

IT-04-84-T
D20860-D20857
11 July 2007

20860
AF



**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: 11 July 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: 11 July 2007

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC WITH CONFIDENTIAL ANNEX

DECISION ON THE SECOND BATCH OF RULE 92BIS WITNESSES

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
Ms Susan L. Park

Counsel for Idriz Balaj

Mr Gregor Guy-Smith
Ms Colleen Rohan

Counsel for Lahi Brahimaj

Mr Richard Harvey
Mr Paul Troop

1. The original Rule 92 bis motion was filed on 19 February 2007 and amended on 7 May 2007. A further clarification by the Prosecution was filed on 27 March 2007. The Defence responded to the original motion and further clarification on 1 and 5 March 2007 and 10 April and to the amended motion on 21 and 22 May 2007.
2. The Prosecution filed another motion to admit written statements pursuant to Rule 92 bis on 27 March 2007 with a corrigendum on 17 May 2007. The Defence responded to this motion and the corrigendum on 10 April 2007 and 1 and 6 June 2007.
3. On 29 May 2007, the Defence of Idriz Balaj requested that the Rule 92 bis statements contained in the 17 May 2007 corrigendum should be refiled. This matter has, however, already been dealt with by the Chamber on 22 May 2007¹ and the mentioned request is therefore dismissed.
4. In taking the present decision the Chamber has, as always, given full consideration to the arguments of the parties. The Chamber's decision covers the material shown in the form in the confidential annex.
5. As can be seen in the first table appearing in that form, the documents relating to the witnesses mentioned therein are admitted pursuant to Rule 92 bis. In the Prosecution's proposal for an amended witness list of 20 June 2007, each of these witnesses is scheduled to be called for up to 15 minutes examination in chief while in the Prosecution's previous submissions no examination in chief was planned for them.
6. The Chamber notes that there are Rule 92 bis attestations for these witnesses and finds that there is no need to call the witnesses for examination in chief. If the Prosecution intends to adduce new evidence not contained in the statements of these witnesses, the Prosecution may make an application to have them called. If no such application is received by 17 July 2007, the Chamber will regard the evidence of these witnesses as having been finalized as far as examination in chief is concerned.
7. The Defence requests that it should be permitted to cross-examine the first witness in table 1. The Chamber has considered the Defence arguments but finds that there is no need to require this witness to appear for cross-examination. As for the second witness mentioned in table 1, the Prosecution indicated that the witness will be made available for cross-examination. The Defence relied on this assumption in its responses and therefore did not

¹ T. 4526-4527, 4555-4556.

argue for why the witness should be called for cross-examination. Before the Chamber reaches a final decision on whether to ask the second witness in table 1 to appear before the court, the Chamber requests the Defence for submissions in relation to this issue before 20 July 2007.

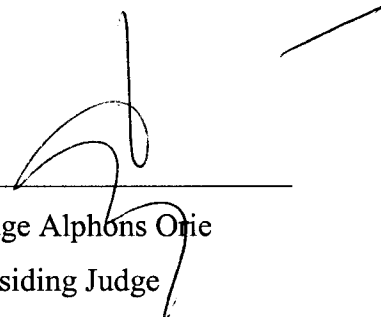
8. The 92 ter witnesses shown in table 2 will appear before the Chamber and the decision on the admission of their evidence will be taken when they appear in court.

9. The Chamber reminds the Prosecution that the evidence admitted pursuant to Rule 92 bis is public unless a request for protective measures has been received and granted. Until the Prosecution is in a position to affirm that the persons referred to in table 1 of the form do not require protective measures, the Chamber will provisionally admit this evidence under seal. The Prosecution is given seven days to inform the Chamber about the security and safety status of these witnesses.

10. On 19 February 2007, the Prosecution submitted a statement of witness Shqipe Krasniqi, dated 28 March 2006, and this was admitted under Rule 92 bis on 22 May 2007. In its motion of 7 May 2007, the Prosecution submitted another statement of the same witness, dated 19 April 2007. This statement contains a minor correction to the statement of 28 March 2006. In the motion of 7 May 2007, the Prosecution also submitted the Rule 92 bis attestations for Shqipe Krasniqi and Witness 63. The Chamber hereby admits the statement of 19 April 2007 and the two attestations into evidence.

11. The Chamber requests the Prosecution to upload the documents shown in table 1 of the annex, as well as the statement of Shqipe Krasniqi dated 19 April 2007 and the two attestations (referred to in para 10 above) into court, and the Registrar is to assign exhibit numbers to them, and inform the parties of the exhibit numbers so assigned.

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



Judge Alphons Orie
Presiding Judge

Dated this 11th day of July 2007

At The Hague

The Netherlands