

**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: 15 December 2011
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision of: 15 December 2011

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

**DECISION ON PROSECUTION'S MOTION RELATING TO
ENGLISH TRANSLATIONS OF EXHIBITS ASSOCIATED
WITH BISLIM ZYRAPI'S WRITTEN EVIDENCE**

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

THIS TRIAL CHAMBER (“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 Prosecution’s “Motion Relating to English Translations of Exhibits Associated with Bislim Zyrapi’s Written Evidence”, filed publicly with public Annexes A-D on 1 November 2011 (“Motion”) by which the Prosecution seeks leave to:

- replace in eCourt the English translation of Exhibit P190 with an official Conference and Languages Services Section (“CLSS”) translation that was admitted in the original trial,¹
- replace the revised English translations of Exhibit P198 and P234 with the official CLSS translations contained in Annex C of the Motion,² and
- retain the admitted English translations revised by CLSS of Exhibits P178, P180, P191, P205, P208, P225, P227, P231, P243, P256, P261, P263, P267, P268 and P269;³

NOTING the Prosecution’s submission that while the English translations of Exhibits P193 and P262 admitted in the retrial are different from those in the original trial, the Prosecution, nevertheless, does not oppose the replacement of the English translations of Exhibits P193 and P262 submitted in this trial by the versions used in the original trial, as, in its submission, those do not contain any problematic translation errors;⁴

NOTING that the Prosecution further notifies the Chamber that with respect to Exhibits P177, P179, P202, P228, and P265, no English translations were uploaded in the original trial, and, thus, the Prosecution has uploaded in eCourt official CLSS translations for all these documents, except for Exhibit P228, the translations for which is not an official CLSS, and that with respect to the latter document, it proposes to obtain an official CLSS translation;⁵

NOTING “Idriz Balaj’s Response to Prosecution ’Motion Relating to English Translations of Exhibits Associated with Bislim Zyrapi’s Written Evidence’ ” filed publicly on 14 November 2011 (“Balaj Response”), by which Balaj:

¹ Motion, paras 3, 9, 12.

² Motion, paras 2, 4, 12. The flaws of the translation used in the original trial are identified in Annex B of the Motion.

³ Motion, paras 2, 5, 12.

⁴ Motion, paras 3, 10.

⁵ Motion, para. 11.

- does not object to the Prosecution correcting translation errors in the documents listed in the Motion,⁶
- requests the Chamber to order the Prosecution to tender into evidence the original translations with only the identified errors changed,⁷
- requests the Chamber to permit the Prosecution to substitute the revised translation of Exhibit P190 with the original translation used at the original trial,⁸ and
- requests the Chamber to order the Prosecution to use the original translations for Exhibits P193 and P262;⁹

NOTING the “Prosecution Request for Leave to Reply and Reply to Balaj Response to Prosecution ‘Motion Relating to English Translations of Exhibits Associated with Bislim Zyrapi’s Written Evidence’ ” filed publicly on 18 November 2011 (“Reply”), by which the Prosecution seeks leave to reply to Balaj Response and requests that the Chamber grants the relief requested in the Motion;¹⁰

NOTING the Prosecution’s submission, which the Chamber accepts, that the English translations of Exhibits P198 and P234 used during the original trial contain errors identified in Annex B to the Motion, that these errors were corrected in the translations admitted in the retrial which, however, were not official CLSS translations, and that the Prosecution now submits official CLSS translations in Annex C of the Motion;¹¹

NOTING that the Prosecution submits and the Chamber accepts that the English translations of Exhibits P178, P180, P191, P205, P208, P225, P227, P231, P243, P256, P261, P263, P267, P268 and P269 used in the original trial contain errors indicated in Annex D of the Motion, and that revised versions, provided by CLSS, have been submitted in the retrial;¹²

NOTING the Prosecution’s submission that in the retrial it inadvertently uploaded a flawed draft English translation of Exhibit P190, which was subsequently admitted, whereas the CLSS translation used in the original trial was correct;¹³

⁶ Balaj Response, paras 2, 19.

⁷ Balaj Response, paras 16-17, 19.

⁸ Balaj Response, paras 18-19.

⁹ Balaj Response, para. 19.

¹⁰ Reply, paras 1, 7.

¹¹ Motion, para. 4.

¹² Motion, para. 5.

¹³ Motion, paras 3, 9. The flaws of the translation used in the retrial are indicated in Annex B of the Motion.

NOTING the Prosecution's notification that English translations for Exhibits P177, P179, P202, P228 and P265 were not provided in the original trial, that prior to tendering these exhibits in the retrial the Prosecution has uploaded in eCourt English translations, which for all of these exhibits, except for Exhibit P228, are official CLSS translations;¹⁴

NOTING that Balaj is in agreement that errors in the English translation of the exhibits mentioned in paragraphs 4 and 5 of the Motion have to be corrected;¹⁵

NOTING that Balaj, however, opposes the Prosecution unilaterally providing new translations and his submission that this would improperly alter the record of the original trial as Bislim Zyrapi's evidence in the original trial and the associate exhibits were admitted pursuant to Rule 92*ter* in the retrial;¹⁶

NOTING that Balaj further proposes that the English translations used in the original trial be submitted together with the proposed translation "modifications" or that the Prosecution submits the original translations with changes only to those parts for which an error was identified;¹⁷

NOTING that the Prosecution argues in its Reply that Balaj's concern that the use of new translations amounts to a modification of the record is without basis, as out of all exhibits mentioned in the Motion for which the Prosecution seeks to use a revised English translation in the retrial, Bislim Zyrapi commented only on Exhibit P191 during his testimony in the original trial, and that the other exhibits at issue were commented on in his written statement admitted in the original trial;¹⁸

NOTING further that Balaj fails to point out any concrete instance where the use of the revised English translations would result in a problematic inconsistency with the trial record of the previous trial;

NOTING the Prosecution's submission that the Chamber has expressed its preference that translations be reviewed by CLSS, and that submitting reviews of the translation of the entire document as opposed to the avenues that Balaj suggests could only reflect positively on the accuracy of the translations if additional deficiencies are discovered;¹⁹

¹⁴ Motion, para. 11.

¹⁵ Balaj Response, paras 2, 10-11, 18-19.

¹⁶ Balaj Response, paras 13-15.

¹⁷ Balaj Response, paras 6, 16-17.

¹⁸ Reply, paras 3-4.

¹⁹ Reply, paras 5-6.

CONSIDERING that the Prosecution fails to indicate whether the English translations of exhibits P193 and P262 that it intends to use, are official CLSS translations, and that unless there are exceptional circumstances, official CLSS translations shall be used;²⁰

CONSIDERING that inconsistencies between the various translations do not appear to be significant;

CONSIDERING that Exhibit P191, as translated in the original trial, was used in the original *Haradinaj* trial and that for clarity of the record it is appropriate to retain the English translation of Exhibit P191 used in the original trial in addition to the official CLSS translation of this document;

FOR THE FOREGOING REASONS:

PURSUANT to Rule 54 and 126*bis* of the Rules of Procedure and Evidence;

HEREBY GRANTS leave to the Prosecution to file a reply and takes note of the content of the Reply;

GRANTS the Motion **IN PART** in that it

GRANTS leave to the Prosecution to substitute the English translation of Exhibit P190 with the version provided in the original trial;

GRANTS leave to the Prosecution to substitute the English translations of Exhibits P198 and P234 with the versions provided by CLSS as indicated in Annex C of the Motion; and

GRANTS leave to the Prosecution to retain the submitted revised English translations of the following Exhibits: P178, P180, P205, P208, P225, P227, P231, P243, P256, P261, P263, P267, P268 and P269;

GRANTS leave to the Prosecution to upload in eCourt official CLSS translations of Exhibits P177, P179, P202, and P265;

ORDERS the Prosecution to upload in eCourt the English translation of Exhibit P191 used in the original *Haradinaj* trial and attach this translation to this exhibit, while retaining the official CLSS translation of this document;

²⁰ Motion, paras 2-3, 10-11.

ORDERS the Prosecution to obtain and upload in eCourt an official CLSS translation of Exhibit P228.

ORDERS the Prosecution to notify the Chamber within 14 days of the issuance of this Decision whether the English translations of Exhibits P193 and P262 currently uploaded in eCourt are official CLSS translations.

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



Judge Bakone Justice Moloto,
Presiding

Dated this fifteenth day of December 2011
At The Hague
The Netherlands

[Seal of the Tribunal]