



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-AR73.1
Date: 4 March 2011
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Fausto Pocar
Judge Liu Daqun
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. John Hocking

Decision of: 4 March 2011

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

**DECISION ON IDRIZ BALAJ AND LAHI BRAHIMAJ'S
REQUESTS FOR STANDING BEFORE THE APPEALS
CHAMBER AND/OR JOINDER ON ISSUES PENDING ON
APPEAL WHICH ARE CENTRAL TO THE LIMITED
PARTIAL RETRIAL ORDERED IN THIS CASE**

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for the Accused:

Mr. Ben Emmerson 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

THE APPEALS 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 (‘ Appeals Chamber’ and ‘Tribunal’, respectively),

RECALLING the ‘Decision on Shortened Form of the Fourth Amended Indictment’ issued by Trial Chamber II (‘Trial Chamber’) on 14 January 2011 (‘Impugned Decision’),¹ in which the Trial Chamber, *inter alia*, ordered the Office of the Prosecutor (‘Prosecution’) ‘to revise the Shortened Indictment’ according to its instructions, and denied the submissions of Ramush Haradinaj (‘Haradinaj’), Idriz Balaj (‘Balaj’) and Lahi Brahimaj (‘Brahimaj’) in all other respects;²

RECALLING the ‘Decision on Application on Behalf of Ramush Haradinaj for Certification Pursuant to Rule 73(B)’ issued by the Trial Chamber on 3 February 2011,³ in which the Trial Chamber granted Haradinaj’s Application for Certification to Appeal the Impugned Decision;⁴

RECALLING the ‘Appeal Brief on Behalf of Ramush Haradinaj on Scope of Partial Retrial’ filed by Haradinaj on 10 February 2011 (‘Haradinaj’s Appeal’);

RECALLING the ‘Decision on Idriz Balaj’s Request for Clarification of the Decision Regarding Paragraph 24 of the Revised Shortened Indictment’ issued by the Trial Chamber on 8 February 2011,⁵ in which the Trial Chamber denied the joint request of Balaj and Brahimaj for clarification of the Impugned Decision;⁶

¹ *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Shortened Form of the Fourth Amended Indictment, 14 January 2011.

² Impugned Decision, para. 42. *See also Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, Submission on Behalf of Ramush Haradinaj on the New Version of the Indictment for the Partial Retrial, 23 November 2010; *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, Idriz Balaj’s Motion Challenging the New Version of the Revised Fourth Amended Indictment, 23 November 2010; *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, Response to Prosecution Indictment Motion on Behalf of Lahi Brahimaj, 23 November 2010.

³ *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Application on Behalf of Ramush Haradinaj for Certification Pursuant to Rule 73(B), 3 February 2011, para. 20.

⁴ *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, Application on Behalf of Ramush Haradinaj for Certification of Appeal Pursuant to Rule 73(B), 18 January 2011 (‘Haradinaj’s Application for Certification to Appeal the Impugned Decision’).

⁵ *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Idriz Balaj’s Request for Clarification of the Decision Regarding Paragraph 24 of the Revised Shortened Indictment, 8 February 2011 (‘Decision on Request for Clarification’).

⁶ *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, 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, 26 January 2011; *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, 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’, 27 January 2011.

NOTING that Balaj and Brahimaj have filed Applications for Certification to Appeal the Decision on Request for Clarification, which are currently pending before the Trial Chamber;⁷

NOTING “Idriz Balaj’s Request for Standing Before the Appeals Chamber and/or Joinder in Issues Pending on Appeal which are Central to the Limited Partial Retrial Ordered in His Case” filed by Balaj on 16 February 2011 (“Balaj’s Request”);

NOTING “Lahi Brahimaj’s Request for Standing Before the Appeals Chamber and/or Joinder in Issues Pending on Appeal which are Central to the Limited Partial Re-trial Ordered in This Case” filed by Brahimaj on 16 February 2011 (“Brahimaj’s Request”) (together with Balaj’s Request, “Requests”);

NOTING the “Prosecution Consolidated Response to Balaj’s and Brahimaj’s Request for Standing Before the Appeals Chamber and/or Joinder in Issues Pending on Appeal” filed by the Prosecution on 24 February 2011 in which it did not object to the Requests;

NOTING that Balaj and Brahimaj request: (i) standing to participate and be heard with respect to issues arising in Haradinaj’s Appeal, which may directly or indirectly affect their right to a fair and expeditious trial; (ii) permission to join Haradinaj’s Appeal regarding the first and third issues raised therein; and (iii) leave to join Haradinaj’s Appeal in the event that their Applications for Certification to Appeal the Decision on Request for Clarification are granted;⁸

CONSIDERING that the Trial Chamber granted certification against the Impugned Decision to Haradinaj alone;⁹

CONSIDERING that neither Balaj nor Brahimaj sought certification from the Trial Chamber to appeal against the Impugned Decision;¹⁰

EMPHASISING that if Balaj and Brahimaj wish to challenge the Impugned Decision, the proper procedural avenue is to seek certification to appeal pursuant to Rule 73(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”);¹¹

⁷ *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, Idriz Balaj’s Application Pursuant to Rule 73(B) of the Rules for Certification to Appeal the Trial Chamber’s Decision of 8 February 2011, 15 February 2011; *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, Lahi Brahimaj’s Joinder in “Idriz Balaj’s Application Pursuant to Rule 73(B) of the Rules for Certification to Appeal the Trial Chamber’s Decision of 8 February 2011”, 16 February 2011 (collectively “Applications for Certification to Appeal the Decision on Request for Clarification”).

⁸ Balaj’s Request, para. 26; Brahimaj’s Request, paras 24-26.

⁹ *Cf. The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.10, Decision on Requests for Extension of Time, 29 August 2007 (“*Édouard Karemera et al.* Decision”), para. 7.

¹⁰ *Cf. Édouard Karemera et al.* Decision, para 7.

FINDING, therefore, that neither Balaj nor Brahimaj have standing before the Appeals Chamber with respect to the Impugned Decision.

FOR THE FOREGOING REASONS,

DISMISSES the Requests.

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

Done this fourth day of March 2011,
At The Hague,
The Netherlands.



Judge Patrick Robinson
Presiding

[Seal of the Tribunal]

¹¹ See, e.g., *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-AR54bis.1, Decision on Prosecution Motion to Strike, Gotovina Defence's Appeal Pursuant to Rule 54 bis, and General Secretariat of the Council of the European Union's Motion for Extension of Time, 6 July 2010, para. 12.