



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-AR73.2

Date: 31 May 2011

Original: English

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31 May 2011  
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**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:** 31 May 2011

**PROSECUTOR**

v.

**RAMUSH HARADINAJ  
IDRIZ BALAJ  
LAHI BRAHIMAJ**

*PUBLIC*

**DECISION ON IDRIZ BALAJ AND LAHI BRAHIMAJ'S  
REQUEST FOR CLARIFICATION OF THE OPERATIVE  
INDICTMENT**

**The Office of the Prosecutor:**

Mr. Paul Rogers

**Counsel for Ramush Haradinaj:**

Mr. 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);

**BEING SEISED OF** the “Appeal Brief on Behalf of Idriz Balaj on Clarification of the Operative Indictment” (“Appeal”) and “Lahi Brahimaj’s Joinder in the Appeal Brief Filed by Idriz Balaj on Clarification of the Operative Shortened Indictment” (“Joinder”), filed by Idriz Balaj (“Balaj”) and Lahi Brahimaj (“Brahimaj”), respectively, on 3 March 2011;

**NOTING** the “Prosecution Response to Appeal Brief on Behalf of Balaj on Clarification of the Operative Indictment and Joinder of Brahimaj”, filed by the Office of the Prosecutor (“Prosecution”) on 10 March 2011;

**NOTING** the “Reply Brief on Behalf of Idriz Balaj on Clarification of the Operative Indictment” and “Lahi Brahimaj’s Reply to Prosecution’s Response to Appeal Brief Filed by Idriz Balaj – and Joined in by Brahimaj – on Clarification of the Operative Shortened Indictment”, both filed on 17 March 2011;

**NOTING** the “Prosecution Motion to Strike and Request for Leave to File Sur-Reply and Sur-Reply to Balaj’s and Brahimaj’s Reply Briefs on Clarification of the Operative Indictment”, filed on 24 March 2011;

**NOTING** “Idriz Balaj’s Request for Leave to File his Reply to the Prosecution Response to his Appeal Brief” and “Lahi Brahimaj’s Request to Admit Late Filing”, both filed on 28 March 2011;

**NOTING** the “Decision on Shortened Form of the Fourth Amended Indictment” of 14 January 2011, in which Trial Chamber II of the Tribunal (“Trial Chamber”) ordered that “[p]aragraph 24 [of the operative Indictment in the retrial] shall be replaced by paragraph 26 of the Fourth Amended Indictment”;<sup>1</sup>

**NOTING** the Prosecution’s submission of the “Revised Fourth Amended Indictment”, filed on 21 January 2011 (“Operative Shortened Indictment”);<sup>2</sup>

**NOTING** “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

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<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, para. 42, referring to *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-T, Fourth Amended Indictment, 16 October 2007.

New Version of the Revised Shortened Indictment”, filed on 26 January 2011, and “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 (collectively, “Motions”);<sup>3</sup>

**NOTING** the “Decision on Idriz Balaj’s Request for Clarification of the Decision Regarding Paragraph 24 of the Revised Shortened Indictment” of 8 February 2011 (“Impugned Decision”), in which the Trial Chamber rejected the Motions of Balaj and Brahimaj that paragraph 24 of the Operative Shortened Indictment contained charges against the Accused<sup>4</sup> or re-alleged crimes of which they had been finally acquitted;<sup>5</sup>

**NOTING** the “Decision on Idriz Balaj’s Application Pursuant to Rule 73(B) for Certification to Appeal the Trial Chamber’s Decision of 8 February 2011” of 24 February 2011, in which the Trial Chamber ordered that certification of the Impugned Decision be granted on the basis that “the question whether to make the revision [of paragraph 24] sought by Balaj would significantly affect the fair and expeditious conduct of the proceedings and the outcome of the trial”;<sup>6</sup>

**CONSIDERING** that the matter at issue in the above-mentioned submissions and decisions is the scope of paragraph 24 of the Operative Shortened Indictment;

**CONSIDERING** that the scope of paragraph 24 of the Operative Shortened Indictment was also the subject of litigation in the Appeals Chamber’s “Decision on Haradinaj’s Appeal on Scope of Partial Retrial” of 31 May 2011, in which the Appeals Chamber rejected the submission that, in the context of the partial retrial, paragraph 24 of the Operative Shortened Indictment exposed the Accused to charges other than those which were the subject of the retrial and that there was therefore no violation or potential violation of the principles of *non bis in idem* or *res judicata*;<sup>7</sup>

<sup>2</sup> *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, Revised Fourth Amended Indictment, 21 January 2011.

<sup>3</sup> *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, 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, 26 January 2011; *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, 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”, 27 January 2011.

<sup>4</sup> Ramush Haradinaj (“Haradinaj”), Balaj and Brahimaj are herein referred to collectively as the “Accused”.

<sup>5</sup> *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Idriz Balaj’s Request for Clarification of the Decision Regarding Paragraph 24 of the Revised Shortened Indictment, 8 February 2011, pp. 2-3.

<sup>6</sup> *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Idriz Balaj’s Application Pursuant to Rule 73(B) for Certification to Appeal the Trial Chamber’s Decision of 8 February 2011, 24 February 2011, para. 14.

<sup>7</sup> *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-AR73.1, Decision on Haradinaj’s Appeal on Scope of Partial Retrial, 31 May 2011 (“Decision”), para. 32.

**FINDING** that this Decision renders moot the issues raised and the relief requested in the Appeal and the Joinder;<sup>8</sup>

**HOLDS** that a decision on the merits is not necessary in these circumstances;

**HEREBY, DISMISSES** the Appeal and the Joinder.

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

Dated this thirty-first day of May 2011  
At The Hague  
The Netherlands



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Judge Patrick Robinson  
Presiding

**[Seal of the Tribunal]**

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<sup>8</sup> The Appeals Chamber is mindful of the fact that Balaj and Brahimaj did not seek an order to amend the first sentence of paragraph 24 of the Operative Shortened Indictment, whereas this was specifically requested by Haradinaj. However, this does not change the ultimate effect of the Decision which disposes of the issues raised by Balaj and Brahimaj.