

IT-04-84-T
D16839-D16837
21 MARCH 2007

16839AT



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: 21 March 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: 21 March 2007

PROSECUTOR

v.

RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ

DECISION ON PROSECUTION'S CONFIDENTIAL MOTION FOR TESTIMONY
TO BE HEARD VIA VIDEO-CONFERENCE LINK

Office of the Prosecutor

Mr David Re
Mr Gramsci di Fazio
Mr Gilles Dutertre
Mr Philip Kearney

Counsel for Ramush Haradinaj

Mr Ben Emmerson, QC
Mr Rodney Dixon

Counsel for Idriz Balaj

Mr Gregor Guy-Smith
Ms Colleen Rohan

Counsel for Lahi Brahimaj

Mr Richard Harvey
Mr Paul Troop

1. On 2 March 2007, the Prosecution filed a confidential motion to hear the testimony of a witness by video-conference link.¹ On 6 March 2007, the Chamber requested additional information from the Prosecution,² which accordingly filed a confidential addendum to its motion,³ after which the Defence gave its response in court.⁴ On 7 March 2007, the Chamber orally denied the motion, with reasons to follow.⁵ The reasons for the decision are given below.

2. Rule 71 *bis* of the Tribunal's Rules of Procedure and Evidence provides that, "At the request of either party, a Trial Chamber may, in the interests of justice, order that testimony be received via video-conference link".

3. The criteria underlying the interests of justice are reflected in the jurisprudence of the Tribunal: (a) the witness must be unable, or have good reasons to be unwilling, to come to the Tribunal, (b) the testimony of the witness must be sufficiently important to make it unfair to the requesting party to proceed without it and (c) the accused must not be prejudiced in the exercise of his or her right to confront the witness.⁶

4. It is in the interests of justice that testimony should, as a rule, be given in court. For reasons of convenience, witnesses might prefer to give testimony by video-conference link rather than to travel to The Hague. However, mere expression of such a preference is not a good reason not to come to the Tribunal.

5. The Prosecution argued that the witness is unwilling to travel to The Hague because he does not feel comfortable doing so and has concerns for his safety and that of his family.⁷

6. The Defence argued, notably, that the expressed safety concerns were insufficiently substantiated.⁸

7. The Chamber finds that the Prosecution has not shown that the witness is unable to travel to The Hague. The Prosecution has also not demonstrated good reasons for the witness's unwillingness to travel to The Hague. The safety concerns expressed by the witness,

¹ Prosecution's Motion for Testimony to Be Heard via Video-Conference Link, 2 March 2007.

² T. 460.

³ Prosecution's Addendum to Motion for Testimony to Be Heard via Video-Conference Link, 6 March 2007.

⁴ T. 554.

⁵ T. 613.

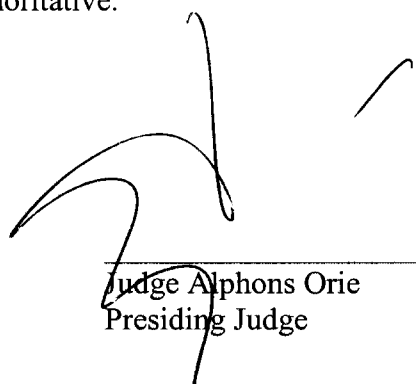
⁶ *Delalić et al.*, Decision on the Motion to Allow Witnesses K, L, and M to Give Their Testimony by Means of Video-link Conference, Trial Chamber, 28 May 1997, para. 17.

⁷ *Supra* note 1, at para. 7. Furthermore, the Prosecution noted that the witness did not possess a passport or the papers required for its issuance. However, it conceded that the local authorities had promised to issue the witness a passport in a timely manner.

⁸ T. 555.

unsupported by any details or argument, do not constitute good reasons, as they could be addressed through an application for protective measures and are not shown to be remedied by testimony by video-link, as compared to *viva voce* testimony in The Hague. The Prosecution has therefore not shown that it would be in the interests of justice to hear the testimony of the witness by video-link conference.

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



Judge Alphons Orié
Presiding Judge

Dated this twenty-first day of March 2007
At The Hague
The Netherlands

[Seal of the Tribunal]