



(6074 - 6104)

**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PRINCIPAL DEFENDER**

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10 February 2005

The Presiding Judge
Trial Chamber II
SCSL

Dear Your Honour,

**RE: RECEIPT OF ACCOMPANYING LIST OF AUTHORITIES TO THE KANU
REPLY TO PROSECUTION RESPONSE TO KANU- DEFENCE MOTION FOR
DISMISSAL OF COUNTS 15-18 OF THE INDICTMENT DUE TO AN ALIBI
DEFENCE AND LACK OF PRIMA FACIE CASE**

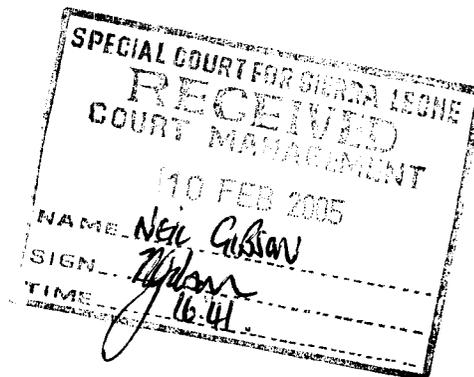
The documents accompanying the above-mentioned reply have been received by our office today.

I am hereby transmitting them to you as per my letter to your Honour dated 4th February 2005.

Yours Faithfully,

A handwritten signature in cursive script, appearing to read 'Claire Carlton-Hanciles'.

Claire Carlton-Hanciles
Legal Officer
The Office of Principal Defender
SCSL

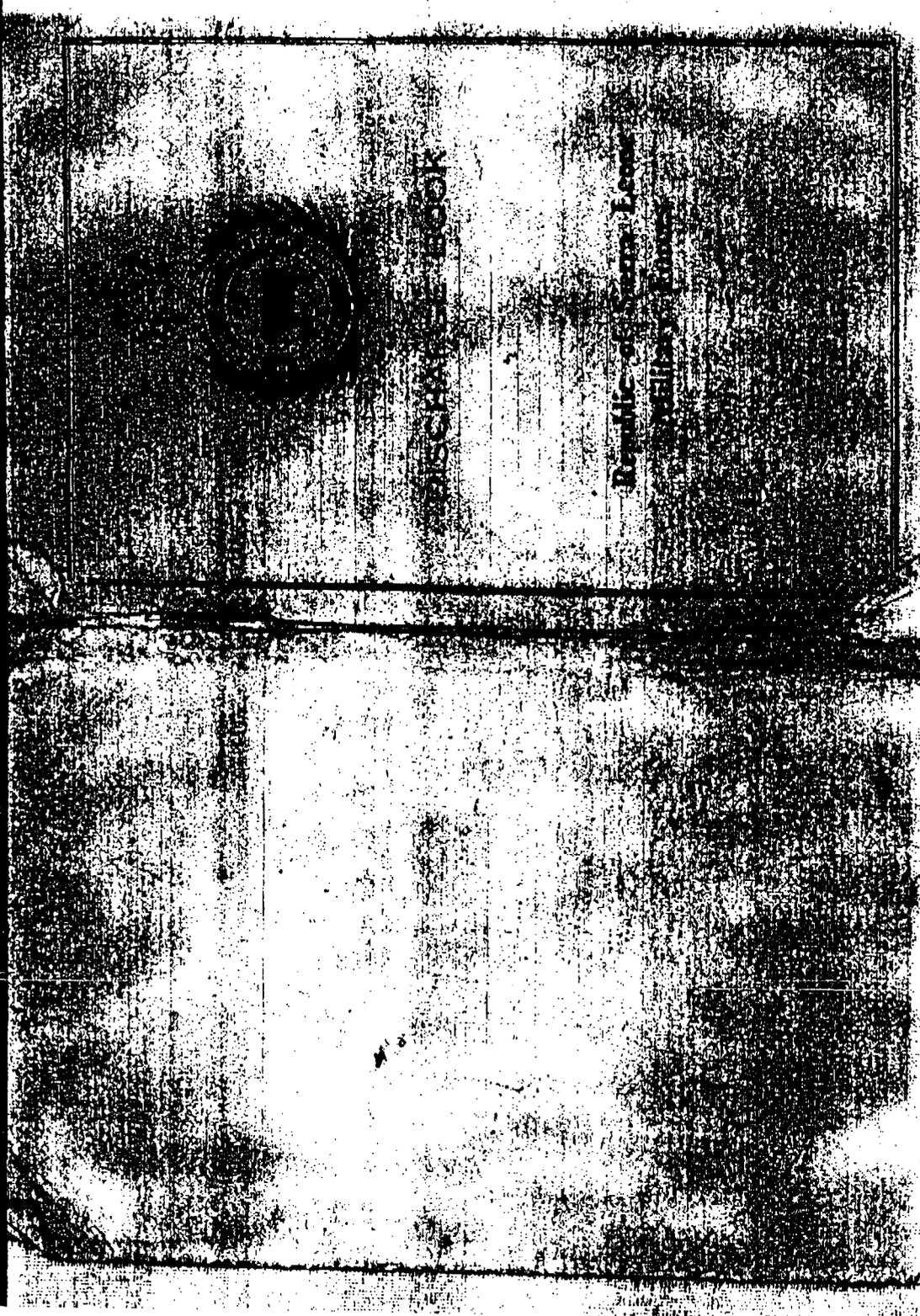


**ACCOMPANYING LIST OF AUTHORITIES TO THE KANU REPLY TO
“PROSECUTION RESPONSE TO KANU- DEFENCE MOTION FOR
DISMISSAL OF COUNTS 15-18 OF THE INDICTMENT DUE TO AN ALIBI
DEFENCE AND LACK OF *PRIMA FACIE* CASE”**

1. Soldier’s Discharge Book
2. Transcripts of the proceedings in *The Prosecutor v/ Limaj et al*, Case No. IT03-66-PT (ICTY-TC), 28 February 2003

Exhibit 1

Soldier's Discharge book.



Serial No.
 Regimental No. **SLA/18164955**
 Name.....
SANTIGIE
KANU
 Enlisted at.....
BTC
 Enlisted on.....
3TH DECEMBER 1990

Space for full set of fingerprints* (right hand)

rolled thumb-print (Right Hand) may be substituted at Area

Commander's discretion.



PHOTOGRAPH

Pension

Serial No.....

(Photograph required only in case of soldier
qualified for Service Pension)
(To be securely affixed and unit stamp
impressed across right bottom corner)



Unit Stamp

Specimen signature or rolled thumb-print of soldier.

Certified that soldier's signature/thumb-print was inserted
in my presence

COMMANDING OFFICER

A F P C

Date 18-06-03

Unit	From	To	Length of Service
BIC	3/12/90	28-8-00	9 Years
			268 Days
TOTAL SERVICE =			9
			268


 COMMANDING OFFICER

Service with the Colours showing Transfers, if any.

(This page should be entirely free from erasures)

Final Assessment of Conduct and Character
on leaving the Colours.

Good

Military Conduct

Testimonial **CORPORAL KANY**

OFFERED A LOYAL, FAITHFUL
 SERVICE TO THE RSLMP. HIS
 APPROACH AND RESPECT FOR
 AUTHORITY HAVE ALWAYS BEEN
 OUBSTANDING. I CAN STRONGLY
 RECOMMEND THAT IF GIVEN THE
 OPPORTUNITY BY ANY EMPLOYER
 HE WILL MEASURE UP TO THE
 TASK.

The above assessments have been read to the
soldier.

Place **FRED BARNARD** COMMANDING OFFICER

Place **FRED BARNARD** COMMANDING OFFICER

Dec 18 06 08 00

CERTIFICATE OF TRANSFER TO FULL RESERVE

Date of Transfer:

Rank: Name:

Cause of transfer:

Unit from which transferred:

Current Service with Colours on date of transfer:

Period of Reserve: years days

Description of Soldier on transfer:

Age: Height: ft. ins.

Marks or Scars:

Place: (Signature & Rank)

Date: O of Record

CERTIFICATE OF DISCHARGE

Date of Discharge: 28TH AUGUST 2000

Rank: CPL Name: SANTIAGO KANU

Cause of Discharge: BREAK OF SERVICE

Discharged under sec: PARA 157 CS ODS 191

Unit from which discharged: BTG

Current Service on date of discharge: —

With Colours: 9 years 268 days

In the reserve: — years — days

Description of soldier on Discharge: —

Age: Height: 5 ft. 8 ins.

Marks or Scars: NIL

Place: PR ETBUN

COMMANDING OFFICER

Signature & Rank

Signature of Officer making entry

1. Campaigns incl.

2. Medals, Claps, Decorations; Mention in despatches; any special act of gallantry or conduct brought to notice in Superior Order.

COMMANDING OFFICER

NOV 26 2003

PARTICULARS ON DISCHARGE/TRANSFER

No. 1816495 Rank CPT Name KANUS

Address: POKI HOKO MAROKKI

Education

Courses attended in Army: NIL

Qualified for Education Certificates: —

3rd Class on: NIL

2nd Class on: NIL

1st Class on: NIL

Trade Qualifications

Trade or Occupation on joining the Army: SCHOLAR

Present Army Trade and classification therein:

Any additional trade in which classified while serving: NIL

Any other industries while serving:

COMMANDING OFFICER

NOV 26 2003

6 A.P.C

NOV-26-2003 02:38 PM SIERRATEL BUREAU

232 22 224439

6083 P.07

PREVIOUS SERVICE

Unit	Period		Rank on Discharge
	From	To	

Payment made at Discharge

Credit Balance on Account..... Le c
 Leave Pay at.....per day.....
 Leave Ration Allowance at.....per day :
 *Marriage Allowance.....days.....
 at.....per day
 Gratuity.....
 Overseas Allowance.....
 Plain Clothes Allowance.....

Total Le

Less Debit Balance (if any).....Le

Le

Amount deposited in the Post Office Savings Bank Book No. Le. c

Amount paid to the man in cash Le

NO FURTHER MONEY OWING TO THIS MAN

(Sgd.)

D. C. Unit.

*Marriage Allowance for the balance of the 50 days has been paid direct to the wife.

FINAL MEDICAL EXAMINATION

No. 18164955 Rank CPL
 Name SANTIGIE KANU
 Medical Category on Enlistment FE

A. I certify that I have examined the above-named OR and find after clinical examination he is:--
 (i) Free from Infectious Disease.
 (ii) Fit for his present Medical Category which is FE

B. The above-named OR appeared before a Medical Board on.....
 and was found "Medically Unfit for further service."

ED 2003/19

Dated.....

Date 18-06-2003 COMMANDING OFFICER

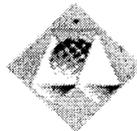
Sign (Sgd.)
A. F. Federal Officer

(Delete A. or B. whichever is not applicable)

Exhibit 2

Transcripts of the proceedings in the Prosecutor V. Limaj et al,
Case No. IT03-66-PT (ICTY-TC), 28 February 2003.

International Criminal Tribunal
for the former Yugoslavia



Tribunal Pénal International
pour l'ex Yougoslavie

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1 Friday, 28 February, 2003

2 [Open session]

3 [Motion Hearing]

4 [The accused entered court]

5 --- Upon commencing at 1.05 p.m.

6 JUDGE LIU: Good afternoon, ladies and gentlemen.

7 Madam Registrar, would you please call the case?

8 THE REGISTRAR: Yes, Your Honour. Good afternoon, Your Honour.

9 This is case number IT-03-66-PT, the Prosecutor versus Agim Murtezi and
10 others.

11 JUDGE LIU: Thank you very much. May I have the appearances,
12 please? For the Prosecution?

13 MR. CAYLEY: Yes, Your Honour, good afternoon, Your Honour. My
14 name is Andrew Cayley, I appear for the Prosecution with my colleague
15 Colin Black and my case manager, Hasan Younis. Thank you.

16 JUDGE LIU: And for the Defence?

17 MR. BOURGON: Good afternoon, Your Honour.

18 JUDGE LIU: Your microphone, please.

19 MR. BOURGON: Sorry, Your Honour, it won't happen again. Good
20 afternoon, Your Honour. I appear this afternoon on behalf of Mr. Agim
21 Murtezi. My name is Stephane Bourgon, counsel from Montreal, Canada.

22 JUDGE LIU: Thank you very much. When did you arrive here in The
23 Hague?

24 MR. BOURGON: I arrived here this morning, Your Honour.

25 JUDGE LIU: Thank you. Mr. Murtezi would you please stand up?

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1 Can you hear the proceedings in a language that you understand?
2 THE ACCUSED: [Microphone not activated] [Interpretation] Please
3 translate this into Albanian, I don't understand this.
4 JUDGE LIU: I mean -- I will repeat my question. Can you
5 understand the proceedings in a language that you understand?
6 THE ACCUSED: Yes, yes, translated into Albanian.
7 JUDGE LIU: Shall I repeat it again?
8 THE ACCUSED: [Interpretation] Yes. Now you may continue but
9 please repeat it.
10 JUDGE LIU: Can you hear the proceedings in a language that you
11 understand?
12 THE ACCUSED: [Interpretation] Yes, now I can.
13 JUDGE LIU: Thank you very much. You may sit down, please.
14 This is a hearing with a request of release of Mr. Murtezi from
15 the United Nations Detention Unit. On the 20th February, 2003, during the
16 initial appearance of the accused, Mr. Murtezi pleaded not guilty to seven
17 counts laid against him in the indictment. Defence counsel raised some
18 doubts about the true identify of the accused on the basis that a wrong
19 pseudonym was used in the indictment, implying that the person arrested
20 and detained may not be the individual referred to in the indictment.
21 Yesterday evening, this Trial Chamber was seized with the motion
22 filed by the Prosecution to withdraw the indictment against Mr. Murtezi
23 and requested that Mr. Murtezi be released from the United Nations
24 Detention Unit and returned to the province of Kosovo as soon as possible.
25 Just about two hours ago, I received urgent preliminary response to the

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1 Prosecution's motion to withdraw the indictment against Agim Murtezi. In
2 this response, the Defence counsel for Mr. Murtezi requested of Trial

3 Chamber I, first to withdraw the indictment against Mr. Murtezi, 2, order
4 the immediate release of Mr. Murtezi, 3, to ensure the presence of the
5 representative of the host country at this hearing.

6 Since it is the Prosecution who filed the motion first, maybe I
7 could first turn to the Prosecution. Would you please brief me about the
8 motion and other related informations in this case? Yes, please.

9 MR. CAYLEY: Yes, Mr. President. I'm aware that there are travel
10 arrangements being urgently made so I will be very brief. This is an
11 application made to you pursuant to Rules 51 and 73 of the Rules of
12 Procedure and Evidence for the withdrawal of the seven counts in the
13 indictment of 24th January, 2003, against Agim Murtezi only, and to apply
14 for his immediate release back to his home in Kosovo.

15 I want to very briefly address you on four separate matters.

16 First of all I want to make some introductory comments to you about the
17 principles which guide the work of the Office of the Prosecutor.

18 The Prosecutor is required to investigate and present facts fairly
19 and impartially. On that basis there is a fundamental requirement that
20 all relevant facts are investigated and wherever possible made available
21 to the Court and to the Defence. These principles must be the guiding
22 lights by which the Prosecutor exercises her functions under the Statute.
23 These are the covenants under which I have done my best over the past week
24 to fulfil. The respect and continuance for the international rule of law
25 demands nothing less of me.

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1 All that said, my position requires that I state publicly today
2 that I accept full responsibility for the conduct of this case and the
3 manner in which events have developed since confirmation.

4 The second matter I want to address you on is the a brief outline
5 of what has happened in this case and the principal reasons why this

6 application is being made. The Prosecution's application lays out in
7 summary form the chronology of events as they took place in this case. I
8 would only highlight to you the events which perhaps are the more
9 important.

10 When this indictment was laid before Judge El Mahdi on 27th of
11 January 2003 for confirmation, there was in my view sufficient evidence to
12 provide reasonable grounds for believing that Agim Murtezi had committed
13 the seven counts contained in the indictment.

14 After his arrest and interview with the Office of the Prosecutor,
15 on the 21st, 24th and 25th of February in which he made substantial
16 cooperation, I took the view that further inquiries were required both
17 here in The Hague and in Kosovo. The results of those further inquiries
18 and the examination of material recovered from Mr. Murtezi's house taken
19 together with his interview led me to conclude that there was a doubt as
20 to whether the man who sits before you today was the actor in the events
21 laid out in the indictment. Naturally, the ethical responsibilities of
22 the Office of the Prosecutor require me to advise the Court to exercise
23 the doubt that now exists in this man's favour and to request the
24 withdrawal of the charges against him and order his release immediately.

25 Thirdly, Your Honour, I want to make a few brief comments about

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1 the conduct of Defence counsel in this case, Mr. Stephane Bourgon. The
2 primary function of Defence counsel in any case is to protect his client
3 from conviction; this is never an easy task even with the best defence.
4 Mr. Bourgon has acted throughout these days honourably, resolutely and
5 above all courageously in what was a grave and difficult situation for all
6 of us.

7 He should be commended upon his behaviour and his conduct, in my
8 view, should be seen as a model for other Defence lawyers when this

9 institution is looking to a just and speedy conclusion to all its
10 proceedings.

11 Lastly, Your Honour, let me emphasise: I apply that only the
12 indictment be withdrawn against this man before you, Agim Murtezi, born on
13 the 20th of February, 1956, in Lipjan in Kosovo. I have no doubt that the
14 events outlined in this indictment, that innocent and defence less people,
15 were imprisoned, beaten and murdered took place. And on those certain
16 facts, Your Honour, the Prosecutor will move forward with this indictment.
17 I thank you, Your Honour.

18 JUDGE LIU: Well, thank you very much. Here I have some questions
19 for you. The first one is what is the exact basis for your request to
20 withdraw the indictment against this individual in the courtroom? Is that
21 because of you don't have enough evidence or something else? Or is the
22 person is not the person who committed that crime? I couldn't see from
23 this point from your presentation and from your filings.

24 MR. CAYLEY: I can only say, Your Honour, that in my view, we do
25 not have sufficient evidence to justify the fact that Agim Murtezi is the

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1 man referred to in the indictment.

2 JUDGE LIU: How many people in that area, so far as I know, bear
3 the same name or nickname?

4 MR. CAYLEY: The question of the nickname is a very difficult one.
5 I am aware, as a result of our further inquiries, that one individual has
6 this nickname. And I believe he is dead. There may be others with that
7 nickname. As far as the nickname -- as far as the actual name of Agim
8 Murtezi, I can only say that there are very few people that we can
9 discover who are actually called that in Kosovo but I would add that it is
10 the nickname that is actually very important in this instance, because
11 none of the witnesses were aware of the real name of this actor in the

12 events at the time that these events took place. They were only aware of
13 the nickname.

14 JUDGE LIU: Well, so you are pretty sure that this person in this
15 courtroom is the person you wanted in the indictment?

16 MR. CAYLEY: Based upon the evidence that existed on the 24th of
17 January of 2003, the answer to that question is yes.

18 JUDGE LIU: I see. But just because there is not enough evidence
19 at your hands that you request for the withdrawal of the indictment?

20 MR. CAYLEY: As matters have developed since the initial
21 appearance, I can state positively to you that I believe that there is a
22 considerable doubt as to whether this man that sits before you today is in
23 fact the actor in the events that are outlined in the indictment.

24 JUDGE LIU: Thank you. Now, may I turn to the Defence counsel?

25 Mr. Bourgon, do you have anything to say at this stage?

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1 MR. BOURGON: Yes, Your Honour. I do have some submissions to
2 make in response to the motion which was filed by the Prosecution
3 requesting the withdrawal of the indictment. I have filed before you
4 urgently this morning a preliminary response which highlights these
5 submissions which I would like to make this afternoon. First I would like
6 to explain why this motion was filed at such a late moment, given that
7 this hearing was scheduled to take place at 1300 and the motion was filed
8 close to 12.00, a little more than one hour before it was due to be heard.
9 Following the interview of Mr. Murtezi with the representative of
10 the Prosecution, which ended on Tuesday, the 25th of July [sic] at
11 precisely 1.00 in the afternoon, at 1300 hours, I did have some
12 discussions with my colleague, Mr. Cayley, from the Office of the
13 Prosecutor, as to what would be the follow-up to this interview, and we
14 were -- and I was informed that we would most likely meet as soon as

15 possible, as soon as the office of the Prosecution would have had enough
16 time to verify the information provided by Mr. Murtezi during the
17 interview, and that in all likelihood this would not take place until this
18 week. I did get last night when I was in Montreal, Canada, a phone call
19 at -- which I got the message at 1700 hours or 5.00, which is of course
20 Hague time 11.00 at night and I took the first plane over and I arrived
21 this morning at 10.00. This is when the received for the first time the
22 Prosecution's motion which was filed this morning at 9.00. And I
23 responded as quick as I could before going to the detention unit and in
24 order to meet to Mr. Murtezi and explain to him what was happening this
25 morning.

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1 This is at least to provide you with the background as to why my
2 response was filed at such a late time.
3 In terms of my submissions this afternoon, first of all I would
4 like to thank my colleague from the Office of the Prosecution for the nice
5 words he has said about the office of being a Defence counsel, in general,
6 and of course the words he has said about me more specifically. Indeed,
7 the situation we face today is an unusual situation and is one that pushes
8 a Defence counsel, in terms of -- to his or her inner limits in terms of
9 how quick and how he should proceed to make the proper representations in
10 full respect for the rights of the accused who appeared before you on 20
11 February. I opted for -- to move quickly and I must say today before you
12 that I must return the compliments which were given to me -- made about me
13 by Mr. Cayley simply because I did get the cooperation that I was
14 expecting from the office of the Prosecution, with such an unusual and
15 exceptional situation.
16 That being said, Mr. Murtezi appears before you today, and I do so
17 on his behalf, and of course we agree and Mr. Murtezi consents and

18 welcomes the motion by the Prosecution for the indictment to be withdrawn.
19 That being said, there are some issues with which Mr. Murtezi disagrees
20 with the submissions made by the Prosecution in its motion.
21 The first of these issues is the difference between having a doubt
22 as to whether there is an enough evidence to continue in a case and the
23 fact that information was provided by Mr. Murtezi to show that none of the
24 characteristics of a person, of an individual, described in the
25 indictment, which, according to the evidence that was given to me in the

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1 indictment supporting material, there appears to be a person, there
2 appears to be an individual, who committed these acts. However, all the
3 information provided by Mr. Murtezi goes to show that he does not fit the
4 description of the person described in the indictment. Some would call
5 this a defence of alibi. I would argue before you, Your Honour, this
6 afternoon, that this goes beyond the defence of alibi. Alibi would be in
7 this case where you have a prison guard accused of having committed some
8 acts against some victims and the guard would say, "I was not at the
9 prison that day or that week, and I was not there. I was a guard. You
10 have the wrong person -- the right person, but I have an alibi." In this
11 case, and this was the basis for my deciding to proceed quickly, is that
12 we are beyond the defence of alibi. Whereas none of the characteristics
13 in the indictment fit the information provided by Mr. Murtezi to the
14 Prosecution.
15 In this respect, Mr. Murtezi maintains his claim that he is not
16 the person referred to in the indictment, and it will be important for my
17 following submission, which is whether the indictment should be withdrawn,
18 that is of course, if Your Honour grants the motion filed by the
19 Prosecution today, should the motion be withdrawn with prejudice to the
20 Prosecution or without prejudice to the Prosecution. And this is indeed a

21 major issue before you this afternoon.
22 Should the motion be granted without prejudice to the Prosecution,
23 this would give weight to the theory that there is not enough evidence to
24 continue with this case, as is explained in the Prosecution's motion, that
25 basically there is a lack of evidence. This would entitle the Prosecution

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1 at some later stage to restart these procedures. What I put to you this
2 afternoon, Your Honour, is that Mr. Murtezi not being the man described in
3 the indictment, there is -- it is a difference, and the Prosecution should
4 not have the opportunity to come back again at him, given what my
5 colleague from the Prosecution just mentioned to you a few minutes ago,
6 that there are considerable doubts that the person appearing before you in
7 this courtroom today is indeed the man described in the indictment. If
8 that is the case, there are no grounds for a person to even become a
9 suspect, and this is the issue to try to summarise, whether we shall have
10 an indictment withdrawn with or without prejudice, without prejudice
11 amounts to having the accused remaining some kind of a suspect, although
12 in a limited manner.

13 My submission to you this afternoon, Your Honour, is that this
14 man, whom there are considerable doubts that he is the person even
15 referred to in the indictment, now referred to we are not even -- we have
16 not even entered into the description of the events or the alleged
17 wrongful acts committed by this person -- that person was arrested, with
18 force, with some degree of force, albeit as was -- as I submitted to you
19 during the initial appearance, Mr. Murtezi says that he was treated fairly
20 during the arrest, nevertheless we all know how an arrest by any police
21 force acting pursuant to an arrest warrant may pursue. He was arrested
22 with the necessary -- although minimum -- amount of force required. He
23 was brought to this Tribunal. He has been here now since the 18th of

24 February. We are today on the 28th of February. He has been here ten
25 days, in a country that is foreign to him. He has been detained ten days,

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12 Blank pages inserted to ensure pagination corresponds between the French and
13 English transcripts. Pages 38 to 40.

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1 and of course, he was the regime to which he was submitted in the
2 detention unit, although he was treated very well, and if you put the
3 question to him, he will gladly answer that he was treated very well at
4 the detention unit, nevertheless, he was detained, which is a violation of
5 his rights.

6 All this being said, I would just like to refer to you on the
7 question of prejudice or without prejudice, the only case I would like to
8 put before you today is the case of the Prosecution versus Barayagwiza a
9 case of interlocutory appeal before the International Tribunal for Rwanda.
10 This was disposed of by the Appeals Chamber in 1998, to be more precise n
11 November of 1998. All they this decision by the Appeals Chamber was later
12 modified because additional facts which were not available at trial --
13 during -- when the motion was heard, and that decision was later changed,
14 nevertheless the contents and the substance of the decision of the Appeals
15 Chamber with respect to prejudice or not prejudice to the Prosecution is
16 relevant to this case. One thing I must add, however, is that in that
17 case, of the Prosecution versus Barayagwiza, there had been, according to
18 the Appeals Chamber, blatant violations on a continuous basis of the
19 accused's rights. That is not the case we are talking about here. Here
20 we are talking of, to some extent, a case of mistaken identify. Again I
21 must admit before you today that within the material that was given to me
22 in the indictment supporting material, the Prosecution in this case did
23 act according to the mandate given to the Office of the Prosecutor, that
24 is to indict or present an indictment when they have sufficient material
25 to do so.

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1 For all those reasons, and I would like to quickly go over some of
2 the facts of this case, to show that the indictment should be withdrawn
3 without prejudice to ensure that Mr. Murtezi will go back home to Kosovo

4 as a free man without having the possibility of a later indictment,
5 hanging over his head --

6 MR. CAYLEY: Excuse me, I do apologise, Mr. Bourgon. Just so the
7 record is clear, my learned colleague stated that the indictment should be
8 withdrawn "without prejudice" and I think he meant with prejudice.

9 MR. BOURGON: Sorry, yes, with prejudice. Thank you for bringing
10 this up.

11 With prejudice, meaning that the accused can go back to Kosovo as
12 a totally free man, as an innocent man, which he was before he was
13 arrested and which he should be today.

14 Just to quickly point out some of the facts of this case, to show
15 how the case proceeded, when he was initially arrested on the 17th of
16 February, Mr. Murtezi immediately claimed that he was not the right
17 person, that he was not the person who should be arrested for this case,
18 and requested at that time to make a statement. Rightfully, the
19 representative of the office of the Prosecution invited him, at least gave
20 him his rights and rightfully suggested that he should wait until he had
21 the benefit of legal counsel before making any such statements.

22 When arriving at the Tribunal, Mr. Murtezi had travelled with two
23 individuals who were his co-accused in this case. Upon meeting
24 Mr. Murtezi for the first time, he immediately informed me that he did not
25 know who the two other men arrested or who travelled with him from Kosovo

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1 to The Hague, he did not know these men. I have verified this
2 information, and of course it is always very difficult to get some kind of
3 a statement from co-accused. Nevertheless, I did obtain from both my
4 counsel -- the counsels who represent the two co-accused in this case,
5 they have both assured me that both of these co-accused were ready to come
6 forward and to say that they did not know Mr. Murtezi and that they would

7 provide a statement to that effect. Due to my absence this week, I have
8 not been able to obtain both of these statements, but I do have one of
9 them, and this is the statement provided by the co-accused, Haradin Bala,
10 which I would like to file this afternoon. My colleague from the
11 Prosecution has received a copy before this hearing and I would like to
12 file this before you this afternoon. And I would like to read for the
13 record the statement goes as follows: To whom it may concern, I wish to
14 state that when I attended my initial appearance on 20 February, 2003, I
15 saw a man who was said to be Agim Murtezi, also known as Murrizi. Before
16 my arrest and transfer to the Hague I have never seen this man before. I
17 have no idea who he is. If this statement is useful, I give my permission
18 for it to be used. This statement is made without prejudice to my own
19 rights, including the right to remain silent, and the right not to give
20 evidence, which rights I do not waive or sorry I did not in any way
21 waive. I have made this statement after consultation with my counsel.
22 And this statement is signed Haradin Bala, accused in the above case.
23 I would like to file this statement before you this afternoon.
24 Now, when the information came to me that both co-accused did not
25 know Mr. Murtezi, and that Mr. Murtezi did not know both co-accused, I did

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1 discuss this issue with the Prosecution, and of course, the Prosecution
2 answered or requested of me what weight or what -- how relevant these
3 statements were or would be, given that they would have no way to go back
4 at both of these co-accused to obtain the confirmation or to obtain more
5 details. My submission before you this afternoon, Mr. -- Your Honour, is
6 that both this statement and the promise to do the same by the second
7 co-accused in this case, put together with the information provided by
8 Mr. Murtezi, put together by the fact that there was no opportunity
9 whatsoever for any collusion of the three accused from the moment they

10 were arrested to the moment that these statements were made, added to the
11 fact that there was a problem with the nickname, which you rightfully
12 highlighted during the initial appearance when you asked the accused what
13 his nickname was and he answered Agim and not Murrizi, for all these
14 reasons, the fact that every time there was a first opportunity for
15 Mr. Murtezi to claim that he is not the person in the indictment, for all
16 those reasons, I put it to you, Your Honour, this afternoon, that the
17 indictment should be withdrawn with prejudice to the Prosecutor. Now,
18 with prejudice does not mean that there should be any type of a blame on
19 the Prosecution. We should not be mistaken on the words. With prejudice
20 to the Prosecutor does not mean that there is a blame, and I do not wish
21 for any type of blame to be put on the Prosecution for laying this
22 indictment, because as soon as they could, as soon as they were informed,
23 as soon as the new information came to light, they acted in a very
24 responsible manner and this is the reason we are here this afternoon.
25 This brings me to my last issue this afternoon, as to when

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1 Mr. Murtezi can be released. Given the fact or should you grant the
2 motion filed by the Prosecution and withdraw the indictment against him
3 this afternoon, there are no reasons why he should spend any further time
4 in the detention unit, even if it is, as we know, detention on remand.
5 He should, as soon as possible, be flown back to Kosovo, to his family.
6 Should that be the case, I have some limited submissions I would like to
7 make which should take place if he is transported or allowed to travel
8 back to Kosovo at the earliest opportunity.
9 The first of these submissions is that earlier this week, I made a
10 press statement following the end of the interview with the Prosecution on
11 behalf of Mr. Murtezi. In this statement, there was information to the
12 effect that both co-accused in this case did not recognise Mr. Murtezi as

13 one of the accused. For some reason, this information was carried or
14 changed in the media to the point where in some media, it was alleged that
15 Mr. Murtezi claims not to be the one but knows who is the one, and this
16 was never the case throughout these proceedings since the beginning.
17 Mr. Murtezi has no idea who the person described in the indictment is. He
18 has no idea as to who the co-accused are, and he possesses little if any
19 information on the functioning of the Kosovo Liberation Army during the
20 time which are relevant to the indictment.
21 For all these reasons it is important that on record it must be
22 said that Mr. Murtezi is simply the wrong person who was arrested
23 concerning the acts alleged in the indictment.
24 Finally, of course, there is the issue of security to his family.
25 The proceedings and your decision this afternoon is likely to have

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1 repercussions in Kosovo. In the media this week we have seen that the
2 situation following the arrests of Mr. Murtezi, of both his co-accused and
3 of a fourth individual at a later time have created quite some tense
4 situation in Kosovo. For that reason, as a minimum, the necessary
5 procedures must be put in place to ensure the security of Mr. Murtezi and
6 his immediate family as he goes back to Kosovo.

7 Thank you, Your Honour.

8 JUDGE LIU: Yes? You have to be very brief.

9 MR. CAYLEY: I will be.

10 JUDGE LIU: Because we are not debating these things.

11 MR. CAYLEY: I will be one minute, Your Honour.

12 JUDGE LIU: Yes.

13 MR. CAYLEY: It's on two issues. On the issue of the with
14 prejudice application, first of all, by the Defence, it's my submission,
15 Your Honour, that that request is inappropriate for four reasons. First

16 of all, this is the Prosecutor's application that is being made today for
17 the withdrawal of the indictment. It is not the application of the
18 Defence.

19 Secondly, and this goes to the case that was mentioned by my
20 learned friend, Barayagwiza case, there is no suggestion in this case, and
21 Mr. Bourgon has acknowledged that, that there has any improper conduct or
22 bad faith on the part of the Prosecutor. And indeed in the Barayagwiza
23 case it was concluded as Mr. Bourgon had stated that there had been a
24 blatant violation of the accused's rights. Mr. Bourgon has acknowledged
25 before you that there is no such suggestion in this case. The third

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1 matter is that the Prosecutor's obligations under the Statute imposed upon
2 her by the Security Council cannot be fettered in this manner by such a
3 measure in these circumstances.

4 Fourthly, were the Court to grant such a punitive measure against
5 the Prosecutor on her own application, it would be a prospective measure,
6 looking forward, to an event that is not even taken place and may never
7 take place.

8 Lastly, in respect of the affidavits that are mentioned by my
9 learned friend, it is my submission that these are of extremely limited
10 value, in terms of weight. Of course they are relevant but the weight
11 which you attach to those particular pieces of evidence should be very
12 limited. The Prosecutor can make no inquiry as to the veracity, the
13 truth, of that evidence. It must just be accepted on its face value by
14 the Court and thus should have a limited value.

15 On the issue of security, a separate issue which my learned friend
16 now raises, whilst the Office of the Prosecutor cannot guarantee the
17 security of Mr. Murtezi, what can be done is that representations can be
18 made to the UN mission in Kosovo that he potentially is at risk and that

19 measures be put in place to ensure that his family and him are safe.

20 Thank you, Your Honour.

21 JUDGE LIU: Thank you very much.

22 Now to be extremely cautious, I would like to ask Mr. Murtezi some

23 personal questions, just for the sake of the record. Since those

24 questions touch upon his personal background and records, we will go to

25 the private session, if necessary. Shall we go to private session?

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1 MR. BOURGON: Your Honour I would advise that we go into private

2 session, if only for, as a matter of precaution, in terms that if any

3 information should come out that would be of a private nature.

4 JUDGE LIU: Thank you. We will go to private session, please.

5 [Private session]

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1 (Redacted)

2 [Open session]

3 JUDGE LIU: Yes, Mr. Bourgon?

4 MR. BOURGON: I agree that we should go back to public session.

5 JUDGE LIU: Yes, thank you.

6 Well, I have considered the information provided by the
7 Prosecution and the Defence counsel during today's hearing. Doubts
8 persist as to the true identity of the perpetrator of the crime alleged in
9 the indictment. I also notice that both parties are not in dispute over
10 the withdrawal of the indictment against Mr. Murtezi and of his immediate
11 release from the United Nations Detention Unit and return to the Kosovo as
12 soon as possible.

13 I hereby order the indictment against Mr. Murtezi be withdrawn and
14 Mr. Murtezi be released immediately from the United Nations Detention
15 Unit. I don't think I am in the position to make a judgement on whether
16 this decision should be with prejudice to the Prosecution or without
17 prejudice to the Prosecution at this moment, because it involves a lot of
18 implications and different interpretations of that very word, and at this
19 moment, I don't have enough evidence to support any of the views expressed
20 by the parties, at this moment.

21 The Registrar will make all necessary arrangements to facilitate
22 Mr. Murtezi to return back to Kosovo as soon as possible.

23 The Prosecutor should file an amended indictment in this case
24 within seven days of this order.

25 A written order will be issued after this hearing in this aspect.

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1 Mr. Murtezi, I apologise to you and after this hearing, you will

6104.

2 be free, and I wish you a pleasant journey back home and a reunion with
3 your family.

4 THE ACCUSED: [Interpretation] Thank you.

5 JUDGE LIU: The case is adjourned.

6 --- Whereupon the Motion Hearing

7 adjourned at 1.54 p.m.

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