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International pour
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JUDGEMENT SUMMARY

TRIAL CHAMBER

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The Hague, 29 November 2012

Retrial Judgement Summary for Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj

Please find below the summary of the Judgement read out today by Judge Moloto.

This Chamber is sitting today to deliver Judgement in the trial of the three accused persons, Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj.

For the purposes of this hearing, the Chamber will summarise briefly its findings, emphasising that this is a *summary* only, and that the only authoritative account of the Chamber's findings and of its reasons for those findings is to be found in the written Judgement, copies of which will be made available to the Parties at the conclusion of this sitting.

The three Accused, Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj, are charged as members of a joint criminal enterprise or, alternatively, under other modes of individual criminal responsibility, with crimes allegedly committed by them or by other members of the Kosovo Liberation Army ("KLA") in 1998 against Kosovo Serbs, Kosovo Roma/Egyptian, Kosovo Albanian or other civilians in a compound of the Kosovo Liberation Army in the village of Jabllanicë/Jablanica in Gjakovë/Dakovica municipality, western Kosovo. The Indictment alleges specific incidents of abduction of a total of 16 Kosovo Albanians, Kosovo Serbs, Kosovo Roma and other civilians, who, it is alleged, were detained and subjected to torture and cruel treatment at the KLA compound in Jabllanicë/Jablanica. It is further alleged that eight of these individuals were killed while in KLA custody. These allegations form the basis of six counts of violations of the laws or customs of war, namely cruel treatment, torture, and murder, charged under Article 3 of the Statute against Ramush Haradinaj and Idriz Balaj. Lahi Brahimaj is charged with four of these counts.

This case is a partial retrial. The three Accused were charged initially in the case of *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84 on 4 March 2005 with 16 counts of crimes against humanity and 19 counts of violations of the laws or customs of war. Ramush Haradinaj was also charged with one further count of crimes against humanity and one further count of violations of the laws or customs of war. On 3 April 2008, the Trial

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Chamber acquitted Ramush Haradinaj and Idriz Balaj of all charges in the indictment, found Lahi Brahimaj guilty of two counts, sentenced him to six years' imprisonment, and acquitted him of all other charges. The Prosecution appealed the trial judgement, alleging, *inter alia*, that the Trial Chamber breached its right to a fair trial by not allowing it additional time to secure the evidence of two critical witnesses, and asked for a retrial.

On 21 July 2010, the Appeals Chamber, Judge Robinson dissenting, granted in part the Prosecution's appeal and quashed the Trial Chamber's decisions to acquit the Accused of certain counts in the indictment related to crimes alleged to have been committed at the KLA compound in Jabllanicë/Jablanica. The Appeals Chamber ordered a partial retrial with respect to these counts. The trial commenced on 18 August 2011. The Chamber received evidence from 56 witnesses, including the two witnesses with respect to whom the retrial was ordered.

The present Indictment alleges that at the material time Ramush Haradinaj was a commander of the KLA Dukagjin Operational Zone in western Kosovo and that as such he had overall command of the KLA forces in this area. Idriz Balaj is alleged to have been a member of the KLA, a direct subordinate to Ramush Haradinaj, and the commander of a rapid intervention special unit known as the "Black Eagles". Lahi Brahimaj is alleged to have been a member of the KLA stationed at Jabllanicë/Jablanica throughout the Indictment period and a subordinate to Ramush Haradinaj. Lahi Brahimaj is alleged to have served briefly as deputy commander of the Dukagjin Operational Zone and, subsequently, as the finance director of the KLA General Staff.

With respect to the six counts of violations of the laws or customs of war charged in the Indictment, the Chamber made the following findings:

Count 3:

On 13 June 1998 Witness 6, a Catholic Kosovo Albanian, was abducted by KLA soldiers from the road between Gjakovë/Đakovica and Klinë/Klina. He was detained in the KLA compound in Jabllanicë/Jablanica for approximately six weeks where he was subjected to repeated beatings by KLA soldiers including Nazmi Brahimaj, Lahi Brahimaj, and Hamza Brahimaj. Witness 6 was accused of consorting with Serbs and spying. On 25 July 1998 Witness 6 was released from the KLA compound in Jabllanicë/Jablanica by Nazmi Brahimaj. The Chamber is satisfied that the charges of torture and cruel treatment of Witness 6 are established. This count is not charged against Lahi Brahimaj.

Count 4:

On 13 June 1998 Nenad Remištar, a traffic policeman of Serb ethnicity, was removed from his vehicle by KLA soldiers, on the road between Klinë/Klina and Gjakovë/Đakovica. He was taken to the KLA compound in Jabllanicë/Jablanica. There, he was severely beaten by Nazmi Brahimaj and other KLA soldiers. On the following day, 14 June 1998, Nenad Remištar was removed from the room in the KLA compound in Jabllanicë/Jablanica where he was detained and never seen again. He is still unaccounted for. The Chamber is satisfied that the allegations of torture and cruel treatment of Nenad Remištar are established. The Prosecution presented no evidence about what happened to Nenad Remištar following his removal from a room in the KLA compound in Jabllanicë/Jablanica. The Chamber concludes in the circumstances that the murder of Nenad Remištar is not established.

Towards the end of June 1998 one unknown Bosnian man and three unknown Montenegrin men were brought to the KLA compound in Jabllanicë/Jablanica where they were beaten and stabbed with knives by KLA soldiers in the presence of Nazmi Brahimaj and Hamza Brahimaj. The unknown Bosnian man was accused of interrupting the electricity. The Chamber is satisfied that the allegations of cruel treatment of these four men and the charge of torture of the unknown Bosnian are established. In the absence of evidence that the mistreatment of the three unknown Montenegrin men was carried out with the requisite intent for torture, the Chamber concludes that the charge of torture of the three Montenegrin men is not established.

Count 5:

On approximately 13 or 14 July 1998 Skender Kuçi, a Kosovo Albanian, was brought to the KLA compound in Jabllanicë/Jablanica in the boot of his car and was detained in a room in the KLA compound. He was beaten on his arrival in the courtyard and in the room where he was detained, by KLA soldiers, including Nazmi Brahimaj and Hamza Brahimaj, in the presence of Lahi Brahimaj. On the following day, *i.e.* on approximately 14 or 15 July 1998, Pal Krasniqi, a Catholic Kosovo Albanian who had left his home in Pejë/Peć on 10 July 1998 with the intention of joining the KLA, was brought to the KLA compound in Jabllanicë/Jablanica. He was detained in the same room with Skender Kuçi. A few hours later Witness 3, a Kosovo Albanian, was brought by Lahi Brahimaj to the KLA compound in Jabllanicë/Jablanica and was detained in the room with Skender Kuçi and Pal Krasniqi. The three men were subjected to repeated beatings in the KLA compound in Jabllanicë/Jablanica. A witness described the state Skender Kuçi and Pal Krasniqi were in as a result of the beatings like this: “I never saw anyone in a worse condition. I have seen people dead, killed during the war. But people reduced to that plight I had never seen before. In a very, very bad condition”. During the beatings Pal Krasniqi was accused of being a spy and Skender Kuçi, of having a lot of money. Witness 3 was interrogated by Lahi Brahimaj following which Lahi Brahimaj asked two women to practice beating with batons

on Witness 3. The Chamber is satisfied that the allegations of torture and cruel treatment with respect to Skender Kuçi, Pal Krasniqi, and Witness 3 are established. This count is not charged against Lahi Brahimaj.

On approximately 15 or 16 July 1998, the day of his failed attempt to escape from the KLA compound in Jabllanicë/Jablanica, Skender Kuçi was beaten severely, following which he was brought to a hospital where he died. The Chamber is satisfied that the death of Skender Kuçi was caused by (complications of) the injuries inflicted on him during the beatings in the KLA compound in Jabllanicë/Jablanica. The charge of murder of Skender Kuçi is established.

Pal Krasniqi was subjected to severe and repeated beatings in the KLA compound in Jabllanicë/Jablanica. He was last seen by Witness 6 at the KLA compound in Jabllanicë/Jablanica on 25 July 1998. His body was discovered in September 1998 at the Lake Radoniq/Radonjić canal with gunshot injuries to the head, trunk, and upper limbs. The Prosecution has presented no evidence as to the circumstances in which he died. In the circumstances, the Chamber cannot conclude beyond reasonable doubt that the charge of murder of Pal Krasniqi is established.

Count 6:

On a day after the attack by the Serbian forces on the village of Grabanicë/Grabanica on or about 19 May 1998, Naser Lika and Fadil Fazliu were removed by force by KLA soldiers from a house in Zhabel/Žabelj. During the incident the KLA soldiers called Fadil Fazliu and Naser Lika “traitors”. The KLA soldiers beat and kicked Naser Lika and Fadil Fazliu in Zhabel/Žabelj. The Chamber is satisfied that the allegations of torture and cruel treatment of Naser Lika and Fadil Fazliu with respect to their forceful removal from Zhabel/Žabelj are established.

The Chamber, therefore, is satisfied that Counts 3, 4, 5, and the forceful removal of Naser Lika and Fadil Fazliu from Zhabel/Žabelj by KLA soldiers alleged in Count 6 are established.

Count 1 of the Indictment alleges the murder, cruel treatment and torture of Ivan Zarić, a Kosovo Serb, and Agron Berisha and Burim Bejta, both of Kosovo Roma/Egyptian origin. The evidence establishes that the three men left the village of Dollc/Dolac on 17 or 18 May 1998 on a horse-drawn cart in the direction of the mill in the village of Grabanicë/Grabanica where they were going to grind a sack of corn. They arrived in Grabanicë/Grabanica the same day. The three men were never seen by their relatives after that day. The Prosecution offered two witnesses to prove events that, it alleges, occurred after Ivan Zarić, Agron Berisha, and Burim Bejta were last seen by their relatives. One of these witnesses gave evidence suggesting that the three men were mistreated in the KLA

compound in Jabllanicë/Jablanica and killed and that the three Accused were involved in the mistreatment and killing. The other witness gave evidence suggesting that Idriz Balaj and Lahi Brahimaj were involved in mistreatment, including of the three victims. The first witness changed his account a number of times in material respects. He contradicted himself repeatedly and his evidence was contradicted by other evidence in the proceedings. The evidence of the second witness was characterised by significant inconsistencies and contradictions. The Chamber was not satisfied of the reliability of the evidence of either of these two witnesses. For reasons fully set out in the written Judgement, the Chamber finds that Count 1 is not established.

Count 2 alleges the murder and cruel treatment of two Roma/Egyptian men, Ukë Rexhepaj and his son-in-law Nesret Alijaj from the village of Grabanicë/Grabanica. The evidence establishes that on 20 May 1998 Ukë Rexhepaj and Nesret Alijaj were stopped on the road between Grabanicë/Grabanica and Dollovë/Dolovo by men dressed in dark-green camouflage clothing, who were speaking Albanian. These men tied the hands of Ukë Rexhepaj and Nesret Alijaj, blindfolded them, and threw them into a car which left in an unknown direction. The Prosecution presented no direct evidence as to what happened to Ukë Rexhepaj and Nesret Alijaj after they were abducted from the road between Grabanicë/Grabanica and Dollovë/Dolovo. It seeks to rely on the evidence of a witness in another trial, whose evidence on this issue was not subjected to cross-examination, referring to a son-in-law and a father-in-law of Roma origin, whose identity is not known, being present in the KLA compound in Jabllanicë/Jablanica. For reasons, fully set out in the written Judgement, the Chamber finds that Count 2 is not established.

Count 6 contains further allegations of mistreatment of Naser Lika, a Kosovo Albanian, in the KLA compound in Jabllanicë/Jablanica. The Prosecution called only one witness in support of this charge; this was one of the two witnesses it offered in support of Count 1. The Chamber was not satisfied that this witness was a reliable witness. In particular, the Chamber was not persuaded that the witness was indeed present in the KLA compound in Jabllanicë/Jablanica at the material time and that he actually observed the events he testified about. The Chamber was left with the clear impression that this witness may have retold what he might have heard from others. For reasons fully set out in the written Judgement, the Chamber finds that the allegations of torture and cruel treatment of Naser Lika in the KLA compound in Jabllanicë/Jablanica, contained in Count 6, are not established.

A central allegation in the present Indictment is the existence of a joint criminal enterprise (I will refer to it as “JCE”), the alleged common purpose of which was to consolidate the total control of the KLA over the Dukagjin Operational Zone, by the unlawful removal and mistreatment of Kosovo Serb civilians and by the mistreatment of Kosovo Albanian and

Kosovo Roma/Egyptian civilians, and other civilians, who were, or were perceived to have been, collaborators with the Serbian forces or otherwise not supporting the KLA. This JCE is alleged to have existed from on or about March 1998 until at least late September 1998.

The Prosecution presented no direct evidence to prove that the established crimes were committed as part of a JCE in which the three Accused participated. The Chamber considered circumstantial evidence tendered by the Prosecution to prove this allegation. This evidence includes communiqués of the KLA General Staff published in the media, which contain information about attacks or “measures” undertaken by the KLA against collaborators with the Serbian authorities. The Chamber finds that the information contained in the communiqués may have been exaggerated or altered for propaganda purposes; this information was often vague and lacked details as to the time and place of the incident, the identity of the perpetrator, the identity of the victims or their civilian or military status. Further, the Chamber received evidence relating to the existence of various lists of names, which the Prosecution submits were “KLA blacklists of individuals who were suspected of being disloyal to the KLA, sympathising with the opposition LDK, or having worked for the Serbian authorities”. In evidence is only one such list, in handwritten notes of a meeting, with the heading “Wanted/or missing?/Persons”, whose purpose is not established by the evidence. In the Chamber’s conclusion, the evidence tendered with respect to these lists does not support a finding that a JCE existed with a common criminal purpose as alleged in the Indictment.

KLA military police regulations provide, in relevant parts, that the KLA military police had the task of “investigating and uncovering, “all those persons who collaborate in any way with the enemy” and “taking of measures against all those working against the Kosovo Liberation Army”. Considering evidence about activities of the KLA military police on the ground, the Chamber concluded that these regulations do not support the existence of a JCE.

Apart from the incidents at the KLA compound in Jabllanicë/Jablanica, the Chamber found the following incidents of mistreatment of civilians in the territory of the Dukagjin Operational Zone by KLA soldiers were established: the mistreatment of Mijat Stojanović, Dragoslav Stojanović and Veselin Stijović on 18 April 1998 in the Stojanović family compound and in Smajl Haradinaj’s house in Gllogjan/Glođane by KLA soldiers including Zeqir Nimonaj, Daut Haradinaj, and Besnik Haradinaj; the mistreatment of Novak Stijović and Staniša Radošević on 22 April 1998 by KLA soldiers in Gllogjan/Glođane and the beating of the Albanian interpreter of an ECMM team in Gllogjan/Glođane by Idriz Balaj on 11 August 1998. Considering the specific circumstances in each of these incidents, and in particular, events preceding and following the mistreatment and the release of the victims shortly thereafter, the Chamber finds that none of these incidents is indicative of a pattern

or a plan involving the mistreatment of civilians as alleged in the Indictment. For example, after one of these incidents, a KLA soldier apologised to the victims and attributed the incident to uncontrollable extremist groups within the KLA.

The Chamber found that Jah Bushati, Witness 6, Nenad Remištar, one unknown Bosnian man, three unknown Montenegrin men, Pal Krasniqi, Skender Kuči, and Witness 3 were detained in the KLA compound in Jabllanicë/Jablanica, where they were subjected to repeated beatings by KLA soldiers. The Chamber found that the perpetrators of these beatings, except for Jah Bushati, included Nazmi Brahimaj, Hamza Brahimaj, Naser Brahimaj, and Lahi Brahimaj. The victims, except for Jah Bushati and the three Montenegrin men, were accused of spying or of consorting with Serbs or were associated with the Serbian forces. These findings of the Chamber tend to suggest that a common plan may have existed between Nazmi Brahimaj, Hamza Brahimaj, Naser Brahimaj, Lahi Brahimaj, and other KLA soldiers present in the KLA compound in Jabllanicë/Jablanica to detain and mistreat individuals whom they believed were collaborating with the Serbian forces or were not supporting the KLA. Such common plan is not alleged in the present Indictment and the issue is outside of the scope of these proceedings. The Chamber notes, however, that even if the existence of such common plan were established, which is not the finding of the Chamber, there is nothing in the evidence to indicate that Ramush Haradinaj or Idriz Balaj may have been involved in any such common plan. On the contrary, the evidence establishes that when Ramush Haradinaj found out about the detention and mistreatment of Skender Kuči, he went to Jabllanicë/Jablanica to speak to Nazmi Brahimaj regarding Skender Kuči's release, telling him that "no such thing should happen anymore because this is damaging our cause". When Witness 3 was brought to Ramush Haradinaj after his escape from Jabllanicë/Jablanica and subsequent apprehension by Lahi Brahimaj, Ramush Haradinaj offered food and accommodation to Witness 3 and released him to his family. No credible evidence has been presented by the Prosecution to establish that Ramush Haradinaj was even aware of the crimes committed at the KLA compound in Jabllanicë/Jablanica. On the evidence accepted by the Chamber there is no mention of Idriz Balaj being present in the KLA compound in Jabllanicë/Jablanica or having knowledge of these crimes.

Having considered all the circumstantial evidence offered to prove the existence of the JCE alleged in the Indictment, the Chamber finds that the common purpose of the JCE is not established. Ramush Haradinaj and Idriz Balaj, therefore, are not criminally responsible for participating in a JCE in relation to the crimes charged in the Indictment under Counts 3, 4, 5, and 6. Lahi Brahimaj is not criminally responsible for participating in a JCE in relation to the crimes charged under Counts 4 and 6.

Ramush Haradinaj is charged in the alternative with ordering, instigating or aiding and abetting the crimes charged in Count 6. The Chamber found that the crimes alleged under this count were not established, except for the forceful removal of Naser Lika and Fadil Fazliu from Zhabel/Žabelj by KLA soldiers. There is no evidence that suggests, let alone proves beyond reasonable doubt, that Ramush Haradinaj prompted or instructed the KLA soldiers who forcefully removed Naser Lika and Fadil Fazliu from Zhabel/Žabelj to commit these acts or that he aided and abetted this crime.

Idriz Balaj and Lahi Brahimaj are charged in the alternative with committing, planning or aiding and abetting the commission of the crimes charged in Count 6. The Chamber found that the alleged crimes charged under this count were not established, except for the forceful removal of Naser Lika and Fadil Fazliu from Zhabel/Žabelj by KLA soldiers. The Prosecution provided no evidence to support the allegations that Idriz Balaj and Lahi Brahimaj committed, planned or aided and abetted the commission of this crime. Therefore, Idriz Balaj and Lahi Brahimaj are not criminally responsible in any respect for the crimes charged under Count 6, including the modes of liability charged in the alternative.

Ramush Haradinaj:

Will you please stand.

The Chamber finds you NOT GUILTY on all counts in the Indictment. The Chamber orders that, you be released from the United Nations Detention Unit, subject to the completion of the necessary formalities, unless you are detained there pursuant to any other valid order of detention.

You may be seated.

Idriz Balaj:

Will you please stand.

The Chamber finds you NOT GUILTY on all counts in the Indictment. The Chamber orders that, you be released from the United Nations Detention Unit, subject to the completion of

the necessary formalities, unless you are detained there pursuant to any other valid order of detention.

You may be seated.

Lahi Brahimaj:

Will you please stand.

The Chamber finds you NOT GUILTY on all counts in the Indictment charged against you.

The Chamber orders that, you be released from the United Nations Detention Unit, subject to the completion of the necessary formalities, unless you are detained there pursuant to any other valid order of detention.

You may be seated.

This concludes this trial.

The Chamber will now adjourn.
