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29 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: 29 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: 29 November 2007

PROSECUTOR

v.

RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ

PUBLIC

DECISION ON THE ADMISSION OF ZORAN STIJOVIĆ'S RULE 92TER
STATEMENT AND ITS ANNEXES

Office of the Prosecutor

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1. On 2 October 2007, the Haradinaj Defence filed a motion to exclude parts of the evidence of Zoran Stijović, a witness who had yet to testify in this case.¹ The motion covered both the anticipated Rule 92 *ter* statement of the witness and a large number of the documents annexed to the statement. The Haradinaj Defence applied for leave to extend the word limit of the Motion given the large number of annexed documents.² The Trial Chamber hereby grants leave to the Haradinaj Defence. On the same day, the Balaj Defence filed a motion in which it similarly moved for the exclusion of parts of the evidence and additionally submitted that 77 of the annexed documents should not be admitted unless and until the Prosecution had sought leave to amend its Rule 65 *ter* exhibit list and demonstrated good cause for not having done so sooner.³ Also the Balaj Defence applied for leave to extend the word limit and this is hereby granted.⁴ On 2 October 2007, the Brahimaj Defence joined the motions filed by the Haradinaj Defence and the Balaj Defence.⁵ On 4 October 2007, the Prosecution responded to the Defence motions.⁶

2. Zoran Stijović testified from 4 to 10 October 2007. During the course of his testimony, the Prosecution tendered two documents, P1013 and P1014, neither of which was annexed to the Rule 92 *ter* statement. On 10 October 2007, the Balaj Defence objected to their admission.⁷ On 10 October 2007, the Prosecution responded to these objections.⁸ On 18, 19, and 22 October 2007, the Defence for each of the three Accused replied to the Prosecution's responses of 4 and 10 October 2007.⁹ The Trial Chamber will deal with the parties' arguments insofar as they are relevant to the documents in question.

¹ Motion on Behalf of Ramush Haradinaj to Exclude Parts of the Evidence of Zoran Stijović, 2 October 2007 ("Haradinaj Motion").

² Haradinaj Motion, para. 1.

³ Idriz Balaj's Objection to Admission into Evidence of Portions of the Proposed 92 *ter* Statement of Zoran Stijović and to Annexes Attached thereto, 2 October 2007 ("Balaj Motion").

⁴ Balaj Motion, para. 3.

⁵ Lahi Brahimaj's Objection to Portions of the Proposed 92 *ter* Statement of Zoran Stijović and to Annexes Attached thereto, 2 October 2007, paras 2-3.

⁶ Response to Objections to Admission of Portions of Statement of Zoran Stijović and Attachments, 4 October 2007 ("Prosecution Response").

⁷ Idriz Balaj's Objections to the Rule 92*ter* Statement of [Witness 68], 10 October 2007. Attached to the Balaj Defence filing were the objections of the Haradinaj Defence which had been communicated to the Prosecution and the Trial Chamber on 9 October 2007.

⁸ Prosecution's Response to Objections to Rule 92*ter* Statement of [Witness 68] and Two Associated Documents, 10 October 2007 ("Prosecution Second Response").

⁹ Idriz Balaj's Reply to the Prosecution's Response to Objections to Admission of Portions of Statement of Zoran Stijović and Attachments thereto, 18 October 2007; Reply on Behalf of Ramush Haradinaj to Prosecution's Response Concerning Admissibility of MUP Statements of Pervorfiš and Other Statements, 19 October 2007 ("Haradinaj Reply"); Idriz Balaj's Joinder in "Reply on Behalf of Ramush Haradinaj to Prosecution's Response Concerning Admissibility of MUP Statements of Pervorfiš and Other Statements", 19 October 2007; Submission of Joinder by the Defence for Lahi Brahimaj, 22 October 2007.

3. The Trial Chamber will first deal with the Balaj Defence's argument that the Prosecution should formally apply to add 77 documents to the Prosecution's 65ter exhibit list and show good cause why they were not previously included on the list.¹⁰ As stated in the Trial Chamber's decision of 25 May 2007, the Prosecution is allowed to add, without leave, documents to its Rule 65 *ter* exhibit list, except if they are of a substantive nature, in which case a formal motion for amendment of the list is in order.¹¹ No such formal motion has been made for the 77 documents in issue. The purpose of this requirement is to ensure timely notification of new documents to be used by the Prosecution, so as not to cause prejudice to the Defence. Although the Trial Chamber is concerned about the repeated failure of the Prosecution to comply with the mentioned decision, the Trial Chamber grants leave for the Prosecution to add those documents to its exhibit list. The Trial Chamber notes that the Defence has not put forward any focused argument that it suffered any prejudice from the Prosecution's late addition to its exhibit list and it did not find any reason to assume that the Defence suffered any such prejudice. As for P1013 and P1014, the Prosecution has applied to have these documents added to the exhibit list and the Defence has not objected to this.¹² The Trial Chamber therefore also grants leave to add these documents.

4. With regard to P931 (the Rule 92 *ter* statement of Zoran Stijović), the Trial Chamber informed the Prosecution on 4 October 2007 that paragraphs 11 through 17, 21, 26, 39, the first five lines of paragraph 40, and the last six lines of paragraph 59 should be redacted.¹³ These paragraphs contain opinion evidence as well as information which has the character of expert evidence and therefore cannot be introduced through a fact witness such as Zoran Stijović. The Trial Chamber finds that the remaining parts of P931 can be admitted into evidence. The Trial Chamber does not find it necessary to redact the parts of P931 referring to documents which are not admitted pursuant to this decision. The Trial Chamber will consider those parts to be un-sourced.

5. P935 through P938, P940, P942 through P945, P947, P948, P951 through P954, P958, P959, P963, and P966 are all communiqués or communications by the KLA (some of them reproduced in whole or in part in various newspaper articles) issued between 1993 and 1998. P933, P941, P946, P960, P961, and P964 are statements of the political party People's

¹⁰ Balaj Motion, paras 34-37.

¹¹ Trial Chamber's Clarification on Whether the Prosecution Must Request Leave to Amend Its Rule 65ter Exhibit List, 25 May 2007, para. 6.

¹² Prosecution's Motion to Add Two Documents to Its Rule 65 *ter* Exhibit List, 8 October 2007.

¹³ T. 8865.

Movement of Kosovo (LPK) (reproduced in newspaper articles) from 1993, 1996, 1997, and 1998. The Defence has not objected to the admission of these documents, but argues that their authenticity and the truth of their contents are not established simply by virtue of publication.¹⁴ In the absence of any objection, the Trial Chamber admits the above mentioned items. The Trial Chamber does not determine at this stage how it intends to use the evidence, or the weight to be given to it, which will be determined in the context of all the evidence before the Trial Chamber. That said, the Trial Chamber has in a previous decision pointed out that “[t]he genre of documents announcing military victories [...] is notoriously a servant of morale rather than truth”.¹⁵ The Trial Chamber considers that the items discussed in this paragraph fall into this category and will keep this in consideration when assessing the evidence.

6. P934 is the foreword, written by Emrush Xhemali, to a book containing KLA documents, published in March 2003. The foreword partly deals with the organization of the KLA and is useful for the understanding of two of the communiqués referred to in paragraph 5 above (P953 and P963). Zoran Stijović testified that the information in P934 about the organization of the KLA was “fully consistent” with what he knew at the time.¹⁶ The Trial Chamber considers that the document is both relevant and has probative value, and admits P934 into evidence.

7. P939 is a newspaper article from 1996 describing the killing and wounding of a number of Serbs, without specifying the perpetrator. Zoran Stijović testified that he was involved in the investigation of these crimes and that the Serbian State Security Service (RDB) arrested two of the perpetrators.¹⁷ He also testified that this was one of many attacks carried out by the then emerging KLA.¹⁸ The Trial Chamber considers that the newspaper article is both relevant and has probative value, and admits P939 into evidence.

8. P950, P962, P985, P996, P1002, and P1010 are statements by various persons given to the RDB or interviews of persons by the RDB. P932, P949, P956, P957, P965, P967 through P978, P980 through P984, P987 through P991, P993 through P995, P997, P998, and P1004 through P1009 are reports by the RDB (labelled “report” or “official note”), the majority of which are explicitly based on interviews or statements (see for example the reports P949,

¹⁴ Haradinaj Motion, paras 14, 40.

¹⁵ Decision on Admission into Evidence of Documents Tendered during Testimony of Bislim Zyrapi, 15 October 2007, para. 8.

¹⁶ T. 8931.

¹⁷ P931 (Zoran Stijović, witness statement, 26 September 2007), para. 20(c).

P956, P957 which are largely based on P950). P973, P978, P980, P983, P987, P991, P993, P998, P999, and P1007 have the statement or statements attached to the report.¹⁹ P962, P1013, and P1014 are statements by various persons given to the Serbian MUP.

9. The Defence argues that the evidence in question impinges directly upon the acts and conduct of the Accused and would not be admissible under Rule 92 *bis*.²⁰ Furthermore, it argues that it is impossible to determine the reliability of the reports, interviews, and statements, that Zoran Stijović is not in a position to provide information about the reliability, and that these documents therefore have no probative value.²¹ The Defence also adds that the Trial Chamber cannot be convinced that the statements were made voluntarily.²² The Prosecution argues that reliability can be established by various criteria, including the source of the document, its form and structure, and its purported use.²³ It also argues that Zoran Stijović is the person best-placed to offer an overview of the documents and that he can attest to the documents authenticity and provide “a better perspective on their reliability than any other single person”.²⁴ In conclusion, the Prosecution argues that the documents are sufficiently detailed, precise, internally consistent, and consistent with other evidence to be probative.²⁵

10. The reports, statements, and interviews are contemporaneous documents and not made or taken for the purpose of proceedings before this Tribunal. The Trial Chamber has reviewed each document to assess its relevance and probative value. In this respect, the Trial Chamber was assisted by the testimony of Zoran Stijović who provided some general understanding of how these documents had been produced, including which sources were used and how the RDB assessed their credibility.²⁶ The documents served to gather and register information for the RDB and a great deal of the information contained in them has no relevance for the present case as it concerns, for example, family relations and the addresses of persons. Where the Trial Chamber decides to admit a document, it will not ask the Prosecution to redact the parts of the documents that have no relevance to the case. Those parts will simply not be considered by the Trial Chamber.

¹⁸ P931 (Zoran Stijović, witness statement, 26 September 2007), para. 20.

¹⁹ The statement attached to P987 is also tendered separately as P985.

²⁰ Haradinaj Motion, para. 3.

²¹ Haradinaj Motion, paras 17, 30; Balaj Motion, paras 13-16, 21-22.

²² Haradinaj Motion, para. 30; Balaj Motion, paras 24, 33.

²³ Prosecution Response, para. 6.

²⁴ *Ibid.*, para. 7.

²⁵ *Ibid.*, para. 9.

²⁶ See T. 8874-8881, 8899-8913.

11. Rule 92 *bis* does not allow the admission into evidence of statements that go to proof of the acts and conduct of the accused. This Trial Chamber expresses a strong preference that evidence that goes to the acts and conduct of the Accused be elicited orally from a witness in court, even if the Prosecution seeks to introduce it pursuant to Rule 92 *ter*. Notwithstanding that the materials tendered through Zoran Stijović are not statements taken for the purpose of legal proceedings before the Tribunal, the Trial Chamber considers that a similar cautious approach in exercising its discretion is appropriate here. This is of even greater import when the sources are anonymous or unclear and when the material itself contains signs which warrant specific attention as to its reliability. Under these circumstances, admitting statements concerning the acts and conduct of the Accused given by persons, without the possibility to examine them in court, would create a high risk of prejudice to the Defence. For this reason, the Trial Chamber will not admit such material. A number of the documents in question are comprised entirely, or in relevant part, of such information. Accordingly, the Trial Chamber denies admission of P932, P949, P950, P956, P957, P962, P972, P973, P978, P985, P987, P989, P991 through P995, P999, P1000, P1002, P1006, and P1007.²⁷

12. Many of the reports, interviews, and statements contain information on events and incidents about which the Trial Chamber has heard evidence from one or more witnesses. The Trial Chamber has previously stated that it is for the Prosecution “to sift through its collection of documents and carefully select the best evidence to present to the Chamber in the most comprehensible and efficient manner”.²⁸ For events and incidents on which the Trial Chamber has heard testimony, that testimony would often serve as the best evidence, in which case the Trial Chamber would not be assisted by further information. One such incident is the attack on the Haradinaj compound on 24 March 1998, about which Dragoslav Stojanović, Mijat Stojanović, and Rrustem Tetaj, among others, have testified. Another example is the procurement and transport of weapons from Albania during and before the indictment period. The Trial Chamber has heard evidence on this topic from many witnesses, including Cufë Krasniqi, Ylber Haskaj, and Shaban Balaj. For this reason, the Trial Chamber does not admit P971, P974, P975, P977, P980, P996, P997, P1004, P1005, and P1010.

²⁷ P949 and P957 are different copies of the same document. Parts of P956 do not contain information about the acts and conduct of the Accused but Zoran Stijović was in a position to give testimony concerning those parts (T. 9003-9009). The Trial Chamber considers that the transcripts are sufficiently clear and that there is no need to redact P956 and admit the parts of P956 which do not concern the acts and conduct of Lahi Brahimaj.

²⁸ Decision on Admission into Evidence of Documents Tendered During Testimony of Achilles Pappas, 17 September 2007, para. 6.

13. Many of the reports referred to in paragraph 8 contain information about how the RDB assessed the reliability of the person providing the information. Some of these reports categorize the person providing the information as “unreliable”. Although this is just one of the factors that the Trial Chamber considers when assessing the reliability of the reports, the Trial Chamber takes the position that, when the witness has not provided further information about them, their reliability is too low and therefore lack probative value. This concerns P982, P983, P984, P988, P998, and P1005, which are therefore not admitted into evidence. P1013 and P1014 are statements given to the Serbian MUP by Krist Pervorfi and Lëk Pervorfi, respectively, in October 1998. The statements concern the disappearance of Ždravko Radunović, allegedly involving Pjetër Shala. The latter testified in this case but was not asked and did not provide any information about the disappearance. The reliability of P1013 and P1014 is questioned by the Defence, which claims that one of the persons giving the statement later denied the truth of the account in the statement. The person allegedly stated that the statement was not given voluntarily.²⁹ This is acknowledged by the Prosecution.³⁰ As opposed to statements given to the RDB, Zoran Stijović was not in a position to shed any light on the circumstances surrounding statements given to the MUP. The witness merely confirmed that P1013 and P1014 were given to the MUP.³¹ Under these circumstances, the Trial Chamber considers that the doubts about reliability are so strong that it deprives the documents of probative value. Consequently, the Trial Chamber decides not to admit P1013 and P1014.

14. The Trial Chamber finds that the reports, interviews and statements not referred to in paragraphs 11-13 above are relevant and have probative value, and admits them into evidence.³²

15. The Defence has not objected to the admission of P955, P959, P986, P1001, P1011, and P1012. In the absence of any objection, the Trial Chamber admits these documents into evidence.

16. For the foregoing reasons, the Trial Chamber;

²⁹ Haradinaj Reply, para. 12.

³⁰ Prosecution Second Response, para. 8.

³¹ T. 9093-9094.

³² P967 contains the name of a protected witness in this case, and the content of the document combined with that witness testimony would reveal the witness's identity. P967 will therefore be admitted under seal.

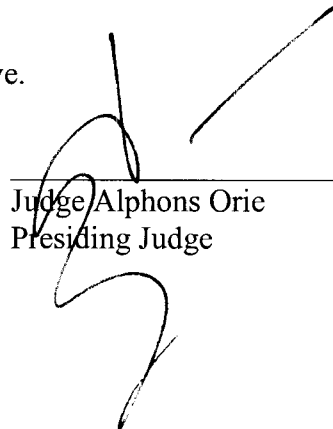
ORDERS the Prosecution to upload a redacted version of P931 (the Rule 92ter statement of Zoran Stijović), in accordance with paragraph 4 above, and **ADMITS** P931, so redacted, into evidence;

ADMITS P933 through P948, P951 through P955, P958 through P961, P963 through P970, P976, P979, P981, P986, P990, P1001, P1003, P1008, P1009, P1011, and P1012 into evidence;

DENIES ADMISSION of P932, P949, P950, P956, P957, P962, P971 through P975, P977, P978, P980, P982 through P985, P987 through P989, P991 through P1000, P1002, P1004 through P1007, P1010, P1013, and P1014 into evidence;

ORDERS that P967 be admitted under seal.

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



Judge Alphons Orie
Presiding Judge

Dated this 29th day of November 2007
At The Hague
The Netherlands

[Seal of the Tribunal]