



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No.: IT-04-84-I
Date: 4 March 2005
Original: English

BEFORE THE REVIEWING JUDGE

Before: Judge Iain Bonomy
Registrar: Mr. Hans Holthuis
Order of: 4 March 2005

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

CONFIDENTIAL AND *EX PARTE*

DECISION ON REVIEW OF THE INDICTMENT

The Office of the Prosecutor

Ms. Carla Del Ponte
Mr. Dermot Groome
Ms. Marie Tuma

I, **IAIN BONOMOY**, Judge of Trial Chamber III of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“International Tribunal”, “Tribunal”),

HAVING BEEN ASSIGNED as the Judge of the Tribunal to whom the indictment in the case of *Prosecutor v. Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj* has been transmitted for review by an Order dated 24 January 2005,

BEING SEISED OF the “Prosecutor’s Motion for Confirmation of an Indictment and for Related Orders”, filed confidentially and *ex parte* by the Office of the Prosecution (“Prosecution”) on 22 December 2004 (“Motion for Confirmation”), to which were attached *ex parte* and confidential Annexes A and B, including the supporting material provided in electronic format on CD-ROM,

NOTING that the Motion for Confirmation includes a request for a warrant of arrest and order for surrender for each of the accused against whom the indictment is confirmed (“Arrest Warrants”), and also requests that the Arrest Warrants be filed under seal,

NOTING the “Request to Prosecution in relation to Review of Indictment Under Rule 47”, filed confidentially and *ex parte* on 7 February 2005, in which I requested the Prosecution to identify the supporting materials on which it relies as providing sufficient evidence in respect of each count,

NOTING the “Prosecution Submission of Annotated Indictment and Supplemental Supporting Materials” filed confidentially and *ex parte* on 11 February 2005, whereby the Prosecution submitted an annotated indictment and supplemental supporting materials, and indicated that it would need to file a second set of supplemental supporting materials,

NOTING the “Prosecution’s Second Submission of Annotated Indictment and Supplemental Supporting Materials” filed confidentially and *ex parte* on 23 February 2005, whereby the Prosecution submitted a revised annotated indictment and its second set of supplemental supporting materials,

NOTING the “Prosecution’s Submission of First Revised Indictment and Final Annotated Indictment”, filed confidentially and *ex parte* on 25 February 2005,

NOTING the “Order Setting the Date for Review of the Indictment”, filed on 3 March 2005, in which I appointed March 3, 2005, at 4:30 p.m. as the date and time for review of the indictment, and invited the Prosecution and a representative from the Registry to attend the review,

NOTING the “Prosecution’s Submission of Second Revised Indictment” (“the Indictment”), filed on 4 March 2005 in conformity with the discussion at the review of the indictment,

CONSIDERING that Article 19 of the Statute of the International Tribunal (“Statute”) provides:

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a *prima facie* case has been established by the Prosecutor, he shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.
2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

CONSIDERING that Rule 47(E) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”) provides:

The reviewing Judge shall examine each of the counts in the indictment, and any supporting materials the Prosecutor may provide, to determine, applying the standard set forth in Article 19, paragraph 1, of the Statute, whether a case exists against the suspect.

CONSIDERING that the Tribunal has defined a *prima facie* case as “a credible case which would (if not contradicted by the Defence) be a sufficient basis to convict the accused on the charge”,¹

CONSIDERING that review of an indictment to determine whether it establishes a *prima facie* case has two distinct components: (1) “an assessment of whether, from the face of the indictment, it is alleged that the accused committed acts which, if proven beyond a reasonable doubt, are crimes as charged and are within the subject matter jurisdiction of the International Tribunal”; and (2) an examination of the accompanying material to ensure that it supports the allegations in the indictment,²

CONSIDERING that I have read the Indictment and all the supporting material now available, and am satisfied that the Indictment establishes a *prima facie* case that Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj (collectively, “the Accused”)³ committed the crimes with which they are charged,

¹ *Prosecutor v. Kordić, Blaškić, Čerkez, Šantić, Skopljak, and Aleksovski*, Case No. IT-95-14-I, “Decision on the Review of the Indictment”, 10 November 1995, at p. 3.

² *Ibid.*

³ See Rule 47(H)(ii).

PURSUANT TO Article 19 of the Statute and Rule 47 of the Rules,

HEREBY CONFIRM each and every count in the Indictment, **ORDER** that the Arrest Warrants be transmitted to the Prosecution, and **FURTHER ORDER** that there be no public disclosure of the Indictment, supporting materials, or Arrest Warrant until they are served on all the Accused or until further order.

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


Judge Iain Bonomy

Dated this fourth day of March 2005
At The Hague
The Netherlands

[Seal of the Tribunal]