

IT-04-84-T
D25608 - D25606
26 NOVEMBER 2007

25608
AT



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: 26 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: 26 November 2007

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

**DECISION ON PROSECUTION'S MOTION FOR PROTECTIVE MEASURES FOR
WITNESS 35 IN THE TENTATIVE ORDER OF TESTIMONY**

Office of the Prosecutor

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Mr Richard Harvey
Mr Paul Troop

1. On 6 November 2007, the Chamber admitted into evidence pursuant to Rule 92 *bis*, provisionally under seal, the 13 August 2006 statement of Witness 35 in the tentative order of testimony on the Prosecution's Third Amended Witness List of 13 September 2007.¹ The Chamber gave the Prosecution three days to inform it about the security and safety status of this witness.² On 8 November 2007, the Prosecution requested that the witness be assigned a pseudonym, that any identifying information be kept confidential, and that only the redacted version of the witness's statement be made public.³ The Defence has not responded to this motion.

2. As the Chamber has stated on previous occasions, 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 has not reported any threats made against the witness. The Chamber will therefore examine whether the three above-mentioned cumulative conditions have been met.

4. The witness's statement concerns the last time he saw Afrim Sylejmani, about attending Afrim Sylejmani's funeral and hearsay evidence about Afrim Sylejmani joining the KLA and the location and identification of Afrim Sylejmani's remains.⁵ The witness lives in Kosovo/Kosova.⁶ The Chamber fails to see how the witness's evidence may antagonize people who reside in Kosovo/Kosova.

¹ Decision on Fourth Batch of 92 *bis* Witnesses and Protective Measures for One of These Witnesses, 6 November 2007, para. 11.

² *Ibid.*

³ Prosecution's Motion for Trial-Related Protective Measures, 8 November 2007, paras 1, 4 ("Prosecution's Motion").

⁴ See for example: T. 694-695, 8371.

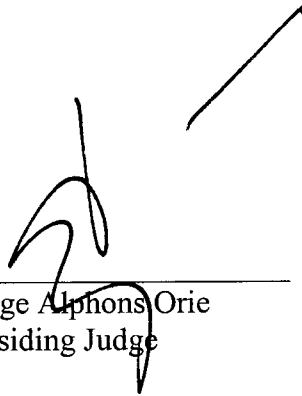
⁵ Prosecution's Motion, Public Annex B.

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

DENIES the Prosecution's Motion for Trial-Related Protective Measures for Witness 35 in the tentative order of testimony;

ORDERS the Registrar to make public the unredacted version of the witness's statement of 13 August 2006, unless the Prosecution informs the Registrar and the Chamber by 5.00 p.m. on 30 November 2007 that it prefers instead to withdraw the witness's evidence.

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



Judge Alphons Orie
Presiding Judge

Dated this 26th day of November 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

⁶ Prosecution's Motion, Confidential Annex A, para. 5.