

# Confidential

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# Rome Statute of the International Criminal Court

Text of the Rome Statute circulated as document A/CONF.183/9 of 17 July 1998 and corrected by process-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. The Statute entered into force on 1 July 2002.

## Article 56

### Role of the Pre-Trial Chamber in relation to a unique investigative opportunity

1.
  - (a) Where the Prosecutor considers an investigation to present a unique opportunity to take testimony or a statement from a witness or to examine, collect or test evidence, which may not be available subsequently for the purposes of a trial, the Prosecutor shall so inform the Pre-Trial Chamber.
  - (b) In that case, the Pre-Trial Chamber may, upon request of the Prosecutor, take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to protect the rights of the defence.
  - (c) Unless the Pre-Trial Chamber orders otherwise, the Prosecutor shall provide the relevant information to the person who has been arrested or appeared in response to a summons in connection with the investigation referred to in subparagraph (a), in order that he or she may be heard on the matter.
2. The measures referred to in paragraph 1 (b) may include:
  - (a) Making recommendations or orders regarding procedures to be followed;
  - (b) Directing that a record be made of the proceedings;
  - (c) Appointing an expert to assist;
  - (d) Authorizing counsel for a person who has been arrested, or appeared before the Court in response to a summons, to participate, or where there has not yet been such an arrest or appearance or counsel has not been designated, appointing another counsel to attend and represent the interests of the defence;
  - (e) Naming one of its members or, if necessary, another available judge of the Pre-Trial or Trial Division to observe and make recommendations or orders regarding the collection and preservation of evidence and the questioning of persons;
  - (f) Taking such other action as may be necessary to collect or preserve evidence.
3.
  - (a) Where the Prosecutor has not sought measures pursuant to this article but the Pre-Trial Chamber considers that such measures are required to preserve evidence that it deems would be essential for the defence at trial, it shall consult with the Prosecutor as to whether there is good reason for the Prosecutor's failure to request the measures. If upon consultation, the Pre-Trial Chamber concludes that the Prosecutor's failure to request such measures is unjustified, the Pre-Trial Chamber may take such measures on its own initiative.
  - (b) A decision of the Pre-Trial Chamber to act on its own initiative under this paragraph may be appealed by the Prosecutor. The appeal shall be heard on an expedited basis.
4. The admissibility of evidence preserved or collected for trial pursuant to this article, or the record thereof, shall be governed at trial by article 69, and given such weight as determined by the Trial Chamber.

## Article 68

### Protection of the victims and witnesses and their participation in the proceedings

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings *in camera* or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.
3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.
4. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in article 43, paragraph 6.
5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
6. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information.

## Article 69

### Evidence

1. Before testifying, each witness shall, in accordance with the Rules of Procedure and Evidence, give an undertaking as to the truthfulness of the evidence to be given by that witness.
2. The testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in article 68 or in the Rules of Procedure and Evidence. The Court may also permit the giving of *viva voce* (oral) or recorded testimony of a witness by means of video or audio technology, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence. These measures shall not be prejudicial to or inconsistent with the rights of the accused.
3. The parties may submit evidence relevant to the case, in accordance with article 64. The Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth.
4. The Court may rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.
5. The Court shall respect and observe privileges on confidentiality as provided for in the Rules of Procedure and Evidence.
6. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.
7. Evidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if:
  - (a) The violation casts substantial doubt on the reliability of the evidence; or
  - (b) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.
8. When deciding on the relevance or admissibility of evidence collected by a State, the Court shall not rule on the application of the State's national law.

# Rules of Procedure and Evidence\* \*\*

\* Explanatory note: The Rules of Procedure and Evidence are an instrument for the application of the Rome Statute of the International Criminal Court, to which they are subordinate in all cases. In elaborating the Rules of Procedure and Evidence, care has been taken to avoid rephrasing and, to the extent possible, repeating the provisions of the Statute. Direct references to the Statute have been included in the Rules, where appropriate, in order to emphasize the relationship between the Rules and the Rome Statute, as provided for in article 51, in particular, paragraphs 4 and 5. In all cases, the Rules of Procedure and Evidence should be read in conjunction with and subject to the provisions of the Statute. The Rules of Procedure and Evidence of the International Criminal Court do not affect the procedural rules for any national court or legal system for the purpose of national proceedings.

\*\* The Rules of Procedure and Evidence are reproduced from the *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (ICC-ASP/1/3 and Corr.1), part II.A. The amendments are reflected via footnotes.

**“Rule 68****Prior recorded testimony**

1. When the Pre-Trial Chamber has not taken measures under article 56, the Trial Chamber may, in accordance with article 69, paragraphs 2 and 4, and after hearing the parties, allow the introduction of previously recorded audio or video testimony of a witness, or the transcript or other documented evidence of such testimony, provided that this would not be prejudicial to or inconsistent with the rights of the accused and that the requirements of one or more of the following sub-rules are met.

2. If the witness who gave the previously recorded testimony is not present before the Trial Chamber, the Chamber may allow the introduction of that previously recorded testimony in any one of the following instances:

(a) Both the Prosecutor and the defence had the opportunity to examine the witness during the recording.

(b) The prior recorded testimony goes to proof of a matter other than the acts and conduct of the accused. In such a case:

(i) In determining whether introduction of prior recorded testimony falling under sub-rule (b) may be allowed, the Chamber shall consider, *inter alia*, whether the prior recorded testimony in question:

- relates to issues that are not materially in dispute;
- is of a cumulative or corroborative nature, in that other witnesses will give or have given oral testimony of similar facts;
- relates to background information;
- is such that the interests of justice are best served by its introduction; and
- has sufficient indicia of reliability.

(ii) Prior recorded testimony falling under sub-rule (b) may only be introduced if it is accompanied by a declaration by the testifying person that the contents of the prior recorded testimony are true and correct to the best of that person's knowledge and belief. Accompanying declarations may not contain any new information and must be made reasonably close in time to when the prior recorded testimony is being submitted.

(iii) Accompanying declarations must be witnessed by a person authorized to witness such a declaration by the relevant Chamber or in accordance with the law and procedure of a State. The person witnessing the declaration must verify in writing the date and place of the declaration, and that the person making the declaration:

- is the person identified in the prior recorded testimony;
- assures that he or she is making the declaration voluntarily and without undue influence;
- states that the contents of the prior recorded testimony are, to the best of that person's knowledge and belief, true and correct; and
- was informed that if the contents of the prior recorded testimony are not true then he or she may be subject to proceedings for having given false testimony.

(c) The prior recorded testimony comes from a person who has subsequently died, must be presumed dead, or is, due to obstacles that cannot be overcome with reasonable diligence, unavailable to testify orally. In such a case:



(i) Prior recorded testimony falling under sub-rule (c) may only be introduced if the Chamber is satisfied that the person is unavailable as set out above, that the necessity of measures under article 56 could not be anticipated, and that the prior recorded testimony has sufficient indicia of reliability.

(ii) The fact that the prior recorded testimony goes to proof of acts and conduct of an accused may be a factor against its introduction, or part of it.

(d) The prior recorded testimony comes from a person who has been subjected to interference. In such a case:

(i) Prior recorded testimony falling under sub-rule (d) may only be introduced if the Chamber is satisfied that:

- the person has failed to attend as a witness or, having attended, has failed to give evidence with respect to a material aspect included in his or her prior recorded testimony;

- the failure of the person to attend or to give evidence has been materially influenced by improper interference, including threats, intimidation, or coercion;

- reasonable efforts have been made to secure the attendance of the person as a witness or, if in attendance, to secure from the witness all material facts known to the witness;

- the interests of justice are best served by the prior recorded testimony being introduced; and

- the prior recorded testimony has sufficient indicia of reliability.

(ii) For the purposes of sub-rule (d)(i), an improper interference may relate, *inter alia*, to the physical, psychological, economic or other interests of the person.

(iii) When prior recorded testimony submitted under sub-rule (d)(i) relates to completed proceedings for offences defined in article 70, the Chamber may consider adjudicated facts from these proceedings in its assessment.

(iv) The fact that the prior recorded testimony goes to proof of acts and conduct of an accused may be a factor against its introduction, or part of it.

3. If the witness who gave the previously recorded testimony is present before the Trial Chamber, the Chamber may allow the introduction of that previously recorded testimony if he or she does not object to the submission of the previously recorded testimony and the Prosecutor, the defence and the Chamber have the opportunity to examine the witness during the proceedings."

**Rule 112****Recording of questioning in particular cases**

1. Whenever the Prosecutor questions a person to whom article 55, paragraph 2, applies, or for whom a warrant of arrest or a summons to appear has been issued under article 58, paragraph 7, the questioning shall be audio- or video-recorded, in accordance with the following procedure:

(a) The person questioned shall be informed, in a language he or she fully understands and speaks, that the questioning is to be audio- or video-recorded, and that the person concerned may object if he or she so wishes. The fact that this information has been provided and the response given by the person concerned shall be noted in the record. The person may, before replying, speak in private with his or her counsel, if present. If the person questioned refuses to be audio- or video-recorded, the procedure in rule 111 shall be followed;

(b) A waiver of the right to be questioned in the presence of counsel shall be recorded in writing and, if possible, be audio- or video-recorded;

(c) In the event of an interruption in the course of questioning, the fact and the time of the interruption shall be recorded before the audio- or video-recording ends as well as the time of resumption of the questioning;

(d) At the conclusion of the questioning, the person questioned shall be offered the opportunity to clarify anything he or she has said and to add anything he or she may wish. The time of conclusion of the questioning shall be noted;

(e) The tape shall be transcribed as soon as practicable after the conclusion of the questioning and a copy of the transcript supplied to the person questioned together with a copy of the recorded tape or, if multiple recording apparatus was used, one of the original recorded tapes;

(f) The original tape or one of the original tapes shall be sealed in the presence of the person questioned and his or her counsel, if present, under the signature of the Prosecutor and the person questioned and the counsel, if present.

2. The Prosecutor shall make every reasonable effort to record the questioning in accordance with sub-rule 1. As an exception, a person may be questioned without the questioning being audio- or video-recorded where the circumstances prevent such recording taking place. In this case, the reasons for not recording the questioning shall be stated in writing and the procedure in rule 111 shall be followed.

3. When, pursuant to sub-rule 1 (a) or 2, the questioning is not audio- or video-recorded, the person questioned shall be provided with a copy of his or her statement.

4. The Prosecutor may choose to follow the procedure in this rule when questioning other persons than those mentioned in sub-rule 1, in particular where the use of such procedures could assist in reducing any subsequent traumatization of a victim of sexual or gender violence, a child or a person with disabilities in providing their evidence. The Prosecutor may make an application to the relevant Chamber.

5. The Pre-Trial Chamber may, in pursuance of article 56, paragraph 2, order that the procedure in this rule be applied to the questioning of any person.

**Rule 114****Unique investigative opportunity under article 56**

1. Upon being advised by the Prosecutor in accordance with article 56, paragraph 1 (a), the Pre-Trial Chamber shall hold consultations without delay with the Prosecutor and, subject to the provisions of article 56, paragraph 1 (c), with the person who has been arrested or who has appeared before the Court pursuant to summons and his or her counsel, in order to determine the measures to be taken and the modalities of their implementation, which may include measures to ensure that the right to communicate under article 67, paragraph 1 (b), is protected.
2. A decision of the Pre-Trial Chamber to take measures pursuant to article 56, paragraph 3, must be concurred in by a majority of its judges after consultations with the Prosecutor. During the consultations, the Prosecutor may advise the Pre-Trial Chamber that intended measures could jeopardize the proper conduct of the investigation.

# ICTR RULES OF PROCEDURE AND EVIDENCE RÈGLEMENT DE PROCÉDURE ET DE PREUVE

Adopted on 29 June 1995; as amended on:

Adopté le 29 juin 1995 et modifié  
successivement les :

12 January 1996

12 janvier 1996

15 May 1996

15 mai 1996

4 July 1996

4 juillet 1996

5 June 1997

5 juin 1997

8 June 1998

8 juin 1998

1 July 1999

1 juillet 1999

21 February 2000

21 février 2000

26 June 2000

26 juin 2000

3 November 2000

3 novembre 2000

31 May 2001

31 mai 2001

6 July 2002

6 juillet 2002

27 May 2003

27 mai 2003

15 May 2004

15 mai 2004

7 June 2005

7 juin 2005

10 November 2006

10 novembre 2006

15 June 2007

15 juin 2007

14 March 2008

14 mars 2008

2 February 2009

2 février 2009

1 October 2009

1 octobre 2009

9 February 2010

9 février 2010

1 April 2011

1 avril 2011

10 April 2013

10 avril 2013

13 May 2015

13 mai 2015

## Rule 71: Depositions

- (A) At the request of either party, a Trial Chamber may, in exceptional circumstances and in the interests of justice, order that a deposition be taken for use at trial, and appoint, for that purpose, a Presiding Officer.
- (B) The motion for the taking of a deposition shall be in writing and shall indicate the name and whereabouts of the witness whose deposition is sought, the date and place at which the deposition is to be taken, a statement of the matters on which the person is to be examined, and of the exceptional circumstances justifying the taking of the deposition.
- (C) If the motion is granted, the party at whose request the deposition is to be taken shall give reasonable notice to the other party, who shall have the right to attend the taking of the deposition and cross-examine the witness.
- (D) The deposition may also be given by means of a video-conference.
- (E) The Presiding Officer shall ensure that the deposition is taken in accordance with the Rules and that a record is made of the deposition, including cross-examination and objections raised by either party for decision by the Trial Chamber. He shall transmit the record to the Trial Chamber.

### Rule 71 bis: Preservation of Evidence by Special Deposition for Future Trials

- (A) If within a reasonable time, a warrant of arrest has not been executed, the Prosecutor may submit a request to the President that evidence relating to the indictment be preserved for a future trial by special deposition recorded in a proceeding conducted by a single Judge.
- (B) If a warrant of arrest has been executed, but the accused has not yet been transferred to the Tribunal, the Prosecutor or the accused's Counsel, if any, may submit a request to the President that the evidence of particular witnesses be preserved for a future trial by special deposition recorded in a proceeding conducted by a single Judge.
- (C) Upon receiving a request pursuant to Sub-Rule (A) or (B), the President shall refer the matter to a Trial Chamber and, if the accused is not represented by counsel, shall instruct the Registrar to appoint Duty Counsel pursuant to Rule 44 bis to represent the interests of the accused.
- (D) The Trial Chamber shall hear the Prosecutor and Counsel representing the interests of the accused in a closed session and may, where appropriate, receive *ex parte* information from the Prosecutor on the whereabouts of the accused.
- (E) The Trial Chamber may grant a request pursuant to Sub-Rule (A), if satisfied that:
  - (i) Reasonable efforts have been made to execute the warrant of arrest;
  - (ii) The execution of the warrant of arrest is not likely to take place within a reasonable time; and
  - (iii) It is in the interests of justice to do so.

- (F) The Trial Chamber may grant a request pursuant to Sub-Rule (B), if satisfied that exceptional circumstances exist and that it is in the interests of justice to do so.
- (G) When granting a request pursuant to Sub-Rules (A) and (E) or (B) and (F), the Trial Chamber shall:
- (i) With respect to a decision pursuant to Sub-Rules (A) and (E), request the Registrar to issue a public notice of the decision and the arrest warrant against the accused.
  - (ii) Request the Registrar to assign Counsel representing the interests of the accused such staff as the Registrar deems necessary.
- (H) The Registrar shall transmit the notice pursuant to Sub-Rule (G)(i) to the national authority of the State of Rwanda and any other State or States, where the accused and/or his or her family may be known or believed to be or to have, at any time, resided, for publication in newspapers or for broadcast via radio, transmission via internet or television, or by any other appropriate means notifying the public including, if possible, the family of the accused, that, pursuant to a decision of the Tribunal, the taking of special depositions for the preservation of evidence will commence after the expiry of 30 days from the date of this notification.
- (I) Upon a decision from a Trial Chamber granting a request pursuant to Sub-Rules (A) and (E), Counsel representing the interests of the accused may submit a request to the President that evidence relevant to the case of the accused be preserved by way of special deposition. Sub-Rules (C), (D), (E) and (G)(ii) shall apply *mutatis mutandis*.
- (J) The President shall designate which single Judge shall conduct the special deposition proceedings.
- (K) Rules 46, 54, 56, 66-70, 73-73 ter, 75-77, 80-81, 90-91, 93 and 95-97 shall apply, *mutatis mutandis*, to the special deposition proceedings with the following modifications:
- (i) The single Judge shall have the same powers as a Trial Chamber.
  - (ii) The Duty Counsel shall have the same rights and duties as a Defence Counsel.
  - (iii) Disclosure pursuant to Rule 66 (A) (i) and (ii) shall be made no later than 60 days before the time set for the commencement of the taking of depositions. Notwithstanding, the single Judge may exceptionally allow that a particular witness be deposed at an earlier date upon a showing that the deposition might not otherwise be possible.

- (iv) The special deposition proceedings shall take place in closed sessions.
- (v) The taking of depositions shall be video-recorded, in addition to other forms of recording, unless, under extraordinary circumstances, a special deposition is taken in a place where video-recording facilities are not available or for other reasons, cannot be organized.
- (L) If a party has obtained a written statement that it wishes to tender into evidence pursuant to Rule 92 *bis*, the single Judge shall make a preliminary finding, if required, whether the witness shall appear for cross-examination or whether to request the Registrar to proceed pursuant to Rule 92 *bis* (B)(i)(a).
- (M) Exhibits used in connection with the examination of witnesses and written statements that have given rise to cross-examination pursuant to Sub-Rule (L) shall be marked for identification and kept on the file.
- (N) At the subsequent trial of an accused before a designated Trial Chamber, the Registrar shall as soon as practicable transmit copies of the file of the record of the special depositions and exhibits kept on the file to the parties. On the application of either party, the Trial Chamber may admit special depositions and exhibits from the file that are relevant and of a probative value not outweighed by their prejudicial effect.
- (O) Notwithstanding Sub-Rule (N), a special deposition may only be admitted into evidence in lieu of live testimony if:
  - (i) The opposite party does not oppose the admission, or
  - (ii) Rule 92 *bis* (D), as read in conjunction with Rule 92 *bis* (A) and (E), is applicable, or
  - (iii) The Chamber is satisfied that the deponent is deceased, can no longer with reasonable diligence be traced, is by reason of bodily or mental condition unable to testify orally, or in exceptional circumstances is unwilling to testify following threats or intimidation, and
  - (iv) It is in the interests of justice to do so.

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UNITED NATIONS  
NATIONS UNIES

**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

OR: ENG

**TRIAL CHAMBER III**

**Before:** Judge Lloyd G. Williams, Q.C., presiding  
Judge Andréia Vaz  
Judge Khalida Rachid Khan

**Registrar:** Adama Dieng

**Date:** 11 November 2003

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JUDICIAL RECORDS SECTION  
10-11-2003  
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**THE PROSECUTOR**

v.

**Tharcisse MUVUNYI  
Idelphonse NIZEYIMANA  
Idelphonse HATEGEKIMANA**

**Case No. ICTR-2000-55-I**

**DECISION ON THE PROSECUTOR'S EXTREMELY URGENT MOTION  
FOR THE DEPOSITION OF WITNESS QX**

*Rule 71 of the Rules of procedure and evidence*

**Office of the Prosecutor:**

Silvana Arbia  
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**Counsel for Tharcisse Muvunyi:**

Michael Fisher, Lead Counsel

**Counsel for Idelphonse Hategekimana:**

Jesse Kiritta, Duty Counsel

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*The Prosecutor v. Tharcisse Muvunyi, Idelphone Nizeyimana, Idelphonse Hategekimana*, Case No. ICTR-2000-55-I

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** ("Tribunal"),

**SITTING** as Trial Chamber III composed of Judge Lloyd G. Williams, Q.C., presiding, Judge Andréia Vaz and, Judge Khalida Rachid Khan ("Chamber");

**BEING SEISED** of the "Prosecutor's Extremely Urgent Motion for the Deposition of Witness QX", filed on 1 October 2003 ("Motion");

**CONSIDERING** the letters of 6 October 2003 from the two Accused presently in custody, namely, Tharcisse Muvunyi to his Counsel, Michael Fisher, and Idelphonse Hategekimana to the Chamber concerning this Motion;

**CONSIDERING** that the Defence for Tharcisse Muvunyi did not respond to the Motion, and that he did not request the Chamber for an extension of the time limit prescribed by the Rules;

**CONSIDERING** the Statute of the Tribunal ("Statute") and the Rules, particularly Rule 71 of the Rules;

**NOW REVIEWS** the Motion, pursuant to Rule 73(A) of the Rules, solely on the basis of the written briefs filed by the parties.

**Submissions of the Parties**

**Prosecution**

1. The Prosecutor requests the Chamber to order that the deposition of Prosecution Witness QX be taken pursuant to Rule 71 of the Rules. The Prosecutor requests that the said deposition be taken in October 2003, that it be videotaped and that it be conducted in a secure place chosen by the investigation team of the Office of the Prosecutor in Kigali (Rwanda).
2. The Prosecutor contends that the Witness is in a critical condition. He has been seriously ill and was evacuated to a foreign country for medical treatment; his life was only spared as a result of specialists' medical treatment. The physicians of the host country have declared his disease incurable; thus he has been brought back to his home country where he has since been living, disabled.
3. The Prosecutor also submits, in support of his Motion, that the Witness is 82 years old and disabled. The Prosecutor contends that the life of the Witness is in danger, and he therefore wishes that the deposition be taken place as soon as possible. In support of the Motion, the Prosecutor tenders a sworn affidavit by an authorized staff member of the Office of the Prosecutor in Kigali.
4. The Prosecutor underscores the importance of the testimony of Witness QX. According to the Prosecutor, he is an eyewitness to the attacks of 30 April 1994, referred to in the indictment, carried out by soldiers against Tutsi refugees at Ngoma Parish. His special status enabled him to witness these events. The Prosecutor further submits that his testimony will relate exclusively to the involvement of the Accused Idelphonse Hategekimana, who



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commanded the soldiers, and Tharcisse Muvunyi, under whose authority the Accused Hategekimana acted.

5. The Prosecutor contends that, pursuant to Rule 71 of the Rules, the requirements of exceptional circumstances and interests of justice are satisfied in this case. The Prosecutor further cites cases like *Nahimana and others*<sup>1</sup>, *Bagambiki et al.*<sup>2</sup> and *Kupreskic and others*<sup>3</sup> in which such measures have been ordered.

### **Defence**

6. The Accused Hategekimana points out that he is still looking for proper legal assistance and contends that such circumstance makes it difficult for him to exercise his right to cross-examine prosecution witnesses. The Accused notably refers to a decision in *Prosecutor v. Seromba*, where the Trial Chamber deferred considering a motion until the assignment of a Counsel.

7. Moreover, the Accused contests the argument that the age of the witness be considered as an exceptional circumstance under Rule 71 of the Rules. He further submits that, if Witness QX is so sick as the Prosecutor alleges, he might see his right to cross-examine the witness reduced because the Prosecutor wants to show consideration for the witness.

8. In response, the Accused Muvunyi does not raise any arguments on the merits of the Prosecutor's Motion but, in a letter to his Counsel, he reminds his Counsel of the importance of his request for withdrawal of Lead Counsel. He affirms that there is greater urgency and necessity for such withdrawal, in light of the Prosecutor's Motion for the taking of the deposition of Witness QX.

### **Deliberations**

9. The Chamber recalls that, pursuant to Rule 90(A) of the Rules, every witness must appear before the Chamber to be heard. Thus, Rule 71 is a special provision for the taking of a deposition. In accordance with that Rule, a deposition may be taken when justified by exceptional circumstances and in the interests of justice.

10. In the instant case, the Chamber considers that Witness QX's age, coupled with his critical state of health, constitutes exceptional circumstances within the meaning of Rule 71 of the Rules. If the state of his health worsened, the Prosecutor would be deprived of his evidence. Furthermore the Chamber notes the Prosecutor's submission that the anticipated evidence of Witness QX is highly important to its case not only because he was allegedly an eyewitness of the acts alleged by the Prosecutor against both Accused, but also because his status makes him a special witness. The Chamber therefore considers that the interests of justice require that the evidence of Witness QX be taken by way of deposition, pursuant to Rule 71 of the Rules, before commencement of trial, so as to adequately facilitate the administration of justice.

<sup>1</sup> *Prosecutor v. Nahimana et al.*, 25 April 2003.

<sup>2</sup> *Prosecutor v. Ntagerura et al.*, 16 July 2002.

<sup>3</sup> *Prosecutor v. Kupreskic et al.*, 11 February 1999.



*The Prosecutor v. Tharcisse Muvunyi, Idelphone Nizeyimana, Idelphonse Hategekimana*, Case No. ICTR-2000-55-I

11. For the purposes of the taking of the deposition, the Prosecutor shall disclose the identity of Witness QX to the Defence at least 21 days before the date set for the taking of the deposition. The Chamber recalls the right of the Defence to be present during the deposition, and to cross-examine the witness if they so wish. The deposition shall be taken under the supervision of the Officer authorized by the Trial Chamber.

12. In the absence of Lead Counsel, Duty Counsel should be appointed by the Registrar to represent the interests of the Accused at the taking of the deposition, and the Accused shall cooperate with such Counsel.

## FOR THE AFOREMENTIONED REASONS,

### THE CHAMBER

I. **GRANTS** the Prosecutor's Extremely Urgent Motion for the Deposition of Witness QX, and **ORDERS** that the deposition be recorded on videotape, and placed under seal;

II. **ORDERS** the Prosecutor to disclose the identity of Witness QX to the Defence, and **REMINDS** the Defence that the Witness is under protection, and therefore the Defence shall not disclose any of his particulars to anyone outside the Defence Team;

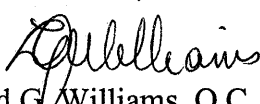
III. **ORDERS** that the deposition be taken on 4 December 2003, in Rwanda, at a place to be chosen by the Registry and the same be communicated to the Chamber and to the parties not later than 21 November 2003;

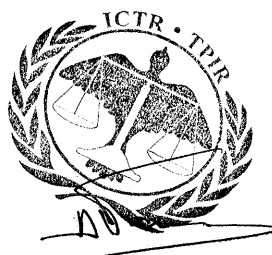
IV. **ORDERS** that the Registrar make all necessary arrangements to facilitate the taking of the deposition;

V. **APPOINTS** Judge Lloyd G. Williams, Q.C., as its Officer for the taking of the deposition of Witness QX.

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

Arusha, 11 November 2003

  
Lloyd G. Williams, Q.C.  
Presiding Judge

  
Andrésia Vaz  
Judge

  
Khalida Rachid Khan  
Judge

[Seal of the Tribunal]

ICTR-2000-55-I

11-11-2003

(992bis - 989bis)

992bis  
2/11/03



UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

### CHAMBRE DE PREMIÈRE INSTANCE III

**Devant les juges :** Juge Lloyd G. Williams, Q.C., Président  
Juge Andréia Vaz  
Juge Khalida Rachid Khan

**Greffier :** Adama Dieng

**Date :** 11 novembre 2003

**LE PROCUREUR**

c.

**Tharcisse MUVUNYI**

**Idelphonse NIZEYIMANA**

**Idelphonse HATEGEKIMANA**

*Affaire No. ICTR-2000-55-I*

2003 NOV 11 A 11:43  
JUDICIAL RECORDS SECTION  
ICTR

### DÉCISION RELATIVE À LA REQUÊTE EXTRÊMEMENT URGENTE DU PROCUREUR AUX FINS DE DÉPOSITION DU TÉMOIN À CHARGE QX

*Article 71 du Règlement de procédure et de preuve*

**Bureau du Procureur :**

Silvana Arbia  
Jonathan Moses  
Adelaide West  
Adesola Adeboyejo  
Manuel Bouwknecht  
Astou M'Bow

**Conseil de la Défense de Tharcisse Muvunyi :**

Michael Fisher, Conseil principal

**Conseil de permanence de Idelphonse Hategekimana :**

Jesse Kiritta

**LE TRIBUNAL PÉNAL INTERNATIONAL POUR LE RWANDA** (le "Tribunal"),

**SIÈGEANT** en la Chambre de première instance III composée des Juges Lloyd G. Williams, Q.C., président, Andréia Vaz et Khalida Rachid Khan (« la Chambre ») ;

**ÉTANT SAISI** d'une Requête déposée le 1<sup>er</sup> octobre 2003 par le Procureur aux fins de recueillir la déposition du Témoin QX (« le témoin ») intitulé « *Prosecutor's Extremely Urgent Motion for the Deposition of Witness QX* » (« la requête ») ;

**CONSIDÉRANT** les lettres datées du 6 octobre 2003 des deux Accusés actuellement en détention, respectivement de Tharcisse Muvunyi à son Conseil, Michael Fisher, et de Idelphonse Hategekimana à la Chambre, relatives à la requête ;

**CONSIDÉRANT** que la Défense de Tharcisse Muvunyi n'a pas répondu à la requête, qu'elle n'a pas non plus demandé à la Chambre une extension des délais prévus par le Règlement ;

**CONSIDÉRANT** le Statut du Tribunal (« le Statut ») et le Règlement, notamment en son Article 71 ;

**STATUE** sur la requête sur la seule base des mémoires soumis par les parties, conformément à l'Article 73 A) du Règlement.

**Arguments des parties**

***Le Procureur***

1. Le Procureur demande à la Chambre d'ordonner, conformément à l'Article 71, que soit recueillie la déposition du Témoin à charge QX. Le Procureur sollicite que cette déposition ait lieu en octobre 2003, qu'elle soit enregistrée sur support vidéo, et qu'elle se tienne en un lieu sûr choisi par le personnel de la Section des Enquêtes du Bureau du Procureur à Kigali (Rwanda).

2. Le Procureur allègue que le Témoin est dans un état critique. Il aurait été gravement malade et évacué à l'étranger pour des soins, sa vie n'ayant pu être sauvée sans des équipements médicaux spécialisés. Les médecins du pays d'accueil ayant déclaré son mal incurable, il a été rapatrié à son lieu de résidence où il vit depuis invalide.

3. Le Procureur allègue aussi, à l'appui de sa requête, que le témoin est âgé de 82 ans et invalide. Le Procureur affirme que la vie du témoin est en danger, et qu'il est souhaitable que la déposition ait lieu aussitôt que possible. Il produit à cet effet la déclaration sous serment d'un membre habilité du Bureau du Procureur à Kigali.

4. Le Procureur souligne enfin l'importance du témoignage de QX. Selon le Procureur, il est un témoin oculaire des attaques menées le 30 avril 1994, par les soldats contre les Tutsi réfugiés à la paroisse de Ngoma, attaques dont il est fait mention dans l'acte d'accusation. Son statut particulier lui aurait permis d'observer ces événements. Son témoignage vaudrait exclusivement à l'encontre des Accusés Idelphonse Hategekimana qui commandait les soldats, et Tharcisse Muvunyi, sous l'autorité de qui le premier agissait, toujours selon le Procureur.





*Le Procureur c. Tharcisse Muvunyi, Idelphone Nizeyimana, Idelphonse Hategekimana, Affaire N°ICTR-2000-55-I*

5. Pour le Procureur, les circonstances exceptionnelles et l'intérêt de la justice, conditions posées par l'Article 71 du Règlement, sont en l'espèce réunis. Le Procureur s'appuie par ailleurs sur des précédents où une telle mesure a pu être ordonnée. Il cite les affaires *Nahimana et consorts*<sup>1</sup>, *Bagambiki et consorts*<sup>2</sup> et *Kupreskic et consorts*<sup>3</sup>.

### **La Défense**

6. L'Accusé Hategekimana fait remarquer qu'il ne bénéficie pas encore de l'assistance d'une personne qualifiée, et affirme que cette circonstance rend difficile toute mise en œuvre de son droit à contre-interroger un témoin à décharge. L'Accusé s'appuie notamment sur une décision de la Chambre de première instance saisie de l'affaire *Le Procureur c. Athanase Seromba*. Cette dernière a sursis à l'examen d'une requête, jusqu'à la commission d'un Conseil.

7. Par ailleurs, l'Accusé conteste que l'âge du témoin puisse être considéré comme une circonstance exceptionnelle au regard de l'Article 71 du Règlement. Il soutient aussi que, si le Témoin QX est aussi malade que le prétend le Procureur, il risque de voir son droit à le contre-interroger écourté pour ménager le témoin.

8. L'Accusé Muvunyi n'évoque aucun argument de fond en réponse à la requête du Procureur mais, dans la lettre à son Avocat, il lui rappelle, l'importance que revêt sa requête aux fins de retrait de son Conseil principal. Il affirme que l'urgence et la nécessité d'un tel retrait paraissent plus accrues encore au regard de requêtes comme celle soumise par le Procureur aux fins de la déposition du Témoin QX.

### **Délibérations**

9. La Chambre rappelle que, conformément à l'Article 90 A) du Règlement, tout témoin doit comparaître devant elle pour déposer. L'Article 71 du Règlement constitue donc une règle dérogatoire spéciale pour la déposition. Une déposition peut être recueillie si des circonstances exceptionnelles et l'intérêt de la justice l'exigent, conformément aux dispositions de ce même Article.

10. En l'espèce, la Chambre est d'avis que l'âge du Témoin QX associé à son état de santé critique constituent des circonstances exceptionnelles au regard de l'Article 71 du Règlement. Si son état de santé s'aggravait, le Procureur perdrait le bénéfice d'un tel témoignage. Ce d'autant plus que la Chambre est d'avis que le témoignage spécifique du Témoin QX est d'une grande importance non seulement parce qu'il prétend avoir été personnellement témoin des faits allégués par le Procureur à l'encontre des deux Accusés, mais en plus parce que son statut en fait un témoin privilégié. Pour la Chambre, l'intérêt de la justice exige dès lors que cette déposition soit recueillie sans attendre le commencement du procès, pour assurer une bonne administration de la justice.

<sup>1</sup> *Prosecutor v. Nahimana et al.*, 25 April 2003.

<sup>2</sup> *Prosecutor v. Ntagerura et al.*, 16 July 2002.

<sup>3</sup> *Prosecutor v. Kupreskic et al.*, 11 February 1999.



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Le Procureur c. Tharcisse Muvunyi, Idelphone Nizeyimana, Idelphonse Hategekimana, Affaire N°ICTR-2000-55-I

11. Aux fins de cette déposition, le Procureur doit communiquer, au moins 21 jours avant la date fixée pour cette déposition, l'identité du Témoin QX à la Défense. La Chambre rappelle le droit de la Défense à être présente à la déposition et à contre-interroger le témoin si elle le souhaite. La déposition sera recueillie sous la police de l'Officier que la Chambre mandatera à cet effet.

12. En l'absence d'un Conseil principal, un Conseil de permanence sera nommé par le Greffier pour sauvegarder les intérêts de la Défense à la déposition, et l'Accusé est tenu de coopérer avec ce Conseil.

## PAR CES MOTIFS,

### LA CHAMBRE

**I. ACCÈDE** à la requête du Procureur aux fins de la déposition du Témoin QX, et **ORDONNE** que cette requête soit enregistrée sur support vidéo, et que l'enregistrement soit mis sous scellé ;

**II. ORDONNE** au Procureur de communiquer à la Défense l'identité du Témoin QX ; **RAPPELLE** à la Défense que ce Témoin est protégé et qu'elle ne saurait dès lors divulguer les informations ayant rapport avec lui, à personne en dehors des équipes de la Défense ;

**III. ORDONNE** que cette déposition soit recueillie le 4 décembre 2003, au Rwanda, en un lieu que le Greffier choisira et communiquera à la Chambre et aux parties au plus tard le 21 novembre 2003 ;

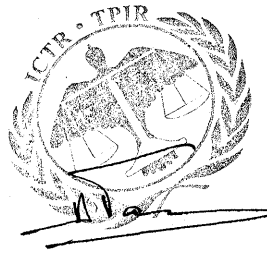
**IV. ORDONNE** que le Greffier prenne toutes les mesures pratiques nécessaires pour faciliter cette déposition ;

**V. NOMME** comme Officier de la Chambre aux fins de cette déposition, le Juge Lloyd G. Williams, Q.C.

Fait en Français et en Anglais, la version anglaise faisant foi.

Arusha, le 11 novembre 2003

  
Lloyd G. Williams, Q.C.  
Président

  
Andréia Vaz  
Juge

  
Khalida Rachid Khan  
Juge

[Sceau du Tribunal]



## **SPECIAL TRIBUNAL FOR LEBANON**

### **RULES OF PROCEDURE AND EVIDENCE**

(adopted on 20 March 2009)

(amended on 5 June 2009)

(amended on 30 October 2009)

(amended on 10 November 2010 and corrected on 29 November 2010)

(amended on 8 February 2012)

(amended on 20 February 2013)

(amended on 9 April 2013)

(corrected on 3 April 2014)

(amended on 12 February 2015)

STL-BD-2009-01-Rev.7



## **Section 8: Depositions**

### **Rule 123**

#### **Taking of Depositions upon Order of the Pre-Trial Judge**

- (A) Where there is reason to believe that the evidence of a potential witness may otherwise become unavailable, the Pre-Trial Judge may order, on request of a Party, that a deposition be taken for use at trial, whether or not the person whose deposition is sought is able physically to appear before the Tribunal to give evidence.
- (B) The motion for the taking of a deposition shall indicate the name and whereabouts of the person whose deposition is sought, the date and place at which the deposition is to be taken, a statement of the matters on which the person is to be examined and of the circumstances justifying the taking of the deposition.
- (C) If the motion is granted, the Party at whose request the deposition is to be taken shall give reasonable notice to the other Party as well as to any victim participating in the proceedings, who shall be given the opportunity to attend the taking of the deposition and question the person whose deposition is being taken. Where the Pre-Trial Judge takes the deposition *proprio motu* notice thereof shall be given to the Parties and to the victims participating in the proceedings.
- (D) Deposition evidence may be taken either at or away from the seat of the Tribunal, and it may also be given by means of a video-conference.
- (E) The Pre-Trial Judge shall ensure that the deposition is taken in accordance with the Rules, and he shall make a record of the deposition. This record shall include the following information:

- (i) the questions and the answers;
- (ii) any issue raised; and
- (iii) whether and how he ruled on any issue raised or whether issues are referred to the Trial Chamber

He shall transmit the record to the Trial Chamber, either as part of the complete file referred to in Rule 95 or at any other stage. (amended 30 October 2009)

**Kurztitel**

Strafprozeßordnung 1975

**Kundmachungsorgan**

BGBI. Nr. 631/1975 zuletzt geändert durch BGBI. I Nr. 19/2004

**§/Artikel/Anlage**

§ 165

**Inkrafttretensdatum**

01.01.2008

**Text****Kontradiktorische Vernehmung des Beschuldigten oder eines Zeugen**

**§ 165.** (1) Eine kontradiktorische Vernehmung sowie die Ton- oder Bildaufnahme einer solchen Vernehmung des Beschuldigten oder eines Zeugen ist zulässig, wenn zu besorgen ist, dass die Vernehmung in einer Hauptverhandlung aus tatsächlichen oder rechtlichen Gründen nicht möglich sein werde.

(2) Die kontradiktorische Vernehmung hat das Gericht auf Antrag der Staatsanwaltschaft in sinngemäßer Anwendung der Bestimmungen der §§ 249 und 250 durchzuführen (§ 104). Das Gericht hat der Staatsanwaltschaft, dem Beschuldigten, dem Opfer, dem Privatbeteiligten und deren Vertretern Gelegenheit zu geben, sich an der Vernehmung zu beteiligen und Fragen zu stellen.

(3) Bei der Vernehmung eines Zeugen ist in seinem Interesse, besonders mit Rücksicht auf sein geringes Alter oder seinen seelischen oder gesundheitlichen Zustand, oder im Interesse der Wahrheitsfindung auf Antrag der Staatsanwaltschaft oder von Amts wegen die Gelegenheit zur Beteiligung derart zu beschränken, dass die Beteiligten des Verfahrens (Abs. 2) und ihre Vertreter die Vernehmung unter Verwendung technischer Einrichtungen zur Wort- und Bildübertragung mitverfolgen und ihr Fragerrecht ausüben können, ohne bei der Befragung anwesend zu sein. Insbesondere wenn der Zeuge das vierzehnte Lebensjahr noch nicht vollendet hat, kann in diesem Fall ein Sachverständiger mit der Befragung beauftragt werden. In jedem Fall ist dafür Sorge zu tragen, dass eine Begegnung des Zeugen mit dem Beschuldigten und anderen Verfahrensbeteiligten möglichst unterbleibt.

(4) Einen Zeugen, der das vierzehnte Lebensjahr noch nicht vollendet hat und durch die dem Beschuldigten zur Last gelegte Straftat in seiner Geschlechtssphäre verletzt worden sein könnte, hat das Gericht in jedem Fall auf die in Abs. 3 beschriebene Art und Weise zu vernehmen, die übrigen im § 156 Abs. 1 Z 1 und 2 erwähnten Zeugen dann, wenn sie oder die Staatsanwaltschaft dies beantragen.

(5) Vor der Vernehmung hat das Gericht den Zeugen überdies darüber zu informieren, dass das Protokoll in der Hauptverhandlung verlesen und Ton- oder Bildaufnahmen der Vernehmung vorgeführt werden können, auch wenn er im weiteren Verfahren die Aussage verweigern sollte. Soweit ein Sachverständiger mit der Durchführung der Befragung beauftragt wurde (Abs. 3), obliegt diesem die Vornahme dieser Information und jener nach §§ 161 Abs. 1. Auf das Alter und den Zustand des Zeugen ist dabei Rücksicht zu nehmen. Die Informationen und darüber abgegebene Erklärungen sind zu protokollieren.

(6) Im Übrigen sind die Bestimmungen dieses Abschnitts sinngemäß anzuwenden.

BUNDESKANZLERAMT  RECHTSINFORMATIONSSYSTEM**Consolidate federal law****Short title**

Code of Criminal Procedure 1975

**Promulgation organ**[BGBl. Nr. 631/1975](#) as amended by [Federal Law Gazette. I Nr. 19/2004](#)**Type**

BG

**§ / article / plant**

§ 165

**Entry into force Date**

01/01/2008

**Expiry date****Shortcut**

Code of Criminal Procedure

**Index**

25/01 Criminal

**Text****Adversarial interrogation of the accused or a witness**

**§ 165.** (1) An adversarial hearing and the sound or video recording of such interrogation of the accused or a witness is admissible if it is to be feared that the evidence in a trial for factual or legal reasons would not be possible.

(2) The inter partes hearing, the Court carried out at the request of the prosecutor's office, in conformity with the provisions of §§ 249 and 250 (§ 104). The court shall give the prosecutor, the accused, the victim, the private parties and their representatives the opportunity to participate in the hearing and to ask questions.

(3) In the examination of a witness is in his interest, particularly in view of his young age or his mental or physical condition, or in the interest of truth at the request of the prosecutor or on its own initiative the opportunity to participate to limit such that the parties to the proceedings (para. 2) and its representatives can follow the interrogation using technical equipment for word and image transmission and exercise their right to ask questions without being present at the interview. In particular, if the witness has not yet completed their fourteenth year, an expert with the survey can be commissioned in this case. In any case, care should be taken that a meeting of the witnesses to the accused and other parties will be omitted if possible.

(4) A witness who has not yet attained the age of fourteen years and could have been by the accused alleged offense violated his sexual sphere has to hear the court in each case to the manner described in para. 3, the other in § 156 para. 1 no 1 and 2 mentioned witnesses if they or the prosecutor's office so request.

(5) Prior to the hearing, the Court has also to inform the witness about the fact that the log read at the trial, and audio or video recordings of interrogation may be presented, even if he should refuse to testify in other proceedings. As far as an expert was commissioned to conduct the survey (para. 3), is responsible for this and making this information and that in accordance with §§ 161 para. 1 to the age and condition of the witnesses is to show consideration. The information and above made statements should be recorded.

(6) the provisions of this section shall apply mutatis mutandis to the remainder.

**Tags**

Sound recording, word transmission

**Last updated on**

03/10/2015

**Law number**

10002326

**Document Number**

NOR40050624

**Summary of the application of § 165 Abs 4 of the Austrian Criminal Code in the *Fritzl* case (Landesgericht St. Pölten, *Fritzl judgment*, AZ 20HV1282008Z). Provided via e-mail by Mag. Andrea Humer, Vice-President of the Landesgericht St.Pölten (regional court of Lower Austria), at the request of the Prosecution:**

**From:** [Andrea.Humer@justiz.gv.at](mailto:Andrea.Humer@justiz.gv.at) [<mailto:Andrea.Humer@justiz.gv.at>]  
**Sent:** 24 June 2015 16:09  
**To:** Wagner, Michaela  
**Subject:** Antwort: RE: Public Judgement Details

Sehr geehrte Frau Wagner,  
entschuldigen sie die verzögerte Antwort.

Das Urteil ist in der Tat für sie nicht von Interesse, es besteht lediglich aus dem Frageschema, das den Geschworenen zur Beantwortung mit Ja/Nein vorgelegt wurde und enthält nur eine Begründung zur Strafzumessung.

Nach § 165 Abs 4 der österreichischen Strafprozessordnung hat das Opfer einer Sexualstraftat (aber auch die Staatsanwaltschaft) das Recht, einen Antrag auf kontradiktorische Vernehmung im Ermittlungsverfahren zu stellen, bei der die Vernehmung durch den Haft- und Rechtsschutzrichter (das ist nicht der erkennende Richter in der Hauptverhandlung) vorgenommen wird. Dabei muss dem Beschuldigten bzw. seinem Verteidiger, der Staatsanwaltschaft und auch dem Privatbeteiligtenvertreter Gelegenheit gegeben werden, sich an der Vernehmung zu beteiligen und Fragen an den Zeugen zu stellen.

Im Falle Josef Fritzl machte die Tochter als Opfer von diesem Recht gebrauch und wurde sehr ausführlich unter Beiziehung der Staatsanwaltschaft, des Verteidigers und der Opfervertreterin einvernommen, die Einvernahme wurde auf Video aufgezeichnet und diese Aufzeichnung war das belastende Beweismittel im Prozess, das mit Einverständnis der Tochter vorgeführt werden durfte. Mit der Zustimmung zur Vorführung dieser Videoaufzeichnung erlangt das kontradiktorisch einvernommene Opfer ein Entschlagungsrecht, das heißt, das Opfer muss im Prozess nicht mehr aussagen und nicht zur Hauptverhandlung kommen.

Durch die Gelegenheit des Beschuldigten, Fragen an den Zeugen zu stellen, wird Art 6 Abs 3 d MRK entsprochen und die Voraussetzung einer Verlesung des Protokolls und Vorführung der Videoaufzeichnung in der Hauptverhandlung geschaffen.

Im Urteil gegen Josef Fritzl findet sich dazu nichts, weil es sich dabei um anzuwendendes geltendes österreichisches Prozessrecht handelt.

Sollten Sie weitere Informationen benötigen, stehe ich Ihnen gerne zur Verfügung, ich gehe davon aus, dass Ihnen der Gesetzestext des § 165 StPO vorliegt.

Mit freundlichen Grüßen  
Andrea Humer

\*\*\*\*\*

HR Mag. Andrea Humer  
Vizepräsidentin  
Landesgericht St. Pölten  
Schießstattring 6, 3100 St. Pölten  
Tel.: 02742/809-201; Fax: 02742/809-410  
mobil: 0676/ 89 89 21701  
E-Mail: [Andrea.Humer@justiz.gv.at](mailto:Andrea.Humer@justiz.gv.at)

\*\*\*\*\*

**Unofficial translation, and interpolation in square brackets, of a portion of the e-mail above, prepared by the Prosecution:**

In the case against Fritzl, the victim [of the SGBC] has made use of her right [to request video-recorded questioning by the investigative judge in advance of trial, as set out in § 165 Abs 4 of the Austrian Criminal Code]. She was questioned at full length and in the presence of the Prosecution, the Defence and the representative of the victim. The interview was video-recorded and constituted the incriminating evidence at trial. It was replayed in the courtroom with the consent of the victim. By virtue of this consent, the victim attained a right to refuse to give evidence, i.e. the victim was not obliged to testify in court or to appear at trial.

Due to the accused's right to put questions to the witness, this procedure is consistent with Art.6(3)(d) of the ECHR, and the requirements for the reading of the minutes and the showing of the video-recording in the courtroom are met.

In the verdict, there is no explicit mention of § 165 Abs 4, as it is the applicable procedural law.

## DECRETO DEL PRESIDENTE DELLA REPUBBLICA 22 settembre 1988, n. 447

Approvazione del codice di procedura penale.

(GU n.250 del 24-10-1988 - Suppl. Ordinario n. 92)

Vigente al: 19-6-2015

## Art. 392.

## Casi

1. Nel corso delle indagini preliminari il pubblico ministero e la persona sottoposta alle indagini possono chiedere al giudice che si proceda con incidente probatorio:

a) all'assunzione della testimonianza di una persona, quando vi e' fondato motivo di ritenere che la stessa non potra' essere esaminata nel dibattimento per infermita' o altro grave impedimento;

b) all'assunzione di una testimonianza quando, per elementi concreti e specifici, vi e' fondato motivo di ritenere che la persona sia esposta a violenza, minaccia, offerta o promessa di denaro o di altra utilita' affinche' non deponga o deponga il falso;

c) all'esame della persona sottoposta alle indagini su fatti concernenti la responsabilita' di altri;

d) all'esame delle persone indicate nell'articolo 210;

e) al confronto tra persone che in altro incidente probatorio o al pubblico ministero hanno reso dichiarazioni discordanti, quando ricorre una delle circostanze previste dalle lettere a) e b);

f) a una perizia o a un esperimento giudiziale, se la prova riguarda una persona, una cosa o un luogo il cui stato e' soggetto a modificazione non evitabile;

g) a una ricognizione, quando particolari ragioni di urgenza non consentono di rinviare l'atto al dibattimento.

*((1-bis. Nei procedimenti per i delitti di cui agli articoli 572, 600, 600-bis, 600-ter e 600-quater, anche se relativi al materiale pornografico di cui all'articolo 600-quater.1, 600-quinquies, 601, 602, 609-bis, 609-quater, 609-quinquies, 609-octies, 609-undecies e 612-bis del codice penale il pubblico ministero, anche su richiesta della persona offesa, o la persona sottoposta alle indagini possono chiedere che si proceda con incidente probatorio all'assunzione della testimonianza di persona minorenni ovvero della persona offesa maggiorenne, anche al di fuori delle ipotesi previste dal comma 1)).*

2. Il pubblico ministero e la persona sottoposta alle indagini possono altresì chiedere una perizia che, se fosse disposta nel dibattimento, ne potrebbe determinare una sospensione superiore a sessanta giorni ovvero che comporti l'esecuzione di accertamenti o prelievi su persona vivente previsti dall'articolo 224-bis. (53)

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## AGGIORNAMENTO (53)

La Corte costituzionale, con sentenza 23 febbraio-10 marzo 1994, n. 77 (in G.U. 1a s.s. 16/03/1994, n. 12) 7), ha disposto l'illegittimita' costituzionale del presente articolo "nella parte in cui non consente che, nei casi previsti dal presente articolo, l'incidente probatorio possa essere richiesto anche nella fase dell'udienza preliminare."

Article 392 of the Italian Code of Criminal Procedure, retrieved from official government website of Italy ([http://www.gazzettaufficiale.it/atto/stampa/serie\\_generale/vigenteAData](http://www.gazzettaufficiale.it/atto/stampa/serie_generale/vigenteAData)) on 19.06.2015.

GAZZETTA UFFICIALE

## **PRESIDENTIAL DECREE 22 September 1998, n. 447**

Approval of the code of criminal procedure.

(GU no.250 dated 24-10-1988 – Suppl. Ordinario n. 92)

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Effective on: 19-6-2015

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Article 392.

Cases

1. At the pre-trial stage, the prosecutor or the person being investigated may request the judge to hold a special evidentiary hearing (“incidente probatorio”) for the purpose of:
  - a) Hearing the *viva voce* testimony of a person for whom there are reasonable grounds (“fondato motivo”) to believe that, due to sickness or other serious impediment, he or she may not be available subsequently for the purpose of trial;
  - b) Hearing the *viva voce* testimony of a person when, on the basis of concrete and specific elements, there are reasonable grounds to believe that he or she is exposed to violence, threat, offer or promise of money or other benefit not to provide evidence or to provide untruthful evidence;
  - c) Examining the person who is being investigated concerning the liability of others;
  - d) Examining the persons listed in article 210 [i.e.: persons who are being prosecuted separately for connected criminal conducts/conducts arising from connected criminal episodes];
  - e) Examining simultaneously [two or more] persons who have provided divergent statements during another special evidentiary hearing or to the prosecutor, when the circumstances in a) and b) arise;
  - f) Securing expert opinion or reproducing a factual situation and simulating the modalities in which that situation occurred [“esperimento giudiziale”];
  - g) Identification [of persons, objects, phenomena/senses] when, due to particular reasons of urgency, such identification cannot be deferred until the commencement of trial proceedings;

(1-bis [translation omitted])

2. The prosecutor or the person being investigated may request to secure an expert opinion when such opinion, if sought at trial, could cause a delay in the proceedings of more than 60 days; or when such expert opinion requires verifications or collection of bodily substances from living individuals as per article 224-bis. (53)

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UPDATE (53)

In its 23 February-10 March 1994 judgement (*Gazzetta Ufficiale*, s.s. 16/03/1994, no. 12) 7), the Constitutional Court has held that the provision of this article that forbids the parties from requesting a special evidentiary hearing during the confirmation hearing is unconstitutional.

**Unofficial translation prepared by the Prosecution.**



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## Wet- en regelgeving

&gt; Instellingen (nu: volledige regeling), opent een nieuw venster

&lt; Zoek opnieuw

&lt; Vorige

Volgende &gt;

## Wetboek van Strafvordering

Geldend op 19-06-2015

Wetstechnische informatie Afdrukken Opslaan     Alles uitklappen Alles inklappen

Opschrift &gt;

Aanhef &gt;

 **Eerste Boek** Algemeene bepalingen >

(Artikelen 1-138d)

 **Tweede Boek** Strafvordering in eersten aanleg >

(Artikelen 139-398)

 **Titel I** Het opsporingsonderzoek >

(Artikelen 139-167a)

 **Titel II** De rechter-commissaris belast met de behandeling van strafzaken >

(Artikelen 168-180)

 **Titel III** Onderzoek door de rechter-commissaris >

(Artikelen 181-241c)

 **Eerste afdeling** Aanleiding tot het verrichten van onderzoekshandelingen >

(Artikelen 181-184)

 **Tweede afdeling** Het verrichten van onderzoekshandelingen door de rechter-commissaris >

(Artikelen 185-199)

Artikel 185 &gt;

Artikel 186 &gt;

Artikel 186a &gt;

Artikel 187 &gt;

Artikel 187a &gt;

Artikel 187b &gt;



De regeling die nu getoond wordt is dermate groot van omvang dat automatisch is overgeschakeld naar artikelsgewijze weergave. Klik op de knop hiernaast om over te schakelen naar complete weergave van de regeling. Let op: voor navigatie door de tekst in artikelsgewijze weergave maakt u gebruik van     in de balk hierboven.

Artikel 187   

1. Indien gegrond vermoeden bestaat dat de getuige of deskundige niet ter terechtzitting zal kunnen verschijnen of dat de gezondheid of het welzijn van de getuige of deskundige door het afleggen van een verklaring ter terechtzitting in gevaar wordt gebracht, en het voorkomen van dit gevaar zwaarder weegt dan het belang om de getuige of deskundige ter terechtzitting te kunnen ondervragen, nodigt de rechter-commissaris de officier van justitie en de verdachte tot bijwoning van het verhoor uit, tenzij het belang van het onderzoek geen uitstel van het verhoor gedooft.
2. De rechter-commissaris kan bevelen dat de verdachte de plaats van verhoor zal verlaten, opdat een getuige of deskundige buiten zijn tegenwoordigheid zal worden ondervraagd. Hij kan bepalen dat de verdachte en diens raadsman het verhoor van de getuige niet mogen bijwonen voor zover dit met het oog op de in [artikel 187d, eerste lid](#), vermelde belangen strikt noodzakelijk is. In het laatste geval is ook de officier van justitie niet bevoegd daarbij tegenwoordig te zijn.
3. De officier van justitie, de verdachte en diens raadsman worden, indien de getuige of deskundige buiten hun aanwezigheid is ondervraagd, zo spoedig mogelijk onderricht over hetgeen de getuige of deskundige heeft verklaard, voorzover dit met de bescherming van de in [artikel 187d, eerste lid](#), vermelde belangen verenigbaar is.

Article 187 of the Dutch Code of Criminal Procedure, retrieved from official government website of the Netherlands on 19.06.2015:

([http://www.wetten.nl/BWBR0001903/TweedeBoek/TitelIII/Tweedeafdeling/Artikel187/geldigheidsdatum\\_19-06-2015](http://www.wetten.nl/BWBR0001903/TweedeBoek/TitelIII/Tweedeafdeling/Artikel187/geldigheidsdatum_19-06-2015)).

**Article 187 of the Dutch Code of Criminal Procedure**

1. If there are reasonable grounds to believe that a witness or expert witness will not be able to appear in court during the trial or that the health and wellbeing of a witness or expert witness will be endangered by testifying in court and where the prevention of this danger outweighs the interests to have the witness or expert witness questioned at trial, the juge d'instruction invites the Prosecutor and the accused to be present during such an interview unless the interests of the investigation prevents any postponement of the interview.
2. The juge d'instruction may order that the accused will leave the place of the interview to ensure that a witness or expert witness can be questioned without the presence of the accused. The juge d'instruction may decide that the accused and his counsel cannot be present during the interview of the witness as far as this is strictly necessary in view of article 187d, first paragraph stated interests. In the latter situation the prosecutor is not allowed to be present during the interview, either.
3. The Prosecutor, the accused and his counsel will, as soon as possible, and to the extent that this is in compliance with the protected interests as laid down in article 187d, first paragraph, be informed of the testimony by the witness or expert witness when the witness was questioned without their being present.

**Unofficial translation prepared by the Prosecution.**

(3) Dieselbe Befugnis haben die Staatsanwaltschaft und der Angeklagte bei den auf Anordnung des Vorsitzenden oder des Gerichts geladenen Zeugen oder Sachverständigen.

(4) Über die Anträge entscheidet das Gericht nach freiem Ermessen.

### **§ 246a**

(1) Kommt in Betracht, dass die Unterbringung des Angeklagten in einem psychiatrischen Krankenhaus oder in der Sicherungsverwahrung angeordnet oder vorbehalten werden wird, so ist in der Hauptverhandlung ein Sachverständiger über den Zustand des Angeklagten und die Behandlungsaussichten zu vernehmen. Gleiches gilt, wenn das Gericht erwägt, die Unterbringung des Angeklagten in einer Entziehungsanstalt anzuordnen.

(2) Ist Anklage erhoben worden wegen einer in § 181b des Strafgesetzbuchs genannten Straftat zum Nachteil eines Minderjährigen und kommt die Erteilung einer Weisung nach § 153a dieses Gesetzes oder nach den §§ 56c, 59a Absatz 2 Satz 1 Nummer 4 oder § 68b Absatz 2 Satz 2 des Strafgesetzbuchs in Betracht, wonach sich der Angeklagte psychiatrisch, psycho- oder sozialtherapeutisch betreuen und behandeln zu lassen hat (Therapieweisung), soll ein Sachverständiger über den Zustand des Angeklagten und die Behandlungsaussichten vernommen werden, soweit dies erforderlich ist, um festzustellen, ob der Angeklagte einer solchen Betreuung und Behandlung bedarf.

(3) Hat der Sachverständige den Angeklagten nicht schon früher untersucht, so soll ihm dazu vor der Hauptverhandlung Gelegenheit gegeben werden.

### **§ 247**

Das Gericht kann anordnen, daß sich der Angeklagte während einer Vernehmung aus dem Sitzungszimmer entfernt, wenn zu befürchten ist, ein Mitangeklagter oder ein Zeuge werde bei seiner Vernehmung in Gegenwart des Angeklagten die Wahrheit nicht sagen. Das gleiche gilt, wenn bei der Vernehmung einer Person unter 18 Jahren als Zeuge in Gegenwart des Angeklagten ein erheblicher Nachteil für das Wohl des Zeugen zu befürchten ist oder wenn bei einer Vernehmung einer anderen Person als Zeuge in Gegenwart des Angeklagten die dringende Gefahr eines schwerwiegenden Nachteils für ihre Gesundheit besteht. Die Entfernung des Angeklagten kann für die Dauer von Erörterungen über den Zustand des Angeklagten und die Behandlungsaussichten angeordnet werden, wenn ein erheblicher Nachteil für seine Gesundheit zu befürchten ist. Der Vorsitzende hat den Angeklagten, sobald dieser wieder anwesend ist, von dem wesentlichen Inhalt dessen zu unterrichten, was während seiner Abwesenheit ausgesagt oder sonst verhandelt worden ist.

### **§ 247a**

(1) Besteht die dringende Gefahr eines schwerwiegenden Nachteils für das Wohl des Zeugen, wenn er in Gegenwart der in der Hauptverhandlung Anwesenden vernommen wird, so kann das Gericht anordnen, daß der Zeuge sich während der Vernehmung an einem anderen Ort aufhält; eine solche Anordnung ist auch unter den Voraussetzungen des § 251 Abs. 2 zulässig, soweit dies zur Erforschung der Wahrheit erforderlich ist. Die Entscheidung ist unanfechtbar. Die Aussage wird zeitgleich in Bild und Ton in das Sitzungszimmer übertragen. Sie soll aufgezeichnet werden, wenn zu besorgen ist, daß der Zeuge in einer weiteren Hauptverhandlung nicht vernommen werden kann und die Aufzeichnung zur Erforschung der Wahrheit erforderlich ist. § 58a Abs. 2 findet entsprechende Anwendung.

(2) Das Gericht kann anordnen, dass die Vernehmung eines Sachverständigen in der Weise erfolgt, dass dieser sich an einem anderen Ort als das Gericht aufhält und die Vernehmung zeitgleich in Bild und Ton an den Ort, an dem sich der Sachverständige aufhält, und in das Sitzungszimmer übertragen wird. Dies gilt nicht in den Fällen des § 246a. Die Entscheidung nach Satz 1 ist unanfechtbar.

### **§ 248**

Die vernommenen Zeugen und Sachverständigen dürfen sich nur mit Genehmigung oder auf Anweisung des Vorsitzenden von der Gerichtsstelle entfernen. Die Staatsanwaltschaft und der Angeklagte sind vorher zu hören.

### **§ 249**

(1) Urkunden und andere als Beweismittel dienende Schriftstücke werden in der Hauptverhandlung verlesen. Dies gilt insbesondere von früher ergangenen Strafurteilen, von Straflisten und von Auszügen aus

The court may order that the defendant leave the courtroom during an examination if it is to be feared that a co-defendant or a witness will not tell the truth when examined in the presence of the defendant. The same shall apply if, on examination of a person under 18 years of age as a witness in the defendant's presence, considerable detriment to the well-being of such witness is to be feared or if an examination of another person as a witness in the defendant's presence poses an imminent risk of serious detriment to that person's health. The defendant's removal may be ordered for the duration of discussions concerning the defendant's condition and his treatment prospects, if substantial detriment to his health is to be feared. When the defendant is present again the presiding judge shall inform him of the essential contents of the proceedings, including the testimony, during his absence.

#### **Section 247a**

##### **[Witness Examination in Another Place]**

(1) If there is an imminent risk of serious detriment to the well-being of the witness were he to be examined in the presence of those attending the main hearing, the court may order that the witness remain in another place during the examination; such an order shall also be admissible under the conditions set out in Section 251 subsection (2), insofar as this is necessary to establish the truth. The decision shall be incontestable. A simultaneous audio-visual transmission of the testimony shall be provided in the courtroom. The testimony shall be recorded if there is a concern that the witness will not be available for examination at a future main hearing and the recording is necessary for establishing the truth. Section 58a subsection (2) shall apply *mutatis mutandis*.

(2) The court may order that the examination of an expert be conducted in such a way that the expert is located in another place than the court and the examination is simultaneously transmitted audio-visually to the place where the expert is located and to the courtroom. This shall not apply in the cases referred to in Section 246a. The decision pursuant to the first sentence shall not be contestable.

#### **Section 248**

##### **[Dismissal of Witnesses and Experts]**

The witnesses and experts who have been examined may absent themselves from the place where the court is sitting only with permission or upon instruction of the presiding judge. The public prosecution office and the defendant shall be heard beforehand.

#### **Section 249**

##### **[Reading Out Documents]**

(1) Certificates and other documents serving as evidence shall be read out at the main hearing. This rule shall apply in particular to previous criminal judgments, criminal records and extracts from parish registers and registers of births, deaths and marriages and to written records of a judicial inspection.

(2) Except in the cases referred to in Sections 253 and 254, the reading may be dispensed with if the judges and the lay judges have taken cognizance themselves of the wording of the certificate or the document and the other participants have had an opportunity to do so. If the public prosecutor, the defendant or the defence counsel objects without delay to the presiding judge's order to proceed in accordance with the first sentence, the court shall decide. A record shall be made of the presiding judge's order, the findings as to cognizance and opportunity, and of the objection.

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## PART I

(3) References in this Part to a referral order being associated with another shall be construed in accordance with section 3(7).

## PART II

## GIVING OF EVIDENCE OR INFORMATION FOR PURPOSES OF CRIMINAL PROCEEDINGS

## CHAPTER I

## SPECIAL MEASURES DIRECTIONS IN CASE OF VULNERABLE AND INTIMIDATED WITNESSES

*Preliminary*

16.—(1) For the purposes of this Chapter a witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this section—

Witnesses eligible for assistance on grounds of age or incapacity.

- (a) if under the age of 17 at the time of the hearing; or
- (b) if the court considers that the quality of evidence given by the witness is likely to be diminished by reason of any circumstances falling within subsection (2).

(2) The circumstances falling within this subsection are—

- (a) that the witness—
  - (i) suffers from mental disorder within the meaning of the Mental Health Act 1983, or
  - (ii) otherwise has a significant impairment of intelligence and social functioning;
- (b) that the witness has a physical disability or is suffering from a physical disorder.

1983 c. 20.

(3) In subsection (1)(a) "the time of the hearing", in relation to a witness, means the time when it falls to the court to make a determination for the purposes of section 19(2) in relation to the witness.

(4) In determining whether a witness falls within subsection (1)(b) the court must consider any views expressed by the witness.

(5) In this Chapter references to the quality of a witness's evidence are to its quality in terms of completeness, coherence and accuracy; and for this purpose "coherence" refers to a witness's ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively.

17.—(1) For the purposes of this Chapter a witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this subsection if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.

Witnesses eligible for assistance on grounds of fear or distress about testifying.

(2) In determining whether a witness falls within subsection (1) the court must take into account, in particular—

- (a) the nature and alleged circumstances of the offence to which the proceedings relate;
- (b) the age of the witness;



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- (c) such of the following matters as appear to the court to be relevant, namely—
  - (i) the social and cultural background and ethnic origins of the witness,
  - (ii) the domestic and employment circumstances of the witness, and
  - (iii) any religious beliefs or political opinions of the witness;
- (d) any behaviour towards the witness on the part of—
  - (i) the accused,
  - (ii) members of the family or associates of the accused, or
  - (iii) any other person who is likely to be an accused or a witness in the proceedings.

(3) In determining that question the court must in addition consider any views expressed by the witness.

(4) Where the complainant in respect of a sexual offence is a witness in proceedings relating to that offence (or to that offence and any other offences), the witness is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the court of the witness' wish not to be so eligible by virtue of this subsection.

Special measures  
available to  
eligible witnesses.

18.—(1) For the purposes of this Chapter—

- (a) the provision which may be made by a special measures direction by virtue of each of sections 23 to 30 is a special measure available in relation to a witness eligible for assistance by virtue of section 16; and
- (b) the provision which may be made by such a direction by virtue of each of sections 23 to 28 is a special measure available in relation to a witness eligible for assistance by virtue of section 17;

but this subsection has effect subject to subsection (2).

(2) Where (apart from this subsection) a special measure would, in accordance with subsection (1)(a) or (b), be available in relation to a witness in any proceedings, it shall not be taken by a court to be available in relation to the witness unless—

- (a) the court has been notified by the Secretary of State that relevant arrangements may be made available in the area in which it appears to the court that the proceedings will take place, and
- (b) the notice has not been withdrawn.

(3) In subsection (2) "relevant arrangements" means arrangements for implementing the measure in question which cover the witness and the proceedings in question.

(4) The withdrawal of a notice under that subsection relating to a special measure shall not affect the availability of that measure in relation to a witness if a special measures direction providing for that measure to apply to the witness's evidence has been made by the court before the notice is withdrawn.

## Israeli Criminal Procedure Law [Consolidated Version], 1982<sup>1</sup>

### Article H: Preservation of Evidence

#### Definitions..

116. In this section:

"Taking of testimony" – including the receipt of documents and other exhibits;

"Pre-trial testimony" – testimony as stipulated in Section 117 or Section 117A;

"Visual documentation" – as defined in the Criminal Procedure Law (Interrogation of Suspects), 2002.

#### Pre-trial taking of testimony

117. (A) After the filing of an indictment with the court, the court will be entitled, at a litigant's request, to take testimony from a person immediately, if the court considers that the testimony is important to the clarification of guilt and that there are reasonable grounds to assume that it would be impossible to take that testimony during the trial or if the court considers that pressure, threat, intimidation, force or promise of benefit would deter the witness from giving true testimony during the trial. After an investigation of an offence has begun but no indictment has yet been filed, the magistrates court or the district court will be entitled to take that testimony at the request of the prosecutor or at the request of the person who might be defendant of the offence.

(B) After the submission of a request to take pre-trial testimony as stipulated in Subsection (A) regarding an offence in accordance with Section 377a of the Penal Law, 1977, the court will decide on the request, no later than two weeks from the day of its submission. The testimony will be taken within two months from the date of that decision, unless the court extends that period for special reasons, which will be recorded.

#### Taking pre-trial testimony from a child

117A. (A) After the filing of an indictment at the court or the opening of an investigation of an offence, which is an offence listed in the addendum to the Rules of Evidence Amendment Law (Protection of Children), 1955, (hereinafter: The Protection of Children Law), the court will be entitled to take testimony immediately from the child as defined in this law, at the request of the prosecutor or at the request of anyone who might be defendant of the offence and with authorization from a juvenile investigator.

(B) The provisions of this article will apply to the testimony taken in accordance with Subsection (A), with the requisite changes, and will also apply to the provisions of sections 2(B) and (C), 2a and 10 of the Protection of Children Law.

#### Pre-trial testimony from a disabled person

117B. (A) After the filing in court of an indictment that pertains to an offence in which the complainant or a witness is a person with mental disabilities or a person with psychological disabilities as defined in the Interrogation and Taking Testimony Procedures for People with Disabilities Law, at the request of the prosecutor or at the request of the defendant, the court will be entitled to take testimony from that person immediately.

(B) Taking of testimony without delay as stipulated in Subsection (A) will be documented in accordance with the provisions of Section 10 of the Interrogation and Taking Testimony Procedures for People with Disabilities Law.

<sup>1</sup> Unofficial translation provided by No Legal Frontiers (NGO), available at: <http://nolegalfrontiers.org/israeli-domestic-legislation/criminal-procedure/criminal01?lang=en>. Retrieved 22.06.2015. The official Hebrew versions of these provisions can be found at: [http://www.knesset.gov.il/review/data/heb/law/kns10\\_criminallaw.pdf](http://www.knesset.gov.il/review/data/heb/law/kns10_criminallaw.pdf); [http://www.nevo.co.il/Law\\_word/law14/LAW-1900.pdf](http://www.nevo.co.il/Law_word/law14/LAW-1900.pdf); and [http://www.nevo.co.il/Law\\_word/law14/law-2067.pdf](http://www.nevo.co.il/Law_word/law14/law-2067.pdf).

## The presence of litigants

118. Pre-trial testimony will be taken in the presence of the prosecutor and in the presence of the defendant or the person who might be defendant of an offence, unless the court decides, for special reasons, which will be recorded, that the testimony will be given without the presence of the defendant or the person who might be defendant. If the court so decides, the testimony will be documented by visual documentation and the provisions of sections 120A (B) and (C) will apply in that instance.

## Procedure in taking testimony

119. (A) The procedure in summoning witnesses and taking their testimony will, as far as possible, be the same as that which applies at the trial, and the provisions of sections 135 to 139 will apply, with the requisite changes, to the record.

(B) An objection to a question and other submissions made during the taking of the testimony will be entered in the record and will be decided upon by the court before which the testimony is adduced as evidence.

## Signing the record

120. The record of proceedings during which testimony was taken will be read out to the witness, and after the witness has confirmed its veracity, he will sign the record and the presiding judge will sign the record. If the witness refuses to confirm its veracity or to sign the record, this will be recorded in the record. The provisions of this section will not apply to testimony that is electronically recorded in its entirety.

## Visual documentation of pre-trial testimony

120A. (A) (1) Pre-trial testimony will be documented using visual documentation.

(2) After the determination of the panel of judges for a trial in which the testimony will be filed as evidence and when that pre-trial testimony is to be taken before the entire panel of judges, the court will be entitled to instruct that the pre-trial testimony will not be documented using visual documentation. A change in the panel after the testimony has been taken will not suffice to disqualify that testimony.

(3) For the purposes of this section, "panel" will also include a single judge.

(B) Notwithstanding the stipulations of Subsection (A), the court taking the pre-trial testimony will be entitled to instruct that the testimony be taken in whole or in part thereof, without visual documentation, if the court is convinced that reasonable means were employed to undertake the documentation, but execution of the visual testimony would delay the taking of testimony and that delay might well prevent the taking of testimony. If the court makes this decision, the lack of visual documentation will not suffice to disqualify the pre-trial testimony.

(C) The court will be entitled to accept as evidence pre-trial testimony that is not documented visually, if the court is convinced that, for special reasons which will be recorded, this is justified in the circumstances of the matter.

## Testimony as evidence in a trial

121.(A) Pre-trial testimony will be considered testimony taken during the trial, but the court will permit summoning the witness to give further testimony if it is possible to bring the witness to the court and one of the following is true:

(1) The defendant had no opportunity to examine the witness;



(2) The defendant was not given reasonable opportunity to appoint a defense attorney for himself who could be present during the taking of the testimony and to examine the witness, or no defense attorney was appointed for the defendant when there was an obligation to appoint a defense attorney;

(3) The court is of the opinion that, for reasons which will be recorded, it is required for the purposes of seeking the truth or in order to do justice.

(B) When a child has given pre-trial testimony in accordance with sections 117A or 117B, that child will not be called to give further testimony unless with the approval from a juvenile investigator. The provisions of this article will apply to that testimony, with the requisite changes and the provisions of sections 2(B), (C), 2A and 10 of the Protection of Children Law will also apply. If the juvenile investigator does not approve the taking of testimony from the child in accordance with this section and the pre-trial testimony was taken before the filing of an indictment, the court will not convict on the basis of that testimony, unless that testimony is supported by other evidence.

### Testimony taken in absence of party

122. If testimony taken under this article is admitted although a party has not had an opportunity to examine the witness, the court will take this fact into account in weighing the evidence.

## Israeli Penal Law, 1977<sup>2</sup>

### Commerce in human beings

- 377A.(a) If a person conducts commerce in human beings for one of the following purposes or if he conducts commerce in a human being and thereby exposes him to the danger of one of them, then he shall be liable to sixteen years imprisonment:
- (1) removal of any organ of his body;
  - (2) bearing a child and removing it;
  - (3) subjecting him to slavery;
  - (4) causing him to perform forced labor;
  - (5) causing him to engage in prostitution;
  - (6) causing him to participate in an obscene publication or in an obscene performance;
  - (7) subjecting him to a sex offense.
- (b) If an offense under subsection (a) was committed on a minor, then the person who committed the offense shall be liable to twenty years imprisonment.
- (c) If a person brokers commerce in human beings, as said in subsection (a), whether or not for consideration, then he shall be liable to the same penalty as the person who trades in that human being.
- (d) In this section, "**commerce in human beings**" – selling or buying a person or performing some other transaction with a person, whether or not for consideration.

### Minimum penalty for the offense of keeping under conditions of slavery and for the offense of commerce in human beings

- 377B. (a) If a person was convicted of an offense under sections 375A or 377A, then his penalty shall not be less than one fourth of the maximum penalty prescribed for that offense, unless the Court decided – for special reasons that shall be recorded – to reduce his penalty.
- (b) A penalty of imprisonment under subsection (a) shall not – in the absence of special reasons – be suspended in its entirety.

### Reasons must be stated when compensation is not awarded

- 377C. If a person was convicted of an offense under sections 375A or 377A, and if the Court did not adjudge compensation for the injured person under section 77, then – in the sentence – the Court shall specify its reasons for not adjudging the said compensation.

### Confiscation

- 377D. (a) In this section and in section 377E –
- "**Struggle against Crime Organizations Law**" the Struggle against Crime Organizations Law 5763-2003;
- "**victim of offense**" – the person directly injured by the offense and also the relative of a person whose death was caused by the offense;

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<sup>2</sup> Unofficial translation provided by the OECD, available at: <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/43289694.pdf>. Retrieved 22.06.2015. The official Hebrew version of this provision can be found at: [http://www.nevo.co.il/Law\\_word/law14/law-2067.pdf](http://www.nevo.co.il/Law_word/law14/law-2067.pdf).

"**offense**" – the offense of keeping under conditions of slavery under section 375A and the offense of commerce in human beings under section 377A;