

IT-04-84bis-AR73.1
A417- A415
16 March 2011

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**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-AR73.1
Date: 16 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: 16 March 2011

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

DECISION ON REQUEST FOR ORAL ARGUMENT

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for Ramush Haradinaj:

Ms. Ben Emmerson QC
Mr. Rodney Dixon

Counsel for Idriz Balaj:

Mr. Gregor Guy-Smith
Ms. Colleen M. Rohan

Counsel for Lahi Brahimaj:

Mr. Richard Harvey
Mr. Paul Troop

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):

NOTING the “Appeal Brief on Behalf of Ramush Haradinaj on Scope of Partial Retrial”, filed by Ramush Haradinaj (“Haradinaj”) on 10 February 2011 (“Appeal”) against the “Decision on Shortened Form of the Fourth Amended Indictment” issued by Trial Chamber II of the Tribunal on 14 January 2011;¹

NOTING that the Prosecution filed its confidential Response on 21 February 2011,² and that Haradinaj filed his Reply on 25 February 2011;³

NOTING that in the Reply, Haradinaj requests that an oral hearing be scheduled by the Appeals Chamber to hear the parties before it renders a decision on the Appeal, and submits that the Appeal raises novel and complex questions which justify an oral hearing;⁴

NOTING that on 3 March 2011, the Prosecution filed a Sur-Reply requesting leave to file its submission and opposing Haradinaj’s request for an oral hearing;⁵

NOTING that in the Sur-Reply, the Prosecution submits that Haradinaj has not shown why the matters raised in his Appeal cannot be addressed effectively in writing and that his request is new and should have been addressed in the Appeal;⁶

NOTING that pursuant to Rule 116 *bis* (A) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), interlocutory appeals may be determined entirely on the basis of written briefs;⁷

CONSIDERING that the Appeals Chamber will only grant a request for oral arguments on interlocutory appeals if such arguments are deemed necessary for the Appeals Chamber to reach an informed decision;⁸

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 Prosecution Response to Haradinaj’s Appeal on Scope of Partial Retrial, 21 February 2011 (confidential). *See also* Prosecution Response to Haradinaj’s Appeal on Scope of Partial Retrial, 22 February 2011 (public redacted version) (“Response”).

³ Reply Brief on Behalf of Ramush Haradinaj on Scope of Partial Retrial, 25 February 2011 (“Reply”).

⁴ *Ibid*, paras 6, 7.

⁵ Prosecution Motion for Leave to File Sur-Reply and Sur-Reply to Haradinaj’s Reply Brief on Scope of Partial Retrial, 3 March 2011 (“Sur-Reply”).

⁶ *Ibid*, paras 1, 2.

⁷ Rule 116 *bis* (A) of the Rules reads: “An appeal under Rule 72 or Rule 73 or appeal from a decision rendered under Rule 11 *bis*, Rule 54 *bis*, Rule 65, Rule 73 *bis* (E), Rule 77 or Rule 91 shall be heard expeditiously on the basis of the original record of the Trial Chamber. Appeals may be determined entirely on the basis of written briefs.” The Appeal was filed under Rule 73 of the Rules. *See 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.

CONSIDERING that the submissions in the written pleadings are extensive and that the information before the Appeals Chamber is sufficient to enable it to reach an informed decision;

FINDING that an oral hearing is not necessary in this case;

FOR THE FOREGOING REASONS,

GRANTS the Prosecution leave to file the Sur-Reply, and

DENIES Haradinaj's request for an oral hearing.

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

Dated this 16th day of March 2011
At The Hague
The Netherlands



Judge Patrick Robinson
Presiding

[Seal of the Tribunal]

⁸ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-AR73.1, Decision on Interlocutory Appeal of Decision on Second Defence Motion for Adjournment, 25 April 2005, para. 4; *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-AR72.1, Decision on Ante Gotovina's Interlocutory Appeal Against Decision on Several Motions Challenging Jurisdiction, 6 June 2007, para. 8. *See also Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motion for Leave to Present Additional Evidence Pursuant to Rule 115, 5 May 2006, para. 9; *Théoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, Decision on Aloys Ntabakuze's Motion for Severance, Retention of the Briefing Schedule and Judicial Bar to the Untimely Filing of the Prosecution's Response Brief, 24 July 2009, para. 22.