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JUDGEMENT SUMMARY

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CHAMBERS

The Hague, 3 April 2008

JUDGEMENT SUMMARY FOR THE CASE OF HARADINAJ ET AL.

Please find below the summary of the judgement today read out by Judge Orić:

This Chamber is sitting today to deliver its Judgement in the case of the Prosecutor versus Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj.

For the purposes of this hearing, the Chamber will briefly summarize its findings. We emphasize that this is a summary only, and that the authoritative account of the Chamber's findings is to be found in the written Judgement, which will be made available at the end of this session.

This case concerns crimes allegedly committed between 1 March and 30 September 1998, in the Dukagjin area of Kosovo. This is an area in Western Kosovo which encompassed the municipalities of Peć, Dečani, Đakovica, and parts of the municipalities of Istok and Klina. It is alleged that during this period the UÇK, also known as the Kosovo Liberation Army which we will refer to as the KLA, persecuted and murdered Serb and Kosovar Roma civilians, as well as Kosovar Albanian civilians perceived to be collaborating with Serbian forces, in order to consolidate total control over the Dukagjin area.

Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj stood trial as alleged participants in a joint criminal enterprise aiming to consolidate total KLA control over the Dukagjin area by the unlawful removal and mistreatment of the aforementioned civilian groups. The Prosecution alleges that from at least 1 March 1998 until mid-June 1998, Ramush Haradinaj was a *de facto* KLA commander in the Dukagjin area and that from mid-June he became a *de jure* commander.

The Prosecution alleges that Idriz Balaj was the Commander of a unit within the KLA known as the "Black Eagles", which operated throughout the Dukagjin area. According to the Indictment, as Commander of the Black Eagles, Idriz Balaj was directly subordinate to Ramush Haradinaj.

Finally, the Prosecution alleges that Lahi Brahimaj was a member of the KLA General Staff stationed at the headquarters in Jablanica, in Đakovica municipality. According to the Indictment, he was also Deputy Commander in the Dukagjin area for a short period. The Prosecution alleges that Lahi Brahimaj was subordinate to, and worked closely with, Ramush Haradinaj.

Each of the three Accused was also charged, in the alternative, with having committed, planned, instigated, ordered, or aided and abetted several of the crimes alleged in the Indictment.

Before summarizing its findings, the Chamber would like to address a few matters related to the proceedings in the present case.

During the trial the Chamber received evidence from almost 100 witnesses. Nevertheless, the Chamber encountered significant difficulties in securing the testimony of a large number of these witnesses. Many cited fear as a prominent reason for not wishing to appear

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before the Chamber to give evidence. In this regard, the Chamber gained a strong impression that the trial was being held in an atmosphere where witnesses felt unsafe, due to a number of factors set out in the Judgement. The parties furthermore agreed that an unstable security situation existed in Kosovo that was particularly unfavourable to witnesses. As a reflection of the difficulties encountered in obtaining testimony, 34 witnesses were granted certain protective measures.

In addition, 18 subpoenas to testify were issued for witnesses who continued to refuse to testify, despite the prospect of protective measures. Four subpoenas issued by the Chamber were not complied with. In one of these cases, the witness concerned eventually agreed to testify via video-conference link. For two others, the Chamber confirmed indictments for Contempt of the Tribunal against the witnesses concerned. These witnesses were arrested and transferred to The Hague. They both decided to testify before the initial appearances in their contempt cases. Following their testimonies, the indictments were withdrawn. In relation to the fourth witness who defied a subpoena, Naser Lika, the Chamber undertook various measures in order to obtain his testimony, including extending the time allotted for the Prosecution to present its case. The witness never testified.

Three Prosecution subpoena requests were denied by the Chamber. In one case, the denied request concerned a witness who was experiencing extreme emotional distress about testifying before the Tribunal. The Victims and Witnesses Section of the Tribunal warned the Prosecution that there were risks in using this person as a witness unless a threat assessment, and other assessments, were made. The Prosecution did not subsequently initiate any such assessments. Under those circumstances, the Chamber found it imprudent to compel the witness's testimony.

Two witnesses came to the Tribunal without being subpoenaed, only to refuse to testify when invited to do so. One of these witnesses, Shefqet Kabashi, confirmed a few personal details, after which he refused to answer any questions on the substance of the case. Consequently, the Chamber issued an Order in Lieu of Indictment for Contempt of the Tribunal. However, before his trial was due to start, Kabashi left the Netherlands and returned to his place of residence in the United States. The Chamber considered and undertook various steps to obtain his evidence. The contempt case against Shefqet Kabashi is still pending his arrest and transfer to The Hague.

One of the subpoenaed witnesses, Witness 55, began to testify but claimed that he was under a great deal of stress and feared for his safety and that he was therefore unable to complete his testimony. After consultation with the Victims and Witnesses Section of the Tribunal and medical examination, the Chamber concluded that it would not be in the interests of justice to continue hearing Witness 55's testimony.

On several occasions, in order to determine the presence of a person at a given time and place, the Chamber had to rely on the identification evidence of a single eye witness. The Chamber considered several factors when evaluating such evidence, such as identification by a witness who only had a fleeting glance or an obstructed view of a person; sighting occurring in the dark; sighting during a traumatic event experienced by a witness; and the possibility of a witness's delayed assertion of memory of the presence of a person.

The Chamber will now give a summary of its findings, starting with the general elements of war crimes and crimes against humanity.

With regard to the general elements of war crimes, the Chamber received a great deal of evidence relevant to the existence of an armed conflict in Kosovo between the KLA and Serbian forces. The clashes at the Ahmeti, Jashari, and Haradinaj family compounds between late February and late March 1998 were particularly violent yet isolated events, followed by periods of relative calm. The evidence shows that the conflict reached the requisite level of intensity on 22 April 1998, when frequent shelling was taking place in Dečani municipality, civilians were fleeing from the countryside, the KLA was clashing with

Serbian forces, and the Yugoslav army was participating in combat and, on a large scale, deploying on the ground. By 22 April 1998, the KLA qualified as an organized armed group capable of entering into armed conflict with the Serbian forces. It had recruited many members or volunteers, provided training, and developed a rudimentary military structure. It controlled a considerable amount of territory, ran supply routes for obtaining weapons and other equipment, used guerrilla tactics, and issued communiqués in its name. On the basis of the evidence before it, the Chamber found that an armed conflict existed in Kosovo from and including 22 April 1998 onwards, that is to say before the material facts charged in each count of the Indictment, with the exception of Counts 3 and 4.

With regard to the general elements of crimes against humanity, the Prosecution alleges that there was a widespread or systematic attack by the KLA directed against part of the civilian population in the Dečani, Peć, Đakovica, Istok, and Klina municipalities of Kosovo. That part consisted of the Serb civilian population in these municipalities as well as civilians perceived to be collaborating with the Serbs or otherwise not supporting the KLA. The Prosecution's case with respect to the alleged attack was, to a large extent, based on the evidence adduced under individual counts. This evidence did not always allow the Chamber to conclude whether a crime was committed or whether the KLA was involved as alleged. The evidence on some of the other counts indicated that the victims may have been targeted primarily for reasons pertaining to them individually rather than as members of a civilian population under attack. These counts were not taken into consideration when determining whether there was an attack against a civilian population.

In addition to the evidence on individual counts in the Indictment, the Chamber heard some evidence relating to whether there was an attack against a civilian population. Much of this evidence concerned Serbs leaving their homes during the Indictment period. The Chamber is convinced that many Serbs left their homes out of fear of being deliberately attacked by the KLA, or out of a general fear of being caught up in the developing armed conflict, rather than because they were being directly targeted by the KLA. Indeed, Kosovar Albanians also fled from their homes during the indictment period. The Chamber could not, therefore, draw any general conclusion with regard to the alleged attack against a civilian population from the mere fact that many Serb civilians left their homes during this period. As for assaults against non-Albanians during the indictment period, the evidence was often insufficiently precise to conclude who was or were responsible for those assaults and whether they formed part of a larger attack against a civilian population.

The Chamber found that the ill-treatment, forcible transfer, and killing of Serb and Roma civilians, as well as Kosovar Albanian civilians perceived to be collaborators or to be unresponsive of the KLA, were not on a scale or of a frequency that would allow for a conclusion that there was an attack against a civilian population. As the general elements for crimes against humanity therefore have not been met, the Chamber will acquit all three Accused of all counts alleging crimes against humanity.

The Chamber will now address the charges of violations of the laws or customs of war. The Chamber heard evidence covering the alleged murder, torture, rape, and cruel treatment charged under 19 counts.

Having considered the evidence presented on individual counts of the Indictment, the Chamber found that a large number of alleged crimes were committed by KLA soldiers or persons affiliated with the KLA. These crimes included, in particular, the ill-treatment of persons detained in the Jablanica compound. The Chamber found that KLA soldiers in the compound, or persons affiliated with the KLA, severely beat Witness 6, Nenad Remištar, Pal Krasniqi, Skender Kuqi, Witness 3, three unidentified Montenegrin men, and one unidentified Bosnian man. The ill-treatment of these persons amounted to cruel treatment and, in several cases, torture. The Chamber also found that two of these individuals, Skender Kuqi and Pal Krasniqi, died as a result of the ill-treatment.

The Chamber found that KLA soldiers interrogated and ill-treated Novak Stijović and Staniša Radošević outside Glođane in April 1998, after the two men had been stopped at a KLA checkpoint. The Chamber also found that a KLA soldier raped Witness 61 in the KLA headquarters in Rznić sometime in the summer of 1998. The ill-treatment of these persons amounted to both cruel treatment and torture.

The Prosecution had charged the three Accused with 30 murders where the victims' remains were found in the Radonjić canal area. The Chamber found, however, that only seven of these murders could be proven beyond a reasonable doubt and were committed by KLA soldiers. These were the murders of Zenun Gashi, Nurije Krasniqi, Istref Krasniqi, Sanije Balaj, and the mother and the two sisters of Witnesses 4 and 19.

The evidence presented with regard to the perpetrators and circumstances of the remaining alleged murders was vague, inconclusive, or non-existent. In relation to many of the victims, the Chamber received evidence merely about where and when they were last seen alive and about them being found dead in the Radonjić canal area. The victims were last seen alive at different locations in three municipalities over a period of five months. Many of them were last seen alive in areas which were under KLA control at the time. The control the KLA exercised over the Radonjić canal area was considerable but not complete in every respect during the indictment period. This raises the likelihood that the KLA abducted the victims and either killed them and deposited their bodies in the Radonjić canal area or took the victims to this area and executed them there.

The Chamber has considered the ballistics evidence which the Prosecution presented in support of its allegation that a weapon fired in the Radonjić canal area was also fired by the KLA on two other occasions, one of which was the clash at the Haradinaj family compound on 24 March 1998. Some imprecision in this evidence and the impossibility of verifying it led the Chamber to decide that it could not rely on this evidence. Furthermore, it could not have answered important questions such as who had fired that weapon, when it was fired in the Radonjić canal area, and what the chain of custody of that weapon had been.

For only one of the victims found in the Radonjić canal area, Sanije Balaj, the Chamber received extensive evidence about the perpetrators of and the circumstances surrounding the murder. The case of this victim demonstrated the level of caution with which the Chamber had to proceed when considering inferences as to responsibility merely on the basis of the disappearance or abduction of a person and the discovery of the remains of that person in the Radonjić canal area. On the face of it, all the elements appear to be present: an arrest by KLA soldiers; the inclusion of Sanije Balaj on what seems to have been a wanted list, used by those soldiers; transportation to, and interrogation in, a KLA headquarters; retrieval of the bodily remains in the Radonjić canal area; and forensic medical evidence of a violent death. At first sight this would make it among the strongest cases from which the Chamber could draw inferences about murders committed in KLA custody. However, in this case, the detailed evidence about the circumstances of Sanije Balaj's death revealed that the apparently obvious conclusion would have been the wrong conclusion. For example, the Chamber heard evidence that a KLA commander ordered Sanije Balaj's release. She was carrying a large amount of money, and the KLA soldier who murdered her was aware of this. Sanije Balaj was not killed on KLA premises or in the vicinity of the Radonjić canal area. Additionally, a number of witnesses testified about a KLA investigation into the murder. Considering all the evidence with regard to this murder, the Chamber found that a reasonable alternative to KLA involvement as charged in the murder was that Sanije Balaj could have been targeted by people who were not acting under the direction of or in pursuit of the policies of the KLA, and that she may not have been killed while in the custody of the KLA.

The Chamber received less evidence for most of the other alleged murders where the victims' remains were found in the Radonjić canal area. In some instances, nothing was known about the circumstances in which the victim disappeared. Some remains found in the Radonjić canal area were not identified. Even those murders for which the Chamber

received ample evidence could not consistently be attributed to the KLA. Consequently, the Chamber could not draw conclusions of a more general nature from the fact that victims were found in the Radonjić canal area, as to who committed the killing and with which group, if any, the perpetrator was affiliated.

In conclusion, the Chamber found that KLA soldiers committed acts of cruel treatment, torture, rape, and murder as charged in:

- Count 6,
- Count 14,
- Count 20,
- Count 22, but only with regard to the murder of Nurije and Istref Krasniqi and the murder of Sanije Balaj,
- Count 28,
- Count 30,
- Count 32, and
- Counts 36 and 37, but only with regard to Witness 61.

As mentioned, the Prosecution charged all three Accused with these crimes as participants in a joint criminal enterprise. The objective of this alleged joint criminal enterprise was to consolidate total KLA control over the Dukagjin area by the unlawful removal and mistreatment of Serb civilians, and by the mistreatment of Kosovar Albanian and Kosovar Roma civilians, and other civilians, who were, or were perceived to have been, collaborators with the Serbian forces or otherwise not supporting the KLA.

The Prosecution presented little direct evidence with regard to the alleged common criminal objective. The Prosecution instead asked the Chamber to infer from circumstantial evidence, principally from evidence on crimes committed by KLA soldiers, that there existed a joint criminal enterprise. With regard to the murder of Sanije Balaj, the Chamber concluded, as mentioned previously, that there existed reasonable alternatives to the Prosecution's theory.

Although the events in the Jablanica compound appear to indicate that crimes committed there were carried out in a systematic way, the Chamber nevertheless found that the evidence before it was insufficient to infer the existence of the common criminal objective, which one or more of the Accused shared with other participants in the alleged joint criminal enterprise.

In conclusion, considering both the direct and the circumstantial evidence, the Chamber was not convinced beyond a reasonable doubt that the three Accused participated in a joint criminal enterprise, as charged.

All the Accused were charged, in the alternative, with having committed, planned, instigated, ordered, or aided and abetted many of the crimes.

For only two of the Counts, the Chamber received sufficient evidence to be convinced beyond a reasonable doubt as to the individual criminal responsibility of one of the Accused, Lahi Brahimaj. The Chamber will now give a summary of its findings for these counts.

Under Count 28, the Prosecution alleged that on or about 13 June 1998, KLA soldiers arrested Witness 6 after searching his car and finding a gun. According to the Indictment, Witness 6 was subsequently detained at the Jablanica compound where he was regularly beaten by KLA soldiers, including Lahi Brahimaj.

Based on the evidence presented, the Chamber is convinced that Witness 6 was detained at the Jablanica compound for around six weeks, starting on or about 13 June 1998. During approximately the first four of these weeks he was regularly beaten by KLA soldiers causing

serious physical suffering and injury, and resulting in lasting physical consequences. Additionally, Witness 7 and Witness 16 testified that a commander at the compound told them that Witness 6 had been convicted or sentenced. The commander spoke angrily against President Rugova and those who did not fight. Witness 6 himself testified that when he was released, he received a written decision from Nazmi Brahimaj stating that if Witness 6 repeated his mistake, he would be prosecuted. On the basis of this evidence, the Chamber is convinced that KLA soldiers mistreated Witness 6 to punish him. For this reason, the Chamber concludes that Witness 6 was a victim of cruel treatment and torture committed by KLA soldiers or persons affiliated with the KLA.

Witness 6 testified that Lahi Brahimaj participated in some of his beatings, and was sometimes present while others beat him. Witness 6 also testified that Lahi Brahimaj was among those who accused him of associating with and spying for the Serbs. Witness 6 had ample opportunity to observe Lahi Brahimaj throughout the approximately four weeks during which he was beaten. Furthermore, Witness 6 testified that, during the following couple of weeks, he repeatedly observed Lahi Brahimaj at the Jablanica compound. Witness 6 heard others address him as Lahi or Maxhup, and learned that Maxhup was Lahi Brahimaj's nickname. Witness 6 later recognized Lahi Brahimaj on a Prosecution photo board. Based on the evidence as a whole, the Chamber is therefore convinced that Lahi Brahimaj personally participated in the cruel treatment and torture of Witness 6, and concludes that he should be convicted for having committed these crimes.

Under Count 32, the Prosecution alleged that in July 1998, Witness 3 was detained at the Jablanica KLA headquarters and submitted to severe beatings by the KLA.

The Chamber is convinced that Witness 3 was subject to beatings by KLA soldiers or persons affiliated with the KLA, which caused him serious physical suffering, and that the perpetrators intended to cause such suffering. The Chamber is also convinced that the beatings of Witness 3 were aimed at punishing him for withholding a weapon, and discriminating against him on the basis of his perceived ties to the Serbs. For these reasons, the Chamber is convinced beyond a reasonable doubt that KLA soldiers or persons affiliated with the KLA committed cruel treatment and torture against Witness 3.

Furthermore, the evidence establishes beyond a reasonable doubt that Lahi Brahimaj left Witness 3 in a room in the Jablanica compound in which KLA soldiers, or persons affiliated with the KLA, arrived shortly thereafter and beat Witness 3 with baseball bats. The evidence also established beyond a reasonable doubt that, on another occasion, Lahi Brahimaj interrogated Witness 3, accusing him of supporting the Serbian police and withholding an automatic weapon. During this same occasion Lahi Brahimaj told two women who were present and dressed in black uniforms, to practice on him. These women then beat Witness 3.

The Chamber found that Lahi Brahimaj's role in the interrogations, as well as his position of authority, established his intent to inflict serious physical suffering on Witness 3 for the purpose of punishing him for withholding a weapon, and discriminating against him on the basis of his perceived ties to the Serbs. For these reasons the Chamber concludes that Lahi Brahimaj should be convicted of having committed cruel treatment and torture under Count 32.

For the other crimes committed under Counts 6, 20, 30, 36 and 37, the Chamber found that insufficient evidence was advanced by the Prosecution to hold any of the Accused criminally liable.

Count 14 charged Idriz Balaj with committing, planning, instigating, or aiding and abetting the commission of the murders of the mother and the two sisters of Witnesses 4 and 19. The majority found that there was no evidence that he knowingly contributed to or facilitated the commission of any of the murders, noting in particular the absence of evidence that he was aware at that time that these murders were or would be committed. Judge Höpfel

dissents as to Idriz Balaj's criminal liability for aiding and abetting the commission of the murder of sister "S".

Having summarised its findings, the Chamber will now give its verdict.

Mr Haradinaj, will you please stand.

For the reasons summarised above, this Chamber, having considered all of the evidence and the arguments of the Parties, the Statute and the Rules, and based upon the factual and legal findings as determined in the Judgement, finds you not guilty and therefore acquits you of all Counts against you in the Indictment. The Chamber orders that you be immediately released from the United Nations Detention Unit, after the necessary practical arrangements are made.

You may be seated.

Mr Balaj, will you please stand.

For the reasons summarised above, having considered all of the evidence and the arguments of the Parties, the Statute and the Rules, and based upon the factual and legal findings as determined in the Judgement, the majority finds you not guilty, Judge Höpfel dissenting, and therefore acquits you of all Counts against you in the Indictment. The Chamber orders that you be released from the United Nations Detention Unit after the necessary practical arrangements are made for your transfer to the authorities competent for the enforcement of the sentence you were serving at the time of your transfer to the seat of the Tribunal.

You may be seated.

Mr Brahimaj, will you please stand.

For the reasons summarised above, this Chamber, having considered all of the evidence and the arguments of the Parties, the Statute and the Rules, and based upon the factual and legal findings as determined in the Judgement, finds you guilty of the following charges:

Under Count 28, cruel treatment and torture as violations of the laws or customs of war, under Article 3 of the Statute, committed against Witness 6.

Under Count 32, cruel treatment and torture as violations of the laws or customs of war, under Article 3 of the Statute, to the extent the crimes were committed against Witness 3.

Your responsibility for the above crimes is pursuant to Article 7(1) of the Tribunal's Statute. The Chamber finds you not guilty of the remaining charges in the Indictment.

With respect to sentencing, the Chamber considered the inherent seriousness of the crimes of which you have been convicted, that you participated directly in their commission, and that you held high-ranking positions in the KLA. The Chamber also considered the vulnerability of the victims and the physical and mental trauma they suffered. It furthermore considered how, upon learning that one of his co-detainees had died following ill-treatment, Witness 6 must have feared for his life. That said, the Chamber considered that your voluntary surrender to the Tribunal and your family situation were mitigating circumstances.

For having committed these crimes, we sentence you, Mr Brahimaj, to a single sentence of 6 years imprisonment.

You are entitled to credit for the period of time you have been in custody, which amounts to 1,109 days.

As mentioned, Judge Höpfel has a dissenting opinion on one of the Counts, which he will now summarize.

[Judge Höpfel speaks.]

With full respect for the majority's opinion, I have to dissent from some conclusions which the majority of this Chamber reached in relation to Count 14.

Under this Count, the Chamber found that sister "S", the mother and sister "M" had been taken from their home on separate occasions and then murdered by KLA soldiers. The Chamber further found that the Accused Idriz Balaj was present when these persons were taken away from their home and also when sister "S" was allowed to visit her family after she had been taken away. The evidence showed that sister "S", who had been coerced to become a KLA member, took orders from Idriz Balaj, that Idriz Balaj had instructed her to be back at the KLA base by a certain time after her second visit home, and that he checked whether she complied. Further, the evidence showed that Idriz Balaj had ordered sister "S" to kill somebody, and that Balaj threatened to kill her if she did not comply.

While I support the Chamber's findings on Count 14 as to the aforementioned points, I respectfully disagree with the majority's finding that there is no evidence to establish that Idriz Balaj aided and abetted the commission of the murder of sister "S". In my opinion, the aforementioned acts provide a sufficient basis to find that by bringing sister "S" under KLA control in this fashion, Idriz Balaj placed her at a direct and serious risk. This risk did indeed materialize, and resulted in her death. For these reasons, I find that Idriz Balaj substantially contributed to the commission of the murder of sister "S".

The evidence showed the leading role of Idriz Balaj in the removal and visits of sister "S". The aforementioned death threat furthermore demonstrates Idriz Balaj's own belief in his control over the life and death of sister "S". On the basis of these considerations, I am convinced beyond a reasonable doubt that Idriz Balaj was aware that sister "S" would be murdered, and that he was aware that by removing sister "S" and controlling her, he would assist in the commission of the murder. Consequently, he knowingly aided and abetted the commission of the murder of sister "S".

I therefore find that Idriz Balaj is guilty of aiding and abetting the commission of the murder of sister "S", which in my view should have resulted in his conviction under Count 14.

[Judge Orić speaks.]

This concludes the delivery of the Judgement, which will now be made publicly available. The Chamber stands adjourned.
