



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 WITH CONFIDENTIAL ANNEX*

DECISION ON FOURTH BATCH OF 92BIS WITNESSES AND PROTECTIVE  
MEASURES FOR ONE OF THESE WITNESSES

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1. On 16 October 2007, the Prosecution filed a motion to admit the evidence of three witnesses under Rule 92bis.<sup>1</sup> Then, on 29 October 2007, the Prosecution applied for video-conference link for one of these witnesses, and, on 30 October 2007, the Trial Chamber granted this application.<sup>2</sup> This witness testified on 31 October 2007 and will therefore not be considered in this decision. On 5 November 2007, the Prosecution withdrew the application for admission under Rule 92bis for the second witness in the 16 October motion and that witness will therefore not be considered in this decision either.<sup>3</sup> The Defence for Ramush Haradinaj and the Defence for Idriz Balaj responded to the 16 October motion on 17 and 18 October 2007, requesting that the witnesses should be available for cross-examination.<sup>4</sup>
2. On 17 October 2007, the Prosecution filed a motion to admit the evidence of another witness under Rule 92bis or alternatively to subpoena this witness.<sup>5</sup> The Defence for all three Accused responded to this motion on 25 and 26 October 2007, requesting that the Prosecution's motion should be denied.<sup>6</sup>
3. On 30 October 2007, the Prosecution filed a third motion. This requested the admission of written statements of two witnesses pursuant to Rule 92bis and for trial-related protective measures for one of these witnesses.<sup>7</sup> The Defence for Ramush Haradinaj responded on 2 November 2007 that they did not object to the application for protective measures or the admission of either of the statements pursuant to Rule 92bis, though one of them (third witness in table 1 of the Annex) under the condition that three paragraphs, containing opinion evidence and internal contradictions, would be redacted.<sup>8</sup>

<sup>1</sup> Prosecution's Motion to Admit the Evidence of Three Witnesses under Rule 92bis, 16 October 2007 ("16 October motion"). These witnesses were introduced as a result of the Trial Chamber's Decision on Prosecution's Motion Seeking Leave to Amend the Third Amended Indictment on 15 October 2007.

<sup>2</sup> T. 9920-9921.

<sup>3</sup> See Prosecution's Motion to Admit Evidence under Rule 92quater, 2 November 2007, para. 2.

<sup>4</sup> Submission on behalf of Ramush Haradinaj in respect of Witnesses the Prosecution Proposes to Call in Relation to the Amendment of the Indictment Concerning Sejd Noci, 17 October 2007; Idriz Balaj's Joinder in the Submission on behalf of Ramush Haradinaj in respect of Witnesses the Prosecution Proposes to Call in Relation to the Amendment of the Indictment Concerning Sejd Noci, 18 October 2007.

<sup>5</sup> Prosecution's Motion to Admit the Evidence of a Witness under Rule 92bis and Alternatively Prosecution's 21st Application for a Subpoena ad testificandum, 17 October 2007. In the Prosecution's witness list filed on 13 September 2007, this witness is number 41 in former proposed tentative order of testimony.

<sup>6</sup> Response on behalf of Ramush Haradinaj to Prosecution's Motion to Admit the Evidence of a Witness under Rule 92bis and Alternatively Prosecution's 21st application for a Subpoena ad testificandum, 25 October 2007; Idriz Balaj's Objection to Admission of Written Statement of Witness 41 Pursuant to Rule 92bis, 25 October 2007; Lahi Brahimaj's Joinder to First and Second Defendants' Responses to Prosecution Motion to Admit the Evidence of Witness 41 Pursuant to Rule 92bis, 26 October 2007.

<sup>7</sup> Prosecution's Motion to Admit Two Written Statements Pursuant to Rule 92 bis and 37th Motion for Trial-related Protective Measures, 30 October 2007.

<sup>8</sup> Response on behalf of Ramush Haradinaj to Prosecution's Motion to Admit Two Written Statements Pursuant to Rule 92bis and for Protective Measures, 2 November 2007.

4. The statement of the witness referred to in table 2 of the confidential annex to this decision deals with the disappearance of Sejd Noci, described in Counts 21 and 22 of the Indictment. The statement includes information about the circumstances under which Sejd Noci disappeared, including that the witness last saw Noci at a KLA checkpoint. The witness's statement is in this important respect not cumulative to any other evidence. The Trial Chamber therefore considers that the witness should be called for cross-examination.

5. The statements of the first and second witnesses in table 1 deal respectively with the disappearance of Afrim Sylejmani and Idriz Hoti, respectively, described in Counts 21 and 22 of the Indictment. The Trial Chamber has received forensic evidence relating to these events. The Trial Chamber finds that the statements of the witnesses are cumulative to this evidence and add very little to it. The content of the statements does not go to proof of the acts and conduct of the Accused. The Trial Chamber therefore finds that the statements may be admitted into evidence under Rule 92bis and that there is no need to call the witness for cross-examination.

6. The statement of the third witness in table 1 deals with the disappearance of Sanije Balaj, described in Counts 21 and 22 of the Indictment. The Trial Chamber has received evidence from numerous witnesses, including Cufë Krasniqi and Shaban Balaj, about this incident. The statement of the witness is cumulative to this evidence and the content of the statement does not go to proof of the acts and conduct of the Accused. The Trial Chamber therefore finds that the statement may be admitted into evidence under Rule 92bis, with the redactions proposed by the Haradinaj Defence (see table 1 of the annex), and that there is no need to call the witness for cross-examination.

7. The evidence admitted pursuant to Rule 92bis is public unless a request for protective measures has been received and granted. The Prosecution has clarified its position with regard to the second witness referred to in table 1 of the annex. The Prosecution is not requesting protective measures for this witness, but has referred to him by name in the public part of its motion of 30 October 2007, and the statement of this witness will therefore be admitted publicly.

8. The Prosecution has requested that the third witness referred to in table 1 of the annex should be assigned a pseudonym and that his statement be admitted under seal. 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.<sup>9</sup> 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 the territory which is particularly unfavourable to witnesses who appear before the Tribunal.

9. According to the Prosecution's application, no threats have been made against the witness. The Trial Chamber will therefore examine whether the three above-mentioned conditions have been met for this witness. The Trial 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.<sup>10</sup>


10. The witness in question lives in Kosovo/Kosova together with his family. The statement of the witness describes, among other things, how he saw Sanije Balaj being arrested and brought into custody of the KLA, by certain named individuals, and how she then disappeared. The Trial Chamber considers that the witness's evidence may antagonize people who reside in Kosovo/Kosova. The Trial Chamber finds that the three conditions set out above are met and therefore grants the requested protective measures. The witness will be assigned the pseudonym "Witness 72" and the witness's statement will be admitted into evidence under seal. The Prosecution is hereby ordered to, no later than 16 November 2007, submit a redacted witness statement which, upon submission, will be admitted publicly.

11. Until the Prosecution is in a position to affirm that the first witness in table 1 of the annex does not require protective measures, the Trial Chamber will admit this evidence provisionally under seal. The Prosecution is given three days to inform the Trial Chamber about the security and safety status of this witness.

12. The Trial Chamber instructs the Prosecution to upload all the documents shown in table 1 of the annex, as well as the redacted statement referred to in paragraph 10 above, into eCourt and instructs the Registrar to assign exhibit numbers to them, and inform the parties of the exhibit numbers so assigned.

<sup>9</sup> See, for example, Decision on the Admission of a Prosecution Witness Statement under Rule 92 bis and Prosecution's 17th Motion for Protective Measures, 29 October 2007, para. 3.

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



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Judge Alphons Orie  
Presiding Judge

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

**[Seal of the Tribunal]**

<sup>10</sup> T. 3955-3956, 5083.