



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-PT

Date: 8 February 2011

Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision: 8 February 2011

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

**DECISION ON IDRIZ BALAJ'S REQUEST FOR CLARIFICATION OF
THE DECISION REGARDING PARAGRAPH 24 OF THE REVISED
SHORTENED INDICTMENT**

Office of the Prosecutor

Mr. Paul Rogers

Counsel for the Defence:

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

THIS TRIAL 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 “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”, filed on 26 January 2011 (“Motion”);

NOTING “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 (“Joinder”), in which Lahi Brahimaj joins the arguments and authorities submitted in the Motion;¹

NOTING that the Prosecution has indicated its intention not to file a response to the Motion;²

NOTING that on 21 July 2010 the Appeals Chamber quashed the Trial Chamber’s decisions to acquit Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj on certain counts and ordered a partial retrial;³

NOTING that on 15 September 2010 the Trial Chamber ordered that the Fourth Amended Indictment⁴ shall be the operative indictment in the partial retrial;⁵

NOTING that on 9 November 2010 the Prosecution filed the “Submission of New Version of the Revised Fourth Amended Indictment” which contained “tracked” and “clean” versions of the Fourth Amended Indictment corresponding to what was at issue in the partial retrial (“Shortened Indictment”);

NOTING that on 23 November 2010, Balaj filed “Idriz Balaj’s Motion Challenging the New Version of the Revised Fourth Amended Indictment” (“Motion of 23 November 2010”), in which he submitted that the Shortened Indictment had to be amended “to comport with the same allegations regarding the common plan or purpose of the JCE as were made at the initial trial”;⁶

NOTING that in the “Decision on Shortened Form of the Fourth Amended Indictment” of 14 January 2011 (“Decision”), the Trial Chamber found that the Appeals Chamber did not order

¹Joinder, para. 7.

²Email correspondence of 23 January 2011.

³*Prosecutor v. Haradinaj, Balaj and Brahimaj*, Case No. IT-04-84-A, Judgement, 19 July 2010 (“Appeal Judgement”)

⁴Fourth Amended Indictment, 16 October 2007.

⁵Order regarding the Operative Indictment and Pleas, 15 September 2010.

⁶Motion of 23 November 2010, para. 30.

amendments to the common purpose of the Joint Criminal Enterprise or to the crimes within its scope;⁷

NOTING that in the Decision the Trial Chamber ordered that “paragraph 24 [of the Shortened Indictment] shall be replaced by paragraph 26 of the Fourth Amended Indictment”⁸ and that the Prosecution file by 21 January 2011 the revised Indictment in “clean” and “tracked” versions;⁹

NOTING that on 21 January 2011 the Prosecution filed its “Submission of Revised Fourth Amended Indictment” (“Submission”), which it stated contained “clean” and “tracked” versions of the Shortened Indictment that had been revised in accordance with the Decision (“Revised Shortened Indictment”);

NOTING that in paragraph 24 of the Revised Shortened Indictment paragraph 24 of the Shortened Indictment has been replaced by paragraph 26 of the Fourth Amended Indictment;

NOTING that Balaj submits that the Prosecution has re-alleged allegations from paragraph 26 of the Fourth Amended Indictment which it may no longer allege as the Accused have been acquitted for all crimes against humanity and all offences alleged to have taken place anywhere other than at Jablanica/Jabllanicë;¹⁰

NOTING that Balaj requests the Trial Chamber to clarify the Decision as it relates to paragraph 24 of the Revised Shortened Indictment and to direct the Prosecution to strike out all language in paragraph 24 which is inconsistent with the 31 acquittals which are now the subject of final judgements;¹¹

NOTING that Balaj’s request for amendments to paragraph 24 of the Revised Shortened Indictment¹² appears in contradiction to his earlier request in the Motion of 23 November 2010, that the Prosecution be directed to amend the Shortened Indictment “to comport with the same allegations regarding the common plan or purpose of the JCE as were made at the initial trial”;¹³

CONSIDERING that paragraph 24 of the Revised Shortened Indictment describes the common criminal purpose of the Joint Criminal Enterprise for the purpose of the partial retrial and does not

⁷ Decision, para 30. See also Appeal Judgement, paras. 50 and 377.

⁸ Decision, para. 42(2)(a).

⁹ *Ibid.*, para. 42(3).

¹⁰ Motion, para. 8.

¹¹ *Ibid.*, para. 9.

¹² See *Ibid.*, para 15.

¹³ Motion of 23 November 2010, para. 30.

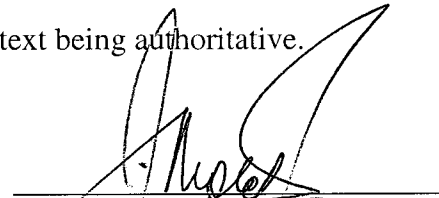
contain any charges against the Accused, nor re-allege allegations which may not be made, as is submitted in the Motion;¹⁴

CONSIDERING that in the Revised Shortened Indictment, the Prosecution replaced paragraph 24 of the Shortened Indictment with paragraph 26 of the Fourth Amended Indictment, pursuant to the Trial Chamber's orders in the Decision, which are consistent with Balaj's Motion of 23 November 2010;

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

HEREBY DENIES the Motion.

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



Judge Bakone Justice Moloto
Presiding Judge

Dated this eighth day of February 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁴ See Motion, para. 8.