



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-04-84bis-PT

Date: 8 February 2011

Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Bakone Justice Moloto, Presiding  
Judge Burton Hall  
Judge Guy Delvoie

**Registrar:** Mr. John Hocking

**Decision:** 8 February 2011

**PROSECUTOR**

v.

**RAMUSH HARADINAJ  
IDRIZ BALAJ  
LAHI BRAHIMAJ**

**PUBLIC**

**DECISION ON IDRIZ BALAJ'S REQUEST FOR CLARIFICATION OF  
THE DECISION REGARDING PARAGRAPH 24 OF THE REVISED  
SHORTENED INDICTMENT**

**Office of the Prosecutor**

Mr. Paul Rogers

**Counsel for the Defence:**

Mr. Ben Emmerson QC and Mr. Rodney Dixon for Ramush Haradinaj  
Mr. Gregor Guy-Smith and Ms. Colleen Rohan for Idriz Balaj  
Mr. Richard Harvey and Mr. Paul Troop for Lahi Brahimaj

**THIS TRIAL CHAMBER** 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 (“Tribunal”);

**BEING SEISED OF** “Idriz Balaj’s Request for Clarification of the Decision of 14 January 2011 Regarding Paragraph 24 of the Revised Shortened Indictment and for Order to the Prosecution to Amend the New Version of the Revised Shortened Indictment”, filed on 26 January 2011 (“Motion”);

**NOTING** “Lahi Brahimaj’s Joinder to Idriz Balaj’s Request for Clarification of the Decision of 14 January 2011 regarding Paragraph 24 of the Shortened Indictment and for Order to the Prosecution to Amend the New Version of the Revised Fourth Amended Indictment”, filed on 27 January 2011 (“Joinder”), in which Lahi Brahimaj joins the arguments and authorities submitted in the Motion;<sup>1</sup>

**NOTING** that the Prosecution has indicated its intention not to file a response to the Motion;<sup>2</sup>

**NOTING** that on 21 July 2010 the Appeals Chamber quashed the Trial Chamber’s decisions to acquit Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj on certain counts and ordered a partial retrial;<sup>3</sup>

**NOTING** that on 15 September 2010 the Trial Chamber ordered that the Fourth Amended Indictment<sup>4</sup> shall be the operative indictment in the partial retrial;<sup>5</sup>

**NOTING** that on 9 November 2010 the Prosecution filed the “Submission of New Version of the Revised Fourth Amended Indictment” which contained “tracked” and “clean” versions of the Fourth Amended Indictment corresponding to what was at issue in the partial retrial (“Shortened Indictment”);

**NOTING** that on 23 November 2010, Balaj filed “Idriz Balaj’s Motion Challenging the New Version of the Revised Fourth Amended Indictment” (“Motion of 23 November 2010”), in which he submitted that the Shortened Indictment had to be amended “to comport with the same allegations regarding the common plan or purpose of the JCE as were made at the initial trial”;<sup>6</sup>

**NOTING** that in the “Decision on Shortened Form of the Fourth Amended Indictment” of 14 January 2011 (“Decision”), the Trial Chamber found that the Appeals Chamber did not order

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<sup>1</sup>Joinder, para. 7.

<sup>2</sup>Email correspondence of 23 January 2011.

<sup>3</sup>*Prosecutor v. Haradinaj, Balaj and Brahimaj*, Case No. IT-04-84-A, Judgement, 19 July 2010 (“Appeal Judgement”)

<sup>4</sup>Fourth Amended Indictment, 16 October 2007.

<sup>5</sup>Order regarding the Operative Indictment and Pleas, 15 September 2010.

<sup>6</sup>Motion of 23 November 2010, para. 30.

amendments to the common purpose of the Joint Criminal Enterprise or to the crimes within its scope;<sup>7</sup>

**NOTING** that in the Decision the Trial Chamber ordered that “paragraph 24 [of the Shortened Indictment] shall be replaced by paragraph 26 of the Fourth Amended Indictment”<sup>8</sup> and that the Prosecution file by 21 January 2011 the revised Indictment in “clean” and “tracked” versions;<sup>9</sup>

**NOTING** that on 21 January 2011 the Prosecution filed its “Submission of Revised Fourth Amended Indictment” (“Submission”), which it stated contained “clean” and “tracked” versions of the Shortened Indictment that had been revised in accordance with the Decision (“Revised Shortened Indictment”);

**NOTING** that in paragraph 24 of the Revised Shortened Indictment paragraph 24 of the Shortened Indictment has been replaced by paragraph 26 of the Fourth Amended Indictment;

**NOTING** that Balaj submits that the Prosecution has re-alleged allegations from paragraph 26 of the Fourth Amended Indictment which it may no longer allege as the Accused have been acquitted for all crimes against humanity and all offences alleged to have taken place anywhere other than at Jablanica/Jabllanicë;<sup>10</sup>

**NOTING** that Balaj requests the Trial Chamber to clarify the Decision as it relates to paragraph 24 of the Revised Shortened Indictment and to direct the Prosecution to strike out all language in paragraph 24 which is inconsistent with the 31 acquittals which are now the subject of final judgements;<sup>11</sup>

**NOTING** that Balaj’s request for amendments to paragraph 24 of the Revised Shortened Indictment<sup>12</sup> appears in contradiction to his earlier request in the Motion of 23 November 2010, that the Prosecution be directed to amend the Shortened Indictment “to comport with the same allegations regarding the common plan or purpose of the JCE as were made at the initial trial”;<sup>13</sup>

**CONSIDERING** that paragraph 24 of the Revised Shortened Indictment describes the common criminal purpose of the Joint Criminal Enterprise for the purpose of the partial retrial and does not

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<sup>7</sup> Decision, para 30. See also Appeal Judgement, paras. 50 and 377.

<sup>8</sup> Decision, para. 42(2)(a).

<sup>9</sup> *Ibid.*, para. 42(3).

<sup>10</sup> Motion, para. 8.

<sup>11</sup> *Ibid.*, para. 9.

<sup>12</sup> See *Ibid.*, para 15.

<sup>13</sup> Motion of 23 November 2010, para. 30.

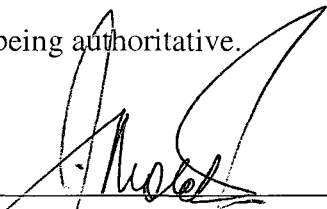
contain any charges against the Accused, nor re-allege allegations which may not be made, as is submitted in the Motion;<sup>14</sup>

**CONSIDERING** that in the Revised Shortened Indictment, the Prosecution replaced paragraph 24 of the Shortened Indictment with paragraph 26 of the Fourth Amended Indictment, pursuant to the Trial Chamber's orders in the Decision, which are consistent with Balaj's Motion of 23 November 2010;

**PURSUANT TO** Rule 54 of the Rules of Procedure and Evidence,

**HEREBY DENIES** the Motion.

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

  
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Judge Bakone Justice Moloto  
Presiding Judge

Dated this eighth day of February 2011  
At The Hague  
The Netherlands

[Seal of the Tribunal]

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<sup>14</sup> See Motion, para. 8.