



**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: 7 September 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: 7 September 2007

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC WITH CONFIDENTIAL ANNEX

DECISION ON THIRD BATCH OF 92BIS AND 92TER WITNESSES

Office of the Prosecutor

Mr David Re
Mr Gramsci di Fazio
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Mr Philip Kearney

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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. The Defence responded to the original motion on 1 and 5 March 2007 and to the amended motion on 21 and 22 May 2007. Furthermore, the Prosecution filed a separate motion to admit a written statement of a witness pursuant to Rule 92 bis or Rule 92 quater on 14 May 2007. The Defence responded to this motion on 29 May 2007.

2. 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 confidential annex.

3. As can be seen in table 1 of the annex, the documents relating to the witnesses mentioned therein are admitted pursuant to Rule 92 bis.¹ As for the first witness in table 1, Rule 92 bis attestations for the 12 December 2005 and 13 October 2006 statements do not exist and these statements are therefore not admitted into evidence.

4. The Defence, in their submissions, request that they should be permitted to cross-examine the first two witnesses shown in table 1. The statements of the first of these two witnesses are partly cumulative to the testimony of Ded Krasniqi but, more importantly, only concern events prior to the alleged mistreatment and murder of Pal Krasniqi, as charged under Counts 31 and 32. The statements of this witness do not relate to a critical element of the Prosecution's case. The Chamber therefore finds that there is no need for this witness to be called for cross-examination.

5. As for the second witness mentioned in table 1, his statement is cumulative to parts of the testimonies of Witness 6, who has testified, and as it is expected at this moment cumulative to Witness 23, who is scheduled to testify. The Chamber therefore finds that there is no need to call this witness for cross-examination.

6. The Chamber will now give its reasons for admitting into evidence the statements of Witness 25 in the tentative order of testimony. These statements are dated 28 October 2004 and 19 April 2007, and are accompanied by the Rule 92 bis attestation of 19 April 2007. The Chamber's decision on this matter was taken on 11 July 2007 and communicated to the parties by a legal officer of the Chamber on the same date. On 20 August 2007, the Chamber made a public announcement that the decision had been taken.² The witness's statements deal

¹ Although there is some confusion in the Prosecution's submissions about the date of the first witness statement mentioned in table 1, the Chamber understands the statement to be dated 16 and 18 April 2007.

² T. 7276.

with the shooting and injuring of a KLA commander which is an incident not mentioned in the indictment. Even if there were a connection between the incident in question and Counts 11 and 12, the Chamber's opinion is that the statements do not relate to a critical element of the Prosecution's case. For this reason the Chamber decides not to call the witness for cross-examination.

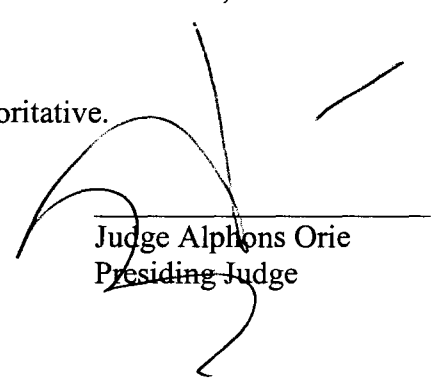
7. The witness mentioned in table 2 of the annex, will be called for cross-examination, but only a brief period of time is granted for that purpose. The decision on the admission of the witness's evidence will be taken on the day the witness appears in court, as is the usual procedure for Rule 92 ter witnesses.³

8. The Prosecution's most recent witness list, filed on 20 June 2007, contains a large number of Rule 92 ter witnesses, some of whom were previously listed as Rule 92 bis witnesses. The Chamber includes under this heading the witnesses for whom the Prosecution has scheduled examination-in-chief as well as those witnesses whom the Prosecution has agreed should be called for cross-examination. The Chamber will decide on the admission of the material of these Rule 92 ter witnesses when the witnesses 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 annex 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. The Chamber instructs the Prosecution to upload the documents shown in table 1 of the annex into eCourt, 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 7th day of September 2007
At The Hague
The Netherlands

³ On 6 September 2007, the Chamber requested some clarifications from the Prosecution concerning the nature of this witness's testimony. This matter will be dealt with when the witness appears in court.