

IT-04-84bis-T
D6914 - D6912
30 August 2012

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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: 29 August 2012
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision: 29 August 2012

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

CONFIDENTIAL

**DECISION ON PROSECUTION REQUEST TO FILE PUBLIC
REDACTED VERSION OF FINAL TRIAL BRIEF,
NOTIFICATION OF CORRIGENDUM TO FINAL TRIAL
BRIEF AND REQUEST TO LIFT THE UNDER SEAL STATUS
OF AN EXHIBIT**

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for the Accused:

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

Made public as per Trial Chamber's Decision
on the 08/11/2012 RP D7310-D7308

TRIAL CHAMBER II ("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 the "Prosecution Request to File Public Redacted Version of Final Trial Brief, Notification of Corrigendum to Final Trial Brief and Request to Lift the Under Seal Status of an Exhibit," filed confidentially on 19 July 2012 ("Motion"), requesting that it be permitted (i) to file its Proposed Public Brief; (ii) to make non-substantive changes to its Final Trial Brief; and (iii) that the confidential status of Mahir Demaj's statement be lifted;¹

NOTING that none of the Accused filed a response to the Motion;

NOTING that in its Motion, the Prosecution seeks, in particular, the Trial Chamber's authorisation to file its Proposed Public Brief as a public document, maintaining that it is not for the Parties to decide which aspects of confidential testimony are to be disclosed;²

CONSIDERING that the authorities cited by the Prosecution do not support such a request;³

CONSIDERING that no grant of leave is required, and the Prosecution therefore does not need the Chamber's authorisation to file its Proposed Public Brief;

EMPHASIZING, however, that any information that enables protected witnesses and sources to be identified, including the names, places of residence at the time of the events, places of residence at the time of trial or thereafter, and any extracts of testimony or documentary evidence that would enable the public to identify the protected witnesses or sources and/or deduce that the person in question was involved in the present case, should be redacted;

NOTING further that the Prosecution submits a list of non-substantive corrections to its Proposed Public Brief;⁴

CONSIDERING that the proposed changes are minor and do not substantively alter the Prosecution's submissions in its Final Trial Brief;

¹ Motion, paras 1-3.

² Motion, para. 1.

³ See *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on Prosecution Motion for Clarification Concerning Preparation of Public Version of Final Trial Briefs, 25 March 2011, p. 2 (clarifying protective measures to be applied and ordering that the parties conform to the Chamber's interpretation in filing their public versions of the final trial briefs).

⁴ Motion, paras 2, 6.

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NOTING that the Prosecution also requests that the confidential status of Mahir Demaj's statement admitted as Exhibit P24 be lifted;⁵

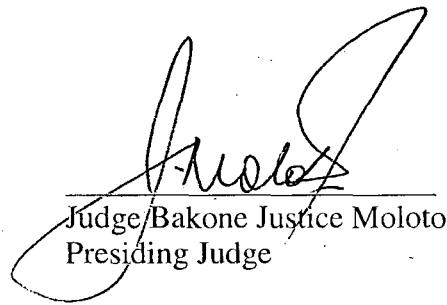
CONSIDERING that Mahir Demaj has not been granted protective measures by this or any other Chamber, that his statement was admitted as a public exhibit in the original trial, and that his statement was incorrectly tendered as an 'under seal' exhibit in the retrial;⁶

FOR THE FOREGOING REASONS,

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

DISMISSES as unnecessary the Prosecution's request for permission to file its Proposed Public Brief and **GRANTS** the Motion in all other respects, and

ORDERS the Registry to remove the 'under seal' status of Exhibit P24 and to notify the Chamber and the Parties accordingly.



Judge/Bakone Justice Moloto
Presiding Judge

Done this twenty-ninth day of August 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

⁵ Motion, para. 7.

⁶ Motion, para. 7.