

VIEW FROM THE HAGUE

INTERFERING WITH WITNESSES IS AGAINST THE LAW

This week, the ICTY saw the arrival into its custody of Mr. Beqa Beqaj, indicted for interfering with potential witnesses in the case of *Prosecutor v. Fatmir Limaj, Haradin Bala, and Isak Musliu*. This important trial of former members of the Kosovo Liberation Army, the KLA, is scheduled to begin this Monday, 15 November 2004.

For any criminal proceedings, be they before national or international courts, testimony of witnesses is of great importance. It is even more true of war crimes trials as they rely greatly on testimony of those who personally witnessed the horrors of war.

However, in war crimes trials, just like in organised crime cases, many security issues may be involved and witnesses can come under threat. This is why, the ICTY, just like national jurisdictions on the territory of the former Yugoslavia, have legislative means to protect witnesses.

In the legal system of the ICTY, one such measure can be found in Rule 77 of the Rules of Procedure and Evidence. This rule states that "the Tribunal ... may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who ... threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness...". In the exercise of this aspect of its jurisdiction, the Tribunal issued the indictment against Beqa Beqaj, which states that Beqaj, individually and in concert with others, incited, attempted to commit, committed or otherwise aided and abetted the commission of Contempt of the Tribunal.

The indictment alleges that from mid-February 2003 through to mid-October 2004 Beqa Beqaj knowingly and wilfully interfered with the administration of justice by threatening, intimidating, offering a bribe to, or otherwise interfering with witnesses or potential witnesses in the case of *Prosecutor v. Fatmir Limaj, Haradin Bala, and Isak Musliu*. The indictment further specifies that Beqaj contacted two specific individuals – Mssrs. Rexhe Rexhaj and Rizha Rexhaj. The indictment alleges that Beqaj, claiming that he is speaking on behalf of Mssrs. Fatmir Limaj and Isak Musliu, instructed the witnesses to withdraw statements they gave to the ICTY prosecutors in relation to these accused.

Fatmir Limaj, Haradin Bala and Isak Musliu, former members of the KLA, stand accused of imprisoning, torturing and murdering Serbian and Albanian civilians from Kosovo. The indictment alleges that KLA forces under Limaj's command seized at least thirty-five Serb and Albanian civilians from Kosovo and forcibly brought them to a prison camp called Lapušnik, located in the municipality of Glogovac. The indictment states that at the camp, KLA forces under Limaj's command, including Bala and Musliu, held the Serb and Albanian civilians in brutal and inhumane conditions, failing to give them adequate food or medical care. The indictment also states that they tortured, beat, and murdered a number those detainees. It further alleges that the three KLA members repeatedly interrogated the Albanian civilians about alleged "collaboration" with Serbs. The indictment states that their evidence of "collaboration" was based on interaction with Serb civilians that was not military in nature. All three accused are charged with directly participating in these crimes. As a KLA commander, Limaj is additionally charged with command responsibility; that is, for failing to prevent these crimes and for failing to punish the perpetrators. (Please see *Outreach* column of 28 January 2004.)

Interfering with witnesses or potential witnesses is a crime under any jurisdiction. But, interfering with witnesses of war crimes, who are often traumatised by their experience, is particularly grave.

These are brave individuals who choose to testify before a court of law and thus perform an important duty of contributing to the interests of justice even though for them it may mean reliving horrible moments of their past. They should be treated with respect and not subjected to further humiliation and intimidation by relatives and friends of those who they consider responsible for the harm that has come to them.

If the Tribunal finds Mr. Beqa Beqaj guilty, he faces the possible sentence of up to 100,000 Euros or up to seven years in prison, or both.

Outreach Programme

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