

IT-04-84-T
D25713-D25711
05 DECEMBER 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 the Former Yugoslavia
since 1991

Case No. IT-04-84-T
Date: 5 December 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: 5 December 2007

PROSECUTOR

v.

RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ

PUBLIC

DECISION ON PROSECUTION'S REQUEST FOR CERTIFICATION TO APPEAL
THE TRIAL CHAMBER'S DECISION CONCERNING SHEFQET KABASHI

Office of the Prosecutor

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Mr Gregor Guy-Smith
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Mr Richard Harvey
Mr Paul Troop

1. The Trial Chamber is seized of a request by the Prosecution for certification to appeal the Trial Chamber's decision of 26 November 2007.¹ According to this decision, the Trial Chamber denied the Prosecution's application of 23 November 2007 to extend its case in order to allow for further attempts to secure the testimony of Shefqet Kabashi at some unspecified date in the future.² The Prosecution argues that, given the importance of this witness's evidence, the Trial Chamber's decision "precluding Shefqet Kabashi's testimony" could significantly affect the outcome of the trial and that an immediate resolution by the Appeals Chamber of this issue may advance the proceedings.³

2. Rule 73(B) of the Rules of Procedure and Evidence states that certification may be granted by a Trial Chamber if the decision "involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings."

3. The Trial Chamber's decision of 26 November 2007 concerned a possible extension of the Prosecution's case in order to allow for further attempts to hear Shefqet Kabashi as a witness in the present case. Until that moment, despite numerous attempts to secure the testimony and as acknowledged by the Prosecution, Shefqet Kabashi was not willing to testify. Moreover, the Prosecution had exhausted the time allotted to it for the presentation of its case. Contrary to what the Prosecution suggests, the decision of 26 November 2007 was not about, and did not have the effect of, precluding Shefqet Kabashi's testimony but was rather based on the premise that the Trial Chamber could not keep the Prosecution's case open indefinitely and that the Prosecution had advanced no argument as to the likelihood that Shefqet Kabashi would ever testify. Therefore, the Trial Chamber does not consider that the decision involved an issue that would significantly affect the outcome of the trial.

4. The Prosecution does not argue, and the Trial Chamber does not find, that the decision of 26 November 2007 significantly affects the fair and expeditious conduct of the proceedings. Since the first limb of the test in Rule 73(B) is not satisfied, the Trial Chamber will not deal with the second limb.

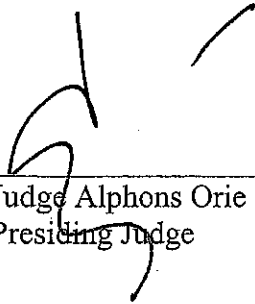
¹ Prosecution's Request for Certification for Interlocutory Appeal of Trial Chamber's Decision re Shefqet Kabashi, 30 November 2007 ("Request").

² T. 10977.

³ Request, paras 7, 9. The Trial Chamber's decision of 26 November 2007 also dealt with the admission of Shefqet Kabashi's statements pursuant to Rule 92 *quater* and the recalling of an investigator to give testimony

5. For the above reasons, the Trial Chamber **DENIES** the Request.

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



Judge Alphons Orie
Presiding Judge

Dated this 5th day of December 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

about the statements provided by Shefqet Kabash. However, the Request only concerns the extension of the Prosecution's case.