



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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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”;¹

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

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

¹ *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”);³

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 Accused⁴ or re-alleged crimes of which they had been finally acquitted;⁵

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”;⁶

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*;⁷

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

³ *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.

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

⁵ *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.

⁶ *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.

⁷ *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;⁸

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

Judge Patrick Robinson
Presiding

[Seal of the Tribunal]

⁸ 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.