

IT-04-84-T
D22544-D22592
14 SEPTEMBER 2007

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AT



**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: 14 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: 14 September 2007

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

**DECISION ON MOTION FOR VIDEOLINK
(WITNESS 30)**

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. On 12 June 2007, the Trial Chamber issued Witness 30 with a subpoena to testify.¹ It was served upon him on 16 June 2007.² In the memorandum of service, the state in which the witness currently resides noted that he was not willing to appear before the Trial Chamber to give testimony because he was “fearful for safety of family and property”. To the question whether the witness would be willing to testify in another manner, the state answered “U/K” (presumably “Unknown”). And, finally, under “other remarks”, the state noted that Witness 30 had said that he would be “going into hospital June 18 for testing”.³

2. The implication in the above that Witness 30 might be unable to travel to The Hague for health reasons prompted the Trial Chamber to request the Victims and Witnesses Section of the Tribunal to obtain from the witness evidence of his current medical condition. The evidence was obtained in due course, and filed in two lots.

3. In the most recent lot, a psychiatrist’s letter dated 3 July 2007 describes the impression made by the witness: “quite depressed a lot of the time. Crying all the time. Not able to settle, extremely anxious, agitated, very watchful, having nightmares and flashbacks.” Witness 30 was diagnosed with “Severe Chronic Post Traumatic Stress Disorder” and prescribed medications.⁴ A letter by the same psychiatrist dated 6 September 2007 reiterates the diagnosis.⁵ The earlier evidence lot obtained by VWS comprised medical reports from 2006 and 2007 of physiological complaints made by the witness, including shortness of breath, chest pain, haemoptysis, and loss of consciousness. These reports also list the medications prescribed to Witness 30, including cardiac medications. The physicians consulted by Witness 30 at one point came to see certain physiological complaints of the witness as symptomatic of the PTSD disorder, and played down the possibility of a coronary disease.⁶

4. There is sufficient evidence about the medical condition of Witness 30 for the Trial Chamber to determine, with reference to the applicable legal threshold, that he is unable to travel to The Hague to testify. The videolink option proposed by the Prosecution is the logical next step.⁷ Whether ultimately the witness is also unwilling to testify remains to be seen.

¹ Subpoena ad testificandum, 12 June 2007.

² Memorandum of service, filed by the Victims and Witnesses Section of the Tribunal on 20 June 2007.

³ Ibid.

⁴ VWS confidential submission, filed 13 September 2007.

⁵ Ibid.

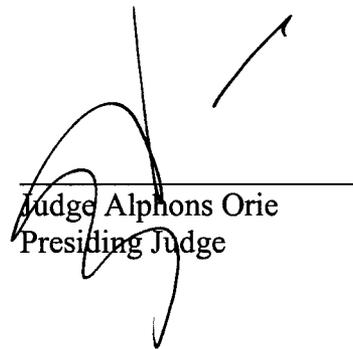
⁶ VWS confidential submission, filed 17 August 2007.

⁷ Prosecution’s Motion for an Order for Compelled Testimony via Video Link, 16 August 2007. The motion, at first filed ex parte, was refiled inter partes on 30 August 2007. This was supplemented by the Prosecution’s Notice to the Trial Chamber of Request for Assistance to [Name of State] and Request for the Trial Chamber’s Assistance in its Execution, 3 September 2007. The Prosecution’s motion was opposed by the Accused, in three

5. The Trial Chamber has already on three occasions granted a videolink application after a subpoena failed to secure a witness's appearance in The Hague. In two of those cases, it was the particular living conditions and security circumstances of the witnesses which persuaded the Trial Chamber to grant the applications for videolink.⁸ In the third case, it was the witness's medical condition which was important.⁹ To avoid such unnecessary procedural complexities in the future (viz. a subpoena application followed by a videolink motion), the Prosecution is advised to better familiarize itself with the personal circumstances of its witnesses before applying to the Trial Chamber for a subpoena.

6. The Prosecution's motion is **ALLOWED**. The compelled-testimony measures proposed in the motion are appropriate in this case, where there is evidence in the material underlying this litigation of an unusual level of non-cooperation by the witness. The Trial Chamber has taken full account of the arguments of the Accused, and agrees with them that this is not the optimal method of receiving the evidence of a potentially important witness. Yet there appears to be no efficient alternative. The Accused will be allowed more than the usual amount of time in cross-examination.

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



Judge Alphons Orie
Presiding Judge

Dated this 14th day of September 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

separate responses filed on 10 September 2007. The parties also made oral submissions in court on 13 September 2007 (T. 8443-8463). The Trial Chamber did not receive a request from any of the parties for additional submissions in light of the VWS's confidential submission of 13 September 2007.

⁸ Decision on Video-Conference Link for Witness 10, 28 August 2007; and Decision on Video-Conference Link for Witness Number 48 in the Tentative Order of Testimony, 28 August 2007.

⁹ Oral Decision on Motion for Videolink Testimony of Witness 55 in the Tentative Order of Testimony, 3 July 2007, T. 6643-6645.