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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-04-84-T
Date: 30 November 2007
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Frank Höpfel
Judge Ole Bjørn Støle

Registrar: Mr Hans Holthuis

Decision of: 30 November 2007

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

**DECISION ON PROSECUTION'S MOTION TO TENDER DOCUMENTS ON ITS
RULE 65 TER EXHIBIT LIST**

Office of the Prosecutor

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1. This is a decision on the Prosecution's motion for admission into evidence of certain documents on its Rule 65 *ter* exhibit list as specified in Annexes A, C, E, H, J and K of its Motion.¹ The Prosecution further tenders several maps from the Prosecution's map book.²
2. The Chamber decided on 13 November 2007 not to admit Annexes A, C and E of the Prosecution's Motion, with reasons to follow. This decision was communicated informally to the parties. The Chamber invited a response of the Defence to Annexes H-K.
3. The Defence for Haradinaj opposes the admission of the documents in Annexes H-K as tendered from the bar table at a very late stage of the Prosecution's case.³ The Defence for Balaj joins the Defence for Haradinaj.⁴
4. Tendering evidence from the bar table rarely allows for proper contextualisation, leaving the Chamber to determine the material's relevance and probative value on the basis of the proposed evidence alone.

Annex A: Interview with the Accused Ramush Haradinaj published in English as a book in 1999

5. Annex A of the Prosecution's Motion features a book containing Bardh Hamzaj's interview of Ramush Haradinaj, entitled "A Narrative about War and Freedom", published in 1999. The Prosecution has identified some relevant parts of the book, which refer to the level of organization of the KLA during the indictment period, Ramush Haradinaj's *de facto* control of the KLA in the Dukagjin area in early 1998 and his efforts to arm, organize and unify it under his command.⁵ Annex B is a letter of the Defence for Haradinaj dated 9 January 2007, which is not tendered. In this letter, the Defence acknowledges that the book is a compilation of interviews of Ramush Haradinaj conducted by Bardh Hamzaj.⁶
6. Large parts of the book refer to matters outside the Indictment period and have no relevance to the present case. These include the development of the war in Kosovo from

¹ Prosecution's Motion to Tender Documents on Its Rule 65 *ter* Exhibit List, 8 November 2007 ("Motion").

² Motion, paras 15-16, 24.

³ Response on Behalf of Ramush Haradinaj to Prosecution's Motion to Tender Documents on Its Rule 65 *ter* Exhibit List, 16 November 2007 ("Haradinaj's Response"), paras 2, 6, 10-11, 14.

⁴ Idriz Balaj's Joinder in "Response on Behalf of Ramush Haradinaj to Prosecution's Motion to Tender Documents on Its Rule 65 *ter* Exhibit List, 16 November 2007 ("Balaj's Response"), paras 1-2.

⁵ Motion, para. 7.

⁶ Motion, para. 6, Annex B.

autumn 1998 onwards,⁷ the involvement of NATO and the situation in Kosovo and its political landscape at the time.⁸

7. Some passages of the book are indeed relevant to the case. They relate to topics such as the encounter of the KLA and the FARK, and the KLA meeting on 26 May 1998 at which the Dukagjin area was divided into four subzones and Ramush Haradinaj appointed as their head. On these matters, the Chamber has received evidence in the form of viva voce testimony. Other relevant topics covered in the book include Ramush Haradinaj's creation of a network in the Dukagjin Operational Zone, and Idriz Balaj's role as the head of the Black Eagles. However, the Chamber considers these passages and the content of the book in general to be of low probative value. First and foremost, the book features hearsay in the form of statements recorded by an interviewer. The Chamber knows little about the statements' context, when they were made, for which purpose, and whether, beyond the acknowledgement mentioned in the last line of paragraph 5, Ramush Haradinaj approved the text. They might have been given for propagandistic purposes, to mislead, or to tell the truth. For all of the foregoing reasons, Annex A is not admitted.

Annex C: Oral interview with Ramush Haradinaj recorded in 2001

8. Annex C features an oral interview of Ramush Haradinaj by a Swiss journalist, recorded in 2001. Annex D consists of the seizure records of the Prosecution relating to the audiotape of the interview. The latter Annex is not tendered.

9. The Chamber considers large parts of the interview to be irrelevant to this case.⁹ Other parts have some relevance, such as those concerning the first appearance of the KLA in 1994, Ramush Haradinaj's perception of himself as one of its founders,¹⁰ and his assessment that the area of Peć/Pejë, Dečani/Dečan, Đakovica/Gjakovë and Klina/Klinë was his base during the war.¹¹ On some of these issues, the Chamber has received better evidence. The Chamber knows little about the context and purpose of the interview, and is unable to correctly assess its content. It often deals with background information and personal history which do not assist the Chamber; it also often lacks sufficient detail to enable the Chamber to adequately assess its probative value. Consequently, Annex C is not admitted.

⁷ Motion, Annex A, pp. 115-119, 145-165.

⁸ Motion, Annex A, pp. 165-183.

⁹ Concerning Haradinaj's education, Motion, Annex C, p. 1; his various occupations in Switzerland, *ibid.*, p. 2-4, 9; his involvements in sports, *ibid.*, pp. 3, 10-11; his private relationship with another person, *ibid.*, pp. 4-5; and other such matters, *ibid.*, pp. 11-14.

¹⁰ Motion, Annex C, pp. 6-8.

Annex E: Notebook seized from Idriz Balaj's home

10. Annex E features a notebook seized from Idriz Balaj's home, which covers different events involving the KLA and the Black Eagles, such as a trek from Albania to Jablanica/Jabllanicë and Glodane/Gllogjan,¹² war preparations and training in different villages,¹³ the creation of the Black Eagles on 14 April 1998,¹⁴ and agendas for several meetings.¹⁵ Annex F contains the UNMIK search and seizure records relating to the notebook. The latter annex is not tendered.

11. The Prosecution alleges that the notebook contains a retrospective of events of 1998 written from the perspective of Idriz Balaj.¹⁶ The Prosecution is uncertain whether the notebook is in his handwriting.¹⁷ Due to the uncertainties with regard to the identity of the author, the source of the information, and the way in which the source and the author communicated, the Chamber finds it difficult to sufficiently establish the probative value of these notes. It is also unclear to the Chamber what purpose the notes served. Therefore, Annex E is not admitted.

Annex H: Additional KLA documents

12. Annex H contains 16 compilations of various KLA documents, which are listed, discussed and labelled with tab numbers in Annex G.¹⁸ The latter annex is not tendered.

13. The Defence for Haradinaj and the Defence for Balaj oppose the admission of the documents in Annex H.¹⁹ Regarding the 13 KLA documents labelled with tabs 1-3 and 5-14, seized by the Prosecution together with other documents, which were shown to Witness Bislim Zyrapi, the Defence for Haradinaj and the Defence for Balaj argue that the Prosecution has not shown good cause and has not explained its failure to tender the documents under tabs 1-3 and 5-14 through Bislim Zyrapi.²⁰ They also argue that the documents are not directly relevant to any of the counts in the Indictment.²¹

¹¹ *Ibid.*, p. 10.

¹² Motion, Annex E, pp. 28-29.

¹³ *Ibid.*, pp. 30-31.

¹⁴ *Ibid.*, p. 32.

¹⁵ *Ibid.*, pp. 33-42.

¹⁶ Motion, paras 11-12.

¹⁷ *Ibid.*, para. 14.

¹⁸ Even if the tab numbers only appear in Annex G, and not in Annex H, the Chamber will only refer to the latter annex, which contains the tendered documents, in its discussion below.

¹⁹ Haradinaj's Response, para. 3; Balaj's Response, para. 1.

²⁰ Haradinaj's Response, paras 4-6; Balaj's Response, para. 1.

²¹ Haradinaj's Response, para. 7; Balaj's Response, para. 1.

14. The Prosecution has established through the declaration of Harjit Sandhu, dated 19 November 2007, how it came into possession of the document labelled as tab 4.²² With regard to the remaining documents in Annex H, the Prosecution established their provenance through the 6 November 2007 declaration of Harjit Sandhu, the 7 November 2007 declaration of Barney Kelly and the 5 November 2007 declaration of Deyan Mihov.²³

15. The documents labelled tab 1-3 in Annex H are two KLA identification cards and one KLA membership card. There are some indicia of reliability, such as a KLA stamp or logo, signatures by Ramush Haradinaj and – in the case of the membership card – a form of KLA document similar to that recognised by Witness Bislim Zyrapi, which bears the signature of Ramush Haradinaj.²⁴ Tabs 6-9 of Annex H are additional such membership cards, bearing a KLA logo and signed by Ramush Haradinaj, issued within the Indictment period. These documents are of some assistance to the Chamber with regard to the organization of the KLA and the position held by Ramush Haradinaj. They are relevant, have probative value, and are therefore admitted into evidence.

16. The document under tab 4 of Annex H consists of an agenda for a constituent meeting of the KLA Dukagjin Operative Staff on 24 June 1998, which was attended by the Accused Ramush Haradinaj and Lahi Brahimaj. The agenda appears to be initialled by Ramush Haradinaj, and relates to the structure and organization of the KLA and the involvement of Ramush Haradinaj and Lahi Brahimaj. The document is relevant, has probative value, and is therefore admitted into evidence.

17. Tab 5 of Annex H contains a request to Ramush Haradinaj from soldiers waiting to be armed, dated 2 July 1998. This document corroborates evidence the Chamber has received about the procurement of weapons from Albania. The Chamber finds it to be relevant and probative and therefore admits it into evidence.

18. Tab 10 of Annex H consists of various records in a notebook concerning the Black Eagles and the KLA. Various lists of names and some remarks on ammunition on pages 1 and 19 of the translated document lack contextualisation. The Chamber therefore cannot regard them as relevant. Many personal details of members of the KLA and the Black Eagles are

²² Prosecution's Reply to Defence Response to Prosecution's Motion to Tender Documents on Its Rule 65 *ter* List, 19 November 2007 ("Prosecution's Reply"), para. 6, Annex A.

²³ Prosecution's Submission of Chain of Custody Information for Exhibits Tendered through Bislim Zyrapi, Annex A: Declaration of Harjit Sandhu, Annex C: Declaration of Barney Kelly, 7 November 2007; Declaration of Deyan Mihov on Provenance and Chain of Custody of Certain KLA Documents, 7 November 2007.

²⁴ P118 (Bislim Zyrapi, witness statement, 25 November 2005), para. 28.

provided on pages 2-17 of the translated document. Many of these members joined the KLA or the Black Eagles within the Indictment period. These personal details are comparable to the information given in the membership cards. This information has some relevance with regard to the level of organization of the KLA and the Black Eagles, except to the extent that it falls outside the Indictment period. The Chamber is not assisted by random references to armament, as found on page 18 of the translated document. In sum, the Chamber admits pages 2-17 of tab 10.

19. Tab 11 of Annex H contains daily reports on KLA patrols dated between 30 April and 25 May 1998. Although the documents are signed by the reporting officer "Xhevdeti" and were seized from the KLA, they lack contextualisation, an example of this being that they do not specify the geographical location of the patrols. The Chamber finds that their probative value is below the threshold of admission and they are therefore not admitted into evidence.

20. Tab 12 of Annex G features notes of the KLA Dukagjin Operational Staff, signed by "Sali Veseli", dated 28 June 1998, which concern the arrival of FARK soldiers in the area of Junik in Dečani/Deçan municipality. These notes are relevant and have probative value, and are therefore admitted into evidence.

21. Tab 13 of Annex H consists of an order of the Junik headquarters of the KLA Dukagjin Operational Staff of 30 June 1998 regarding the control of vehicles, fuel and food in the area. The order concerns the control of territory by the parties to the conflict. This document is relevant and has probative value and the Chamber therefore admits it into evidence.

22. Tab 14 of Annex H, which is a weekly KLA report of 24 July 1998 concerning the tasks of local staff and a surprise attack in Rakovina, lacks contextualisation, and its relevance and probative value are therefore insufficiently clear to warrant admission. Tab 16 of Annex H is a propagandistic appeal to join the KLA's cause, signed by Ramush Haradinaj and dated 20 July 1998. The Chamber considers that it lacks probative value, and does not admit it into evidence. Finally, the Chamber notes that the memorandum of Sadri Selca of 25 August 1998 contained in tab 15 of Annex H has already been admitted into evidence as P1229.²⁵

Annex J: VJ documents

23. Annex J consists of three Yugoslav Army (VJ) documents. The first VJ document complements other evidence that is before the Chamber concerning the arrest of KLA soldiers

²⁵ T. 11011.

by Military Police Staff on 23 May 1998.²⁶ The second VJ document features a Priština Corps report of 27 May 1998, which reports the presence of KLA fighters at the northern slopes of the mountain Radonjička Suka near Lake Radonjić/Radoniq. The third VJ document is a Priština/Prishtinë Corps report of 6 June 1998, which mentions among other things the presence of armed persons in Jasić/Jasiq. These documents relate to the KLA and its control of territory. The Chamber considers that the documents are relevant and have probative value, and therefore admits them into evidence.

Annex K: ICRC missing person reports

24. The ICRC missing person reports contained in Annex K deal with Nenad Remištar, Ivan Zarić, Agron Berisha, Kujtim Imeraj, Xhevat Berisha and Tush Frokaj, who are the missing persons mentioned in counts 17-18, 21-24 and 29-30 of the Indictment. The Chamber considers that these reports are relevant and have probative value and therefore admits them into evidence.

Maps tendered

25. Although the Prosecution has only tendered certain maps from the Prosecution's map book,²⁷ the Chamber admits into evidence all the maps in the map book.

26. For the foregoing reasons, the Trial Chamber;

ADMITS tabs 1-9, 12-13 of Annex H; Annex J; Annex K; the maps in the Prosecution's map book; and pages 2-17 of tab 10 of Annex H;

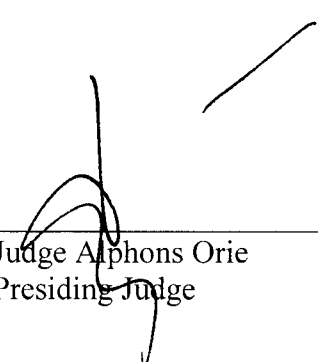
DENIES ADMISSION of the remaining parts of tab 10 of Annex H, as well as tabs 11, 14, 16 of Annex H; and Annexes A, C and E;

ORDERS the Prosecution to upload the admitted items into eCourt, and the Registrar to assign exhibit numbers to them and inform the Chamber and the parties of the exhibit numbers so assigned.

²⁶ P1017 (Dragan Živanović, witness statement, 9 August 2007), para. 81; P1049.

²⁷ Motion, para. 15.

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



Judge Alphons Orié
Presiding Judge

Dated this 30th day of November 2007
At The Hague
The Netherlands

[Seal of the Tribunal]