

IT-04-84-T
D22558 - D22556
17 SEPTEMBER 2007

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**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: 17 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: 17 September 2007

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

**DECISION ON ADMISSION INTO EVIDENCE OF DOCUMENTS TENDERED
DURING TESTIMONY OF ACHILLEAS PAPPAS**

Office of the Prosecutor

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1. This is a decision on the Prosecution's motion for admission into evidence of certain documents tendered by the Prosecution from the bar table during the testimony of Witness Achilleas Pappas.¹ The seventeen documents have been marked for identification as: P280, P285 through to P289, P293, P295 through P298, P301, P303, P306, P307, P311, and P313.

2. The Prosecution's motion of 25 May 2007 gives four general reasons for admitting these documents into evidence. The documents are said, first, to go towards proof of the existence of an armed conflict; second, to provide evidence about the location and area of control of KLA forces; third, to contain reports on some of the crimes alleged in the indictment; and fourth, to be a record of activities and observations of international monitors who have testified in this case, such as Pappas.

3. The Prosecution indicates in an annex to its motion, in which each of the documents is considered separately, that the first and second reasons for admission apply to each and every document, while a subset of the documents also receive support from the third or fourth reasons for admission.

4. The three Accused responded essentially with one voice on 12 June 2007.² They do not challenge the authenticity of the documents nor do they claim that all of the documents are irrelevant or inadmissible as such. However, the Accused do complain that the Prosecution has failed to specify the portions of each document which are relied upon as evidence – and those which are not. The Accused draw the Chamber's attention to the fact that parts of the documents are based solely on hearsay, such as press reports, and submit that they are of virtually no assistance to the Chamber.

5. In the Accused's view, moreover, it is not appropriate for the Prosecution to ask the Chamber to wade through bundles of documents, about which the witness in court has no personal knowledge, in order for the Chamber to ascertain which documents, or portions thereof, might be probative for issues in this case.

6. The Chamber finds merit in the position expressed by the Accused. The Chamber has often sought to reassure the Accused that the Chamber gives little, if any, weight to unexplained opinions and untested hearsay. An accumulation of such evidence does not

¹ Prosecution Motion for Admission of Documents Tendered During Testimony of Witness Achilleas Pappas, 25 May 2007.

² Response on Behalf of Ramush Haradinaj to Prosecution Motion for Admission of Documents Tendered During the Testimony of Witness Achilleas Pappas, 12 June 2007. The other two Accused joined this response on the same date.

necessarily make it stronger. The Chamber again emphasizes that it is not assisted by receiving such evidence instead of the best evidence, and that it is the Prosecution's task to sift through its collection of documents and carefully select the best evidence to present to the Chamber in the most comprehensible and efficient manner.

7. As to the documents in question, the Chamber will not go into detail about their content, for the reason that they have been obtained pursuant to Rule 70(B).

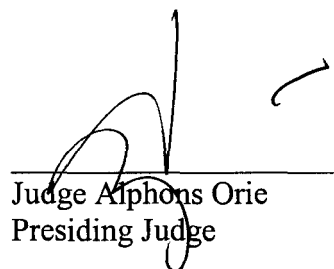
8. The Chamber hereby admits into evidence the following documents: P280, P285, P286, P288, P289, P297, P298, P303, and P311. It is clear which portions of these documents are relevant and which are not. This evidence has some value as a check on the veracity of evidence obtained from other sources. It also says something about the nature of the conflict between the Serbian forces and the KLA. The portions of the documents which summarize the direct observations of personnel of the European Community Monitoring Mission are sufficiently reliable, in the Chamber's view. It is still open to the Defence to test the content of these documents with forthcoming witnesses.

9. The Chamber denies admission of the remaining eight documents. The reliability of their content is too low. They reproduce media reports that cannot be said to be impartial. They do not summarize the direct observations of ECMM personnel. Other sources put forth by the Prosecution supply better evidence.

10. The admitted documents are to be placed under seal and the non-admitted documents are to have their MFI numbers vacated.

11. The Chamber notes that three Defence documents used with Witness Pappas, namely D64, D65, and D115, are still pending admission. The parties are requested to deal with these at the next session on procedural matters.

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



Judge Alphons Orie
Presiding Judge

Dated this 17th day of September 2007
At The Hague
The Netherlands

[Seal of the Tribunal]