

IT-04-84bis-AR73.1  
A417- A415  
16 March 2011

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**UNITED  
NATIONS**



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-AR73.1  
Date: 16 March 2011  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Patrick Robinson, Presiding  
Judge Fausto Pocar  
Judge Liu Daqun  
Judge Andréia Vaz  
Judge Theodor Meron

**Registrar:** Mr. John Hocking

**Decision of:** 16 March 2011

**PROSECUTOR**

v.

**RAMUSH HARADINAJ  
IDRIZ BALAJ  
LAHI BRAHIMAJ**

*PUBLIC*

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**DECISION ON REQUEST FOR ORAL ARGUMENT**

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**The Office of the Prosecutor:**

Mr. Paul Rogers

**Counsel for Ramush Haradinaj:**

Ms. Ben Emmerson QC

Mr. Rodney Dixon

**Counsel for Idriz Balaj:**

Mr. Gregor Guy-Smith

Ms. Colleen M. Rohan

**Counsel for Lahi Brahimaj:**

Mr. Richard Harvey

Mr. Paul Troop

**THE APPEALS 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 (“Appeals Chamber” and “Tribunal”, respectively):

**NOTING** the “Appeal Brief on Behalf of Ramush Haradinaj on Scope of Partial Retrial”, filed by Ramush Haradinaj (“Haradinaj”) on 10 February 2011 (“Appeal”) against the “Decision on Shortened Form of the Fourth Amended Indictment” issued by Trial Chamber II of the Tribunal on 14 January 2011;<sup>1</sup>

**NOTING** that the Prosecution filed its confidential Response on 21 February 2011,<sup>2</sup> and that Haradinaj filed his Reply on 25 February 2011;<sup>3</sup>

**NOTING** that in the Reply, Haradinaj requests that an oral hearing be scheduled by the Appeals Chamber to hear the parties before it renders a decision on the Appeal, and submits that the Appeal raises novel and complex questions which justify an oral hearing;<sup>4</sup>

**NOTING** that on 3 March 2011, the Prosecution filed a Sur-Reply requesting leave to file its submission and opposing Haradinaj’s request for an oral hearing;<sup>5</sup>

**NOTING** that in the Sur-Reply, the Prosecution submits that Haradinaj has not shown why the matters raised in his Appeal cannot be addressed effectively in writing and that his request is new and should have been addressed in the Appeal;<sup>6</sup>

**NOTING** that pursuant to Rule 116 *bis* (A) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), interlocutory appeals may be determined entirely on the basis of written briefs;<sup>7</sup>

**CONSIDERING** that the Appeals Chamber will only grant a request for oral arguments on interlocutory appeals if such arguments are deemed necessary for the Appeals Chamber to reach an informed decision;<sup>8</sup>

<sup>1</sup> *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Shortened Form of the Fourth Amended Indictment, 14 January 2011.

<sup>2</sup> Prosecution Response to Haradinaj’s Appeal on Scope of Partial Retrial, 21 February 2011 (confidential). *See also* Prosecution Response to Haradinaj’s Appeal on Scope of Partial Retrial, 22 February 2011 (public redacted version) (“Response”).

<sup>3</sup> Reply Brief on Behalf of Ramush Haradinaj on Scope of Partial Retrial, 25 February 2011 (“Reply”).

<sup>4</sup> *Ibid*, paras 6, 7.

<sup>5</sup> Prosecution Motion for Leave to File Sur-Reply and Sur-Reply to Haradinaj’s Reply Brief on Scope of Partial Retrial, 3 March 2011 (“Sur-Reply”).

<sup>6</sup> *Ibid*, paras 1, 2.

<sup>7</sup> Rule 116 *bis* (A) of the Rules reads: “An appeal under Rule 72 or Rule 73 or appeal from a decision rendered under Rule 11 *bis*, Rule 54 *bis*, Rule 65, Rule 73 *bis* (E), Rule 77 or Rule 91 shall be heard expeditiously on the basis of the original record of the Trial Chamber. Appeals may be determined entirely on the basis of written briefs.” The Appeal was filed under Rule 73 of the Rules. *See Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Application on Behalf of Ramush Haradinaj for Certification Pursuant to Rule 73(B), 3 February 2011, para. 20.

**CONSIDERING** that the submissions in the written pleadings are extensive and that the information before the Appeals Chamber is sufficient to enable it to reach an informed decision;

**FINDING** that an oral hearing is not necessary in this case;

**FOR THE FOREGOING REASONS,**

**GRANTS** the Prosecution leave to file the Sur-Reply, and

**DENIES** Haradinaj's request for an oral hearing.

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

Dated this 16<sup>th</sup> day of March 2011  
At The Hague  
The Netherlands



Judge Patrick Robinson  
Presiding

[Seal of the Tribunal]

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<sup>8</sup> *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-AR73.1, Decision on Interlocutory Appeal of Decision on Second Defence Motion for Adjournment, 25 April 2005, para. 4; *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-AR72.1, Decision on Ante Gotovina's Interlocutory Appeal Against Decision on Several Motions Challenging Jurisdiction, 6 June 2007, para. 8. *See also Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motion for Leave to Present Additional Evidence Pursuant to Rule 115, 5 May 2006, para. 9; *Théoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, Decision on Aloys Ntabakuze's Motion for Severance, Retention of the Briefing Schedule and Judicial Bar to the Untimely Filing of the Prosecution's Response Brief, 24 July 2009, para. 22.