and conduct by the Accused.²¹ The Prosecution responds that the notes are contemporaneous, not taken for the purpose of the present proceedings, and relevant to the Indictment.²² The Chamber notes that the document carries no sign of having been confirmed as a true and accurate statement by the person allegedly interviewed. Moreover, Witness 69's testimony did not shed any light on the document. However, the document is relevant to Counts 15 and 16 of the Indictment, probative of facts alleged therein, contemporaneous, and does not contain any allegations of criminal acts and conduct by the Accused. In addition, a statement is not barred from admission because its maker could have been called as a witness. The document is therefore admitted into evidence.

13. **Statements of Jakup Hamzaj [ERN numbers U0168281-U0168284], Nedžat Dervišaj [U0168285-U0168288], Šać Seljmanaj [U0168289-U0168292], Shefqet Kabashi [U0168293-U0168300] and Jah Isufaj [U0168301-U0168303].**²³ The Defence objects to the admission of these statements for the reasons described in paragraph 3 above.²⁴ The Chamber notes that all of these statements, taken by officials of the Serbian SUP or State Security Department (RDB) from persons not called in the present case as Prosecution witnesses, contain allegations of criminal acts and conduct by the Accused. For instance, several of them allege that "Toger" liquidated civilians and threw their bodies in the Lake Radonjić/Radoniq canal. They carry signs of low reliability. For instance, some of the makers of the statements

²⁰ Balaj's Further Objections, paras 18-21; Brahimaj's Second Joinder, paras 1-2.

²¹ See *supra*, note 4.

²² Prosecution's Response, paras 7-8.

²³ The Prosecution removed from P1181 the statement of Musa Zećiraj, to which the Defence had objected; see T. 9918, 10389, 10700-10701, 10765-10766, 10918.

²⁴ Balaj's Further Objections, paras 11-13, 28, Annex A; Brahimaj's Second Joinder, paras 1-2; see *supra*, note 4.

purportedly describe themselves as members of the “DTG” (“Sabotage and Terrorist Group”) or as having taken part in criminal activities “with other terrorists”. Since the Defence is not in a position to cross-examine the makers of these statements, one of whom refused to testify despite major efforts to obtain his testimony, the Chamber finds that their admission would be prejudicial to the Defence. These statements are therefore not admitted into evidence.

14. In conclusion, the Chamber **admits P1181** into evidence, **except for pages U0168255 and U0168281-U0168303**, for the reasons given in paragraphs 11 to 13 above.

15. **P1182** consists of two notes containing information allegedly received from Arif Hysenaj, and which are almost identical in content.²⁵ The Defence objects to the admission of these notes for the reasons mentioned in paragraph 3 above.²⁶ The notes are not dated, their author is not indicated, and Witness 69 could only speculate about their origin.²⁷ Lacking sufficient probative value, P1182 is **not admitted** into evidence.

16. **P1183** consists of a Đakovica/Gjakovë SUP official note on information received from Fatime Jolaj, dated 24 January 2003.²⁸ The Defence objects to the admission of this statement through Witness 69, who was not able to shed any light on it, rather than through the person who was the purported source of the information contained in the document, and who could have been called as a witness and made available for cross-examination.²⁹ The Defence also argues that admission should be denied because the document contains allegations of criminal acts and conduct by the Accused.³⁰ The Chamber notes that this SUP statement, which is dated more than four years after the indictment period, was taken from a person whom the Prosecution did not call as a witness. The statement contains strong criminal allegations against the Accused that are not convincing on their face and would have to be tested. Since the Defence is not in a position to cross-examine the maker of this statement, the Chamber finds that its admission would be prejudicial to the Defence. P1183 is therefore **not admitted** into evidence.

17. **P1184** contains a compilation of documents concerning the KLA.³¹ The Defence objects to the admission of some of these documents, which the Chamber will consider individually.

²⁵ P1231 (Witness 69, witness statement, 20 June 2007), para. 64; T. 9846, 9871.

²⁶ Balaj’s Further Objections, paras 11-13, 28, Annex A; Brahimaj’s Second Joinder, paras 1-2; see *supra*, note 4.

²⁷ P1231 (Witness 69, witness statement, 20 June 2007), para. 64; T. 9846.

²⁸ P1231 (Witness 69, witness statement, 20 June 2007), para. 64; T. 9846, 9871.

²⁹ Balaj’s Further Objections, paras 15-17; Brahimaj’s Second Joinder, paras 1-2.

³⁰ See *supra*, note 4.

³¹ P1231 (Witness 69, witness statement, 20 June 2007), para. 64; T. 9846, 9871-9872.

18. **Đakovica/Gjakovë SUP Crime Police official note of an interview with Šaban Dodaj, dated 28 May 1998 [ERN numbers U0168373-U0168375].** The Defence objects to the admission of this document for the reasons described in paragraph 3 above.³² The Chamber notes that it purportedly contains information received from a person not called as a Prosecution witness, and describes acts and conduct by the Accused. The document carries no sign of having been confirmed as a true and accurate statement by the person allegedly interviewed. Since the Defence is not in a position to cross-examine its alleged source, the Chamber finds that its admission would be prejudicial to the Defence. It is therefore not admitted into evidence.

19. **Statements of Dem Batuša [ERN numbers U0168390-U0168394].** The Defence objects to the admission of these statements for the reasons described in paragraph 3 above.³³ The Prosecution responds that the statements were not taken for the purpose of the present proceedings, and are relevant to the organization of the KLA.³⁴ The Chamber notes that the documents indicate that the statements were given to authorized individuals of the SUP, but those persons are not clearly identified, and the statements are undated and without SUP letterhead. In addition, the statements carry signs of low reliability. For instance, the first statement reads, “I became a member of an illegal terrorist group”. The Chamber finds that the relevance and probative value of these statements are below the threshold for admission.

20. **Alleged minutes of meetings [ERN numbers U0168395-U0168397].** The Defence objects to the admission of these minutes because their relevance and sources are unclear and their reliability cannot be tested.³⁵ The Chamber notes that the nature of the alleged meeting is not clear, that the author of the alleged minutes is not identified, and that they are not clearly dated and do not assist the Chamber. These pages are therefore not admitted into evidence.

21. In conclusion, the Chamber **admits P1184** into evidence, **except for pages U0168373-U0168375 and U0168390-U0168397**, for the reasons given in paragraphs 18 to 20 above.

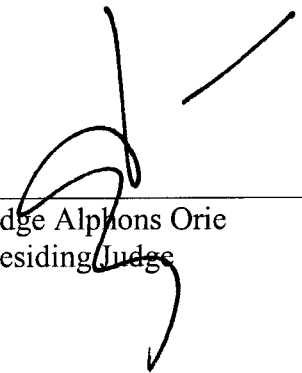
³² Balaj’s Further Objections, paras 11-13, 28, Annex A; Brahimaj’s Second Joinder, paras 1-2; see *supra*, note 4.

³³ *Ibid.*

³⁴ Prosecution’s Response, paras 7-8.

³⁵ Balaj’s Further Objections, para. 27; Brahimaj’s Second Joinder, paras 1-2; Haradinaj’s Motion, para. 8; Balaj’s First Objection, para. 6; Brahimaj’s First Joinder, paras 1, 3.

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



Judge Alphons Orie
Presiding Judge

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

[Seal of the Tribunal]