



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: 29 October 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: 29 October 2007

PROSECUTOR

v.

RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ

PUBLIC

DECISION ON THE ADMISSION OF A PROSECUTION WITNESS STATEMENT
UNDER RULE 92 *BIS* AND PROSECUTION'S 17TH MOTION FOR PROTECTIVE
MEASURES

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 17 July 2007, the Parties agreed that a Prosecution witness, which the Prosecution had previously indicated would be a *viva voce* witness and who had been scheduled to be heard via video-link on 18 July 2007,¹ could instead have his testimony admitted into evidence under Rule 92 *bis* of the Rules of Procedure and Evidence, that is, without cross-examination.² On 25 September 2007, the Prosecution filed a motion requesting that (i) its 17th application for protective measures³ for this witness be adjusted to reflect the requested admission of his statement under Rule 92 *bis*, (ii) the witness be granted the pseudonym “Witness 67” and (iii) only the redacted statement be made public.⁴ Attached to the 25 September Motion is the redacted original witness statement (in Albanian) along with the redacted Rule 92 *bis* attestation (public Annex A), and the unredacted original witness statement in Albanian along with the unredacted Rule 92 *bis* attestation (confidential Annex B). This filing did not include an English version of the statement. On 10 October 2007, the Prosecution filed a clarification to its 25 September Motion, to which it attached the original (Albanian) statement with revised redactions, the Rule 92 *bis* attestation and the corresponding redacted English translation (public Annex A), as well as an unredacted English version of the statement (confidential Annex B).⁵ The Prosecution further requested that the revised redacted Albanian statement in public Annex A of the 10 October 2007 Motion be the redacted Albanian version of the statement admitted into evidence.

2. Shortly before the above-mentioned video-link testimony was to be received, the parties agreed that the witness’s testimony should be admitted under Rule 92 *bis*.⁶ In view of this development, the Chamber agrees to grant the 25 September Motion notwithstanding that the witness’s evidence is mainly hearsay and the sole evidence dealing with the disappearance of Xhevat Berisha, who is listed in Counts 21 and 22 of the Indictment.

3. With regard to the protective measures application, the Chamber is not satisfied that the required standards have been met. As the Chamber has stated on previous occasions,⁷ protective measures may be granted if there is an objectively grounded risk to the security or welfare of the witness or the witness’s family should it become known that the witness has

¹ T. 6643-6645.

² T. 6948-6951, 7042.

³ Prosecution’s 17th Motion for Trial-Related Protective Measures, 10 July 2007.

⁴ Adjustment of Prosecution’s 17th Motion for Trial-Related Protective Measures Witness 67, 25 September 2007 (“25 September Motion”), para. 2.

⁵ Clarification to the Adjustment of Prosecution’s 17th Motion for Trial-Related Protective Measures, 10 October 2007 (“10 October Motion”).

⁶ T. 6948-6951, 7042.

⁷ See for example: T. 694-695, 8371.

given evidence before the Tribunal. The party seeking protective measures for a witness can satisfy this standard by showing that a threat was made against a witness or a witness's family, or by demonstrating a combination of three factors: (i) the witness's testimony may antagonise persons who reside in a specific territory; (ii) the witness, or his or her family live or work in the territory, or have property in the territory; and (iii) there exists an unstable security situation in that territory which is particularly unfavourable to witnesses who appear before the Tribunal.

4. The Chamber notes that in this case no threats were made against the witness, and will therefore examine whether the three above-mentioned conditions have been met. The Chamber has accepted the parties' agreement that there exists an unstable security situation in Kosovo which is particularly unfavourable to witnesses who appear before the Tribunal.⁸ Further, the witness and his family live in Kosovo. Therefore, the second and third conditions of the test have been met. The Chamber is however not satisfied that the first condition of the test has been met. The witness does not know who killed Xhevat Berisha or why he disappeared. He solely states that he was told of the disappearance by a third person and helped in the initial search for him. Since the witness's evidence does not point to any particular person, the Chamber fails to see how the witness's testimony may antagonise people who reside in a specific territory.

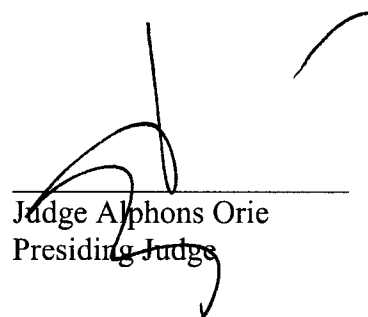
5. Therefore, pursuant to Rules 75 and 92 *bis*, the Chamber:

DENIES the Prosecution's application for protective measures;

GRANTS the Prosecution's application to have the witness's statement admitted under Rule 92 *bis* and **ORDERS** the Registrar to admit the witness's statement publicly, unless the Prosecution informs the Chamber no later than 2 November 2007 that it chooses to withdraw the evidence.

⁸ T. 3955-3956, 5083.

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



Judge Alphons Orie
Presiding Judge

Dated this 29th day of October 2007
At The Hague
The Netherlands

[Seal of the Tribunal]