



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: 15 September 2010

Original: English

**IN TRIAL CHAMBER II**

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

**Registrar:** Mr. John Hocking

**Order:** 15 September 2010

**PROSECUTOR**

v.

**RAMUSH HARADINAJ  
IDRIZ BALAJ  
LAHI BRAHIMAJ**

**PUBLIC**

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**ORDER REGARDING THE OPERATIVE INDICTMENT AND PLEAS**

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**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”);

**NOTING** that in the Appeal Judgement issued on 19 July 2010 (“Appeal Judgement”), the Appeals Chamber:

- (1) quashed the Trial Chamber’s decisions to (a) acquit Ramush Haradinaj and Idriz Balaj of participation in a Joint Criminal Enterprise (“JCE”) to commit crimes at the Kosovo Liberation Army (“KLA”) headquarters and the prison in Jablanica/Jabllanicë under Counts 24, 26, 28, 30, 32, and 34 of the Fourth Amended Indictment, which was filed on 16 October 2007; (b) acquit Lahi Brahimaj of participation in a JCE to commit crimes at the KLA headquarters and the prison in Jablanica/Jabllanicë under Counts 24, 26, 30, and 34 of the Fourth Amended Indictment; (c) acquit Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj of individual criminal responsibility under Counts 24 and 34 of the Fourth Amended Indictment; and (d) acquit Lahi Brahimaj of individual criminal responsibility under Count 26 of the Fourth Amended Indictment; and
- (2) ordered that Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj be retried on these counts;<sup>1</sup>

**NOTING** that at their Initial Appearance on 14 March 2005 all three Accused were formally charged and pleaded not guilty<sup>2</sup> to the charges set forth in the Indictment which had been confirmed on 4 March 2005 (“Original Indictment”);<sup>3</sup>

**NOTING** that on 26 April 2006 the Prosecution filed the “Motion to Amend the Indictment in the Case of *The Prosecutor v. Haradinaj et al.*” (“April 2006 Motion”), in which leave was sought to amend the Original Indictment and replace it by the proposed Amended Indictment;<sup>4</sup>

**NOTING** that on 25 October 2006 the Trial Chamber ordered that the Amended Indictment shall be the operative indictment,<sup>5</sup> that also on 25 October 2006 the Prosecution sought leave to further

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<sup>1</sup> Appeal Judgement, para. 377.

<sup>2</sup> T. 1-51 (14 March 2005).

<sup>3</sup> Decision on Review of Indictment.

<sup>4</sup> April 2006 Motion, para. 44.

<sup>5</sup> Decision on Motion to Amend the Indictment and on Challenges to the Form of the Amended Indictment, 25 October 2006, para. 26.

amend the Original Indictment<sup>6</sup> and that on 10 November 2006 the Prosecution requested that the proposed Revised Second Amended Indictment replace the Amended Indictment;<sup>7</sup>

**NOTING** that on 12 January 2007 the Trial Chamber ordered, *inter alia*, that:

- (1) The 25 October Motion shall be dismissed as moot;
- (2) The 10 November Motion shall be granted and the Revised Second Amended Indictment shall henceforth be the operative indictment in the case; and
- (3) A further appearance for the Accused to re-enter their pleas in relation to Counts 1, 2, 3, 4, 5, 6, 16, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 31, 35, and 37 of the Revised Second Amended Indictment will be scheduled in due course.<sup>8</sup>

**NOTING** that at the Pre-Trial Conference on 1 March 2007 the Accused pleaded not guilty on Counts 1, 2, 3, 4, 5, 6, 16, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 31, 35, and 37 of the Revised Second Amended Indictment;<sup>9</sup>

**NOTING** that on 5 September 2007 the Trial Chamber found that that the amendments proposed by the Prosecution in the Third Amended Indictment<sup>10</sup> did not amount to new charges and ordered that the Third Amended Indictment shall be the operative indictment;<sup>11</sup>

**NOTING** that on 15 October 2007 the Trial Chamber found that that the amendments proposed in the Fourth Amended Indictment<sup>12</sup> did not amount to new charges and ordered that the Fourth Amended Indictment shall be the operative indictment;<sup>13</sup>

**NOTING** that the Prosecution filed the Fourth Amended Indictment on 16 October 2007;

**NOTING** that in the Trial Judgement issued on 3 April 2008 (“Trial Judgement”) the Fourth Amended Indictment was the operative indictment;<sup>14</sup>

**CONSIDERING** that the operative indictment in the partial retrial shall be the same as the operative indictment at trial;

<sup>6</sup> Prosecution Motion Seeking Leave to Amend the Indictment, 25 October 2006 (“25 October Motion”).

<sup>7</sup> Motion Seeking Leave to Amend the Amended Indictment by Substituting a Revised Second Amended Indictment, 10 November 2006 (“10 November Motion”).

<sup>8</sup> Decision on Motion to Amend the Amended Indictment, 12 January 2007, para. 25.

<sup>9</sup> T. 257-266 (1 March 2007).

<sup>10</sup> Motion Seeking Leave to Amend the Revised Second Amended Indictment, 13 June 2007.

<sup>11</sup> Decision on Prosecution’s Motion Seeking Leave to Amend the Revised Second Amended Indictment, 5 September 2007, paras. 11–15, 17.

<sup>12</sup> Prosecution’s Motion Seeking Leave to Amend the Third Amended Indictment, 28 September 2007.

<sup>13</sup> Decision on Prosecution’s Motion Seeking Leave to Amend the Third Amended Indictment, 15 October 2007, paras. 6, 8.

<sup>14</sup> Trial Judgement, para. 1.

**NOTING** Rule 50(B) of the Rules of Procedure and Evidence (“Rules”) which provides that “[i]f the amended indictment includes new charges and the accused has already appeared before a Trial Chamber in accordance with Rule 62, a further appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charges”;

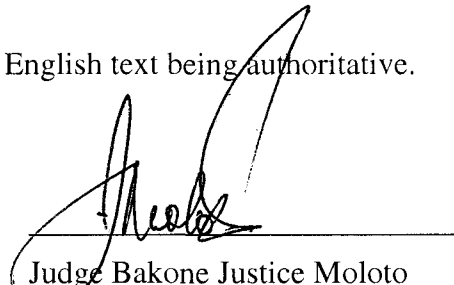
**CONSIDERING** that since the Accused entered their pleas on 14 March 2005 and 1 March 2007 there have been no amendments to the indictment amounting to new charges and that a further appearance pursuant to Rule 50(B) has, therefore, not been required;

**PURSUANT TO** Rules 50 and 54 of the Rules;

**HEREBY ORDERS** that:

- (1) The Fourth Amended Indictment shall be the operative indictment in the partial retrial;
- (2) The pleas which the Accused entered on 14 March 2005 and 1 March 2007 on the counts on which the Appeals Chamber ordered that the Accused be retried shall continue to stand.

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



Judge Bakone Justice Moloto  
Presiding Judge

Dated this fifteenth day of September 2010  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**