

IT-04-84-T
D28235-D28232
15 FEBRUARY 2008

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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: 15 February 2008
Original: English

IN TRIAL CHAMBER I

**Before: Judge Alphons Orie, Presiding
Judge Frank Höpfel
Judge Ole Bjørn Støle**

Registrar: Mr Hans Holthuis

Decision of: 15 February 2008

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

REASONS FOR THE DECISION ON WITNESS 56'S EVIDENCE

Office of the Prosecutor

Mr David Re
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Mr Richard Harvey
Mr Paul Troop

1. On 20 November 2007, the Chamber informed the parties that it had decided that Witness 56's testimony was validly given, with reasons to follow in writing.¹ The Chamber now gives those reasons.

2. On 18 July 2007, Witness 56 testified before the Chamber by means of video-link. Witness 56 did not repeat the solemn declaration as mentioned in Rule 90(A) of the Tribunal's Rules of Procedure and Evidence ("Rules"). On 7 November 2007, the Chamber gave the parties the opportunity to make oral submissions on Witness 56's testimony on 8 November 2007, or file written submissions on the matter by 12 November 2007.²

3. On 7 November 2007, the Balaj Defence filed written submissions.³ It argued that Witness 56 did not take the solemn oath, and did not understand the need to take such an oath.⁴ It submitted that Witness 56 was demonstrably confused about the nature of the proceedings and his role therein.⁵ The Balaj Defence requested that Witness 56's testimony be stricken from the record.⁶

4. On 14 November 2007, the Prosecution submitted in writing that Witness 56 expressed his intention to tell the truth and that Rule 90(A) of the Rules therefore was satisfied.⁷ The Prosecution further submitted that Witness 56's evidence was consistent with the statements he gave to the Prosecution, and with the evidence of other witnesses.⁸ The Prosecution concluded that Witness 56's evidence has sufficient reliability and probative value to satisfy the requirements of Rule 89(C) of the Rules and is therefore admissible.⁹ The Prosecution also asked for the Chamber's permission to file its written submissions on 14 November 2007.

5. The Prosecution missed the deadline for filing its written submissions. In November 2007 all parties were busy preparing for the last witnesses to be heard before the closing of the Prosecution's case and under these circumstances the Prosecution overlooked the deadline for filing. Considering these circumstances and considering that no prejudice is caused to the

¹ T. 10915.

² T. 10411.

³ Idriz Balaj's Motion to Strike the Testimony of [Confidential] Prosecution Witness 56, 7 November 2007 ("Motion").

⁴ Ibid., paras 10, 19.

⁵ Ibid., paras 11-18.

⁶ Ibid., paras 3, 19.

⁷ Prosecution's Submissions on Witness 56's Evidence – It Is Admissible, 14 November 2007, Confidential Annex A, paras 4-11.

⁸ Ibid., Confidential Annex A, paras 12-14.

⁹ Ibid., Confidential Annex A, para. 15.

Defence by the delay in filing, the Chamber will grant the Prosecution leave to file its submissions on 14 November 2007.

6. According to Rule 90(A) of the Rules, a witness is required to make a solemn declaration that he will speak the truth, the whole truth and nothing but the truth, before giving evidence in Court. The mere fact that a witness does not pronounce the formula prescribed by Rule 90(A) does not necessarily lead to the exclusion of his evidence. Under Rule 89(D) of the Rules the Chamber may exclude any evidence if its probative value is substantially outweighed by the need to ensure a fair trial. Although the Defence for Mr Balaj has not invoked Rule 89(D), the Chamber will examine whether there are grounds to exclude Witness 56's evidence under this Rule. In this respect, the Chamber will consider, in particular, whether the witness was aware of his duty to speak the truth and whether the witness committed himself to telling the truth.

7. Witness 56 did not pronounce the exact formula in Rule 90(A) and seemed confused by the oath-taking procedure.¹⁰ Before the Chamber had the opportunity to ask him to make the solemn declaration, he started speaking about the substance of his expected evidence. He said: "I know what happened to me in [...] 1998, that they took [Witness 1], and then they brought him back".¹¹ When the Chamber asked Witness 56 if he would promise to tell the truth when answering questions put to him, he replied: "That's what I'm telling you, the truth, what happened to me. [...] Everything that happened to me, I told you the truth."¹² The Chamber then asked Witness 56 if he was going to tell the truth, and he responded: "Everything, the truth, mine is the truth. There is no other truth."¹³ At the end of his testimony, when the Chamber asked him whether the answers he gave were true, Witness 56 answered: "Yes, they are true, everything is true. Those things are true."¹⁴

8. Witness 56 testified about what had happened to him and his family in 1998. He answered several factual questions put to him and it appeared from his answers that he understood these questions. For instance, the Witness was able to confirm his personal

¹⁰ T. 7088-7092.

¹¹ T. 7087.

¹² T. 7096.

¹³ T. 7096.

¹⁴ T. 7128-7129.

details;¹⁵ answered several questions about the men who entered his house,¹⁶ and told the Chamber how the incident was reported to a local KLA commander.¹⁷

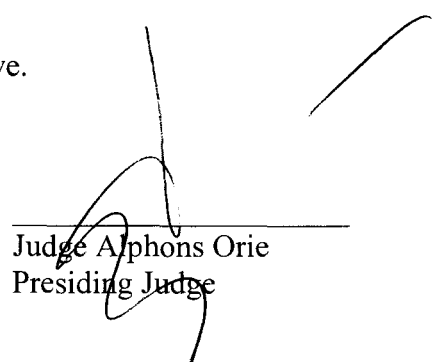
9. Witness 56 may have poorly understood the Court's procedures,¹⁸ but he was not confused about his role in Court. Based on Witness 56's own remarks, the Chamber is satisfied that Witness 56 understood from the outset that he had appeared in Court to tell the story about what had happened to him and his family in 1998. The Chamber is further satisfied that Witness 56 understood the questions posed to him and did his utmost to answer them fully. The Chamber is also satisfied that Witness 56 understood that he was under an obligation to tell the truth. In his own words he confirmed several times that he would tell the truth before answering questions put to him, and confirmed that he had told the truth after finishing his testimony. Therefore, the probative value of Witness 56's evidence was not substantially outweighed by the need to ensure a fair trial and the Chamber did not find that his testimony should be stricken from the record.

10. For the foregoing reasons the Chamber

GRANTS the Prosecution extension to file its written submissions on 14 November 2007;

DENIED the Motion on 20 November 2007.

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



Judge Alphons Orie
Presiding Judge

Dated this 15th day of February 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁵ T. 7099-7100.

¹⁶ T. 7102-7103.

¹⁷ T. 7090, 7101-7103, 7105-7106, 7116-7117.

¹⁸ T. 7111, 7129-7130.