

**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-T  
Date: 3 February 2012  
Original: English

**IN TRIAL CHAMBER II**

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

**Registrar:** Mr. John Hocking

**Decision of:** 3 February 2012

**PROSECUTOR**

**v.**

**RAMUSH HARADINAJ  
IDRIZ BALAJ  
LAHI BRAHIMAJ**

***PUBLIC***

**JUDGE DELVOIE'S PARTIALLY DISSENTING  
OPINION ON THE DECISION ON PROSECUTION  
MOTION TO ADMIT EVIDENCE FROM THE BAR  
TABLE, REVISE ITS RULE 65TER WITNESS AND  
EXHIBIT LISTS AND ADMIT EVIDENCE PURSUANT  
TO RULE 92TER, DATED 26 JANUARY 2012**

**The Office of the Prosecutor**

Mr. Paul Rogers

**Counsel for the Accused**

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

**PARTIALLY DISSENTING OPINION OF JUDGE DELVOIE**

1. As indicated in the “Decision on Prosecution Motion to Admit Evidence from the Bar Table, Revise its [Rule] 65*ter* Witness and Exhibit Lists and Admit Evidence Pursuant to Rule 92*ter*”, issued on 26 January 2011 by the Majority (“Decision”), I respectfully disagreed with the determination of the following requests stemming from the Motion:<sup>1</sup>

- (a) Request to admit excerpts of the Book (Rule 65*ter* number 3002) from the bar table;
- (b) Requests to add an inscribed copy of the Book and the Letter (Rule 65*ter* numbers 3112 and 3113) to the Prosecution’s exhibit list; and
- (c) Request to admit the Interview, Rule 65*ter* no. 3000, from the bar table.

I hereby append my dissenting opinion to the Decision by the Majority.

2. In essence, the Prosecution sought to have the relevant extracts of the Book authored by Bardh Hamzaj, which purportedly contains a record of a dialogue between Haradinaj and the author, admitted into evidence. All other materials were tendered by way of supporting evidence to satisfy the Chamber of the reliability and authenticity of the Book.

3. I note that Haradinaj accepts that the Book is based on a dialogue between him and the author, but states that there is no further verification of the fact that it accurately reflects his words as opposed to those of the author.<sup>2</sup> He goes on to state that there is no evidence to show that he approved the contents of the Book, in whole or in part.<sup>3</sup> Significantly, he adds that the Prosecution did not seek to adduce an audio or other record of the dialogue between the author and him.<sup>4</sup>

4. The Prosecution, in its Reply, relies largely on the Letter written by the counsel of Haradinaj in the course of preliminary negotiations pursuant to an order to that effect by the Pre-Trial Judge, wherein the counsel accepted the authenticity and admissibility of the Book in its entirety.<sup>5</sup>

5. With regard to the Letter, I agree with the Majority in its conclusion but wish to supplement the reasoning.<sup>6</sup> In my opinion, unless an agreement is placed on record, every party is at liberty to review and revise their position uncurtailed by any prior position. However, it is imperative to the

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<sup>1</sup> For ease of reference and uniformity, I adopt the defined terms as used in the Decision in this opinion.

<sup>2</sup> Response, para. 25.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> Reply, para. 3.

<sup>6</sup> Decision, para. 30.

integrity of the process of pre-trial negotiations that parties approach each other in good faith and do not mislead or misrepresent facts as a matter of strategy.

6. With respect to the inscribed copy of the Book, I note that Haradinaj did not dispute that it in fact carries his signature and dedication to the journalist, Ms. Schnieper,<sup>7</sup> while with respect to the record of the Interview, Haradinaj relied on this very record to assert that his single reference to the Book as “my book” was made in the context of the attack on his family home in March 1998.<sup>8</sup> In both instances, he merely contests the inference that the Prosecution invited the Chamber to draw, namely that such inscription or reference demonstrate the accuracy, methodology, acceptance or ownership of the Book by Haradinaj, thereby establishing its the reliability and authenticity.

7. In my view, Haradinaj’s reference to the Book in the Interview as “my book” and his presentation of an inscribed copy to Ms. Schnieper are both unchallenged and unprompted acts made of his own volition. They demonstrate his willingness to accept, in the most general of terms, ownership and the accuracy of the Book. While these acts may have been motivated by propaganda and self-promotion, which, to my mind, could well go to his state of mind in the context of the war, they were devoid of any influence that a prospective indictment against him could have had. Absent a disclaimer of some or all of its other contents in the course of that Interview, I am sufficiently satisfied that together they establish the *prima facie* reliability of the Book.<sup>9</sup>

8. A Trial Chamber is not required to establish the truth and veracity of the contents of every piece of documentary evidence or verify its sources of information at the time of its admission. As stated in the Decision, proof of authenticity, which amounts to no more than “whether a document is what it professes to be in origin or authorship”, is not required at the stage of admissibility.<sup>10</sup>

9. There being no disagreement as to the relevance of the extracts identified by the Prosecution, I would have admitted the three documents - the inscribed copy of the Book, relevant portions of the Interview and the extracts of the Book as identified by the Prosecution - at this stage, allowing their probative value to be determined in the overall context of the trial record.

10. I note that while some unrelated portions of Ms. Schnieper’s statement bear relevance to the case, the Prosecution seeks to have her added to its witness list primarily for the purpose of authenticating the inscribed copy of the Book and to verify Haradinaj’s statement of ownership.<sup>11</sup> Given that I would have admitted the relevant extracts of the Interview and the inscribed copy of

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<sup>7</sup> Response, para. 18.

<sup>8</sup> Response, para. 17.

<sup>9</sup> Decision, para. 25.

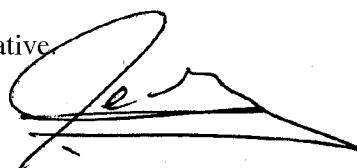
<sup>10</sup> Decision, para. 27.

<sup>11</sup> Motion, paras 26-27.

the Book, I do not consider that the anticipated evidence of Ms. Schnieper would add much corroborative value in this respect.

11. Finally, I would have required the Prosecution to explore the possibility of procuring either a statement directly from the author, Bardh Hamzaj, or an audio or other recording of his interview with Haradinaj, pursuant to Rule 89(E), in order to assist the Chamber in arriving at a determinative position on the prospective probative value of the Book.

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



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Judge Guy Delvoie

Dated this third day of February 2012

At The Hague

The Netherlands

**[Seal of the Tribunal]**