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AT

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

Case No. IT-04-84-A

IN THE APPEALS CHAMBER

Before: A Bench of the Appeals Chamber

Registrar: Mr. Hans Holthuis

Date Filed: 1 May 2008

THE PROSECUTOR

v.

RAMUSH HARADINAJ  
IDRIZ BALAJ  
LAHI BRAHIMAJ

*PUBLIC WITH CONFIDENTIAL ANNEX*

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PROSECUTION'S NOTICE OF APPEAL

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THE INTERNATIONAL CRIMINAL TRIBUNAL  
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Case No. IT-04-84-A

THE PROSECUTOR

v.

RAMUSH HARADINAJ  
IDRIZ BALAJ  
LAHI BRAHIMAJ

PROSECUTION'S NOTICE OF APPEAL

1. Pursuant to Article 25 of the Statute of the International Criminal Tribunal for the former Yugoslavia and Rule 108 of the Rules of Procedure and Evidence, the Prosecution hereby files its Notice of Appeal setting out the grounds of appeal against the Judgement of Trial Chamber I in the case of *Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj* dated 3 April 2008.

**1<sup>st</sup> Ground: Appeal in respect of Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj:  
Evidence relevant to Joint Criminal Enterprise and Individual Liability  
(Counts 24, 26, 28, 30, 32, 34)**

2. The Prosecution provides notice of the following ground of appeal in respect of Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj:

3. In the prevailing circumstances of witness intimidation and fear,<sup>1</sup> the Trial Chamber erred in law by depriving the Prosecution of its right to a fair trial under Article 20(1) of the Statute. The Trial Chamber denied the Prosecution a fair trial by not granting it the additional time necessary to exhaust all reasonable steps to obtain the testimony of witnesses, including Shefqet Kabashi, relating to central issues in the case and by ordering the closure of the Prosecution case before such reasonable steps could be taken to secure their testimony.

4. Considering the circumstances relating to securing these witnesses, including the involvement of the Trial Chamber, the Trial Chamber's decisions foreclosing the possibility

of calling these witnesses constituted an abuse of discretion. The Trial Chamber abused its discretion in a number of related decisions which had the effect individually or cumulatively of denying the Prosecution a fair trial. The confidential Annex to this Notice of Appeal sets out these decisions, and further explains how the Trial Chamber erred.

5. The impact of the Trial Chamber's legal error is that it precluded the possibility of hearing direct evidence of witnesses regarding the participation of Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj in a joint criminal enterprise ("JCE") to commit crimes at the KLA headquarters and the prison in Jablanica/Jabllanicë (counts 24, 26, 28, 30, 32, 34)<sup>2</sup>, and regarding the criminal liability of Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj for their responsibility individually under counts 24<sup>3</sup> (Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj), 26<sup>4</sup> (Lahi Brahimaj) and 34<sup>5</sup> (Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj). This error of law invalidates the verdict in that it precluded the opportunity to present crucial evidence, which was directly relevant to the Trial Chamber's determination on these counts.

6. The appropriate remedy for this denial of the Prosecution's right to a fair trial is to reverse the decisions to acquit Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj of criminal responsibility based on JCE liability for the crimes committed at the KLA headquarters and the prison in Jablanica/Jabllanicë (counts 24, 26, 28, 30, 32 and 34), and to reverse the decisions to acquit Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj of criminal responsibility based on their responsibility individually under counts 24 (Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj), 26 (Lahi Brahimaj) and 34 (Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj).

7. Given that the Accused elected not to call a case in defence, and may have done so had the Trial Chamber heard the evidence of these witnesses, the Appeals Chamber should remit the matter back to a trial chamber for a re-trial to determine the liability of Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj based on JCE and/or their responsibility individually in relation to the crimes committed at the KLA headquarters and the prison in Jablanica/Jabllanicë. Such re-trial should include the testimony of these witnesses.

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<sup>1</sup> Judgement, paras.6, 22-28.

<sup>2</sup> Judgement, paras.475, 476, 478, 502-504.

<sup>3</sup> Judgement, paras.376, 502-504.

<sup>4</sup> Judgement, paras.379, 504.

<sup>5</sup> Judgement, paras.457-458, 502-504.

**2<sup>nd</sup> and 3<sup>rd</sup> Grounds: Separate Appeal in respect of Idriz Balaj**

8. The Prosecution also provides notice of the following separate grounds of appeal against Idriz Balaj:

**(A) 2<sup>nd</sup> Ground: Error as to the Murder of Sister 'S', the Mother of Witness 4 and Sister 'M' (Count 14)**

9. The Trial Chamber erred in law, or alternatively in fact, in paragraphs 242 and 503 of the Judgement in failing to find that Idriz Balaj was responsible for aiding and abetting the murder of Sister 'S', the mother of Witness 4 and Sister 'M'.

10. The Trial Chamber erred in law in paragraph 242 in failing to correctly apply the *actus reus* and *mens rea* standards for aiding and abetting murder.

11. When making its finding on the *actus reus* for aiding and abetting, the Trial Chamber erred in law in paragraph 242 in not finding that the acts committed by Idriz Balaj, as found by the Chamber, amounted to a substantial contribution for aiding and abetting. Specifically, the Trial Chamber erred in not finding that Idriz Balaj substantially contributed to the three murders by accompanying Sister 'S' when, and after, she was recruited into the KLA, and by taking the mother of Witness 4 and Sister 'M' from their home, all of which were found to be acts in the chain of events leading to their deaths.

12. Further, the Trial Chamber erred in law in paragraph 242 in its application of the legal standard of the *mens rea* for aiding and abetting. When making its finding the Trial Chamber applied a certainty test, not a probability test, and thereby erroneously held that Idriz Balaj did not have the *mens rea* for aiding and abetting murder.

13. Had the Trial Chamber applied the correct *mens rea* and *actus reus* standards, it would have reached the conclusion that Idriz Balaj was aware that the murder of Sister 'S', the mother of Witness 4, and Sister 'M' by KLA members was probably among the crimes that would be committed and that his acts constituted a substantial contribution to these crimes. These legal errors invalidate the decision.

14. In the alternative, the Trial Chamber erred in fact, based on its findings in paragraphs 222-242 and the relevant evidence, in finding in paragraph 242 that it did not have a sufficient basis to assess the relevance and importance of Idriz Balaj's acts. Moreover, even accepting the *mens rea* standard as applied by the Trial Chamber, based on its findings in paragraphs 222-242 and the relevant evidence, the Trial Chamber erred in fact in paragraph 242, in finding that Idriz Balaj was not aware at the time that these murders were or would be committed and that he did not knowingly contribute to or facilitate their commission. No reasonable trial chamber could have reached this conclusion.

15. As a result of this error of fact, the Trial Chamber failed to find that Idriz Balaj knew that the murders would occur and that he substantially contributed to them. This factual error has occasioned a miscarriage of justice.

16. The Prosecution requests the Appeals Chamber to reverse the acquittal of Idriz Balaj for murder, apply the correct legal standards to the evidence, enter a conviction under Count 14 for murder as a violation of the laws or customs of war under Article 3 of the Statute for having aided and abetted the murders of Sister 'S', the mother of Witness 4 and Sister 'M', and sentence Idriz Balaj accordingly. Alternatively, the Appeals Chamber should conclude that no reasonable trial chamber could have reached the factual conclusion, enter a conviction under Count 14 for murder as a violation of the laws or customs of war under Article 3 of the Statute for having aided and abetted the murder of Sister 'S', the mother of Witness 4 and Sister 'M', and sentence Idriz Balaj accordingly.

**(B) 3<sup>rd</sup> Ground: Errors as to Rape, Torture and Cruel Treatment of Witness 61 and Cruel Treatment of Witness 1 (Counts 36 – 37)**

17. The Trial Chamber erred in fact and in law in paragraphs 467, 469 and 503 in finding that Idriz Balaj was not responsible for the rape, torture and cruel treatment of Witness 61 and for the cruel treatment of Witness 1.

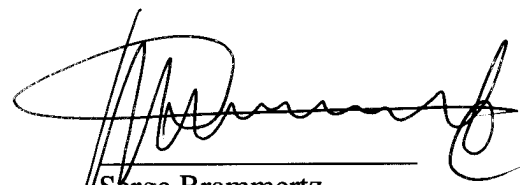
18. The Trial Chamber erred in fact in concluding that it was not Idriz Balaj who raped, tortured and cruelly treated Witness 61. The Trial Chamber found that one night in the summer of 1998 Witness 61 was taken from her house together with Witness 1 by KLA soldiers, and raped, tortured and cruelly treated by one of the KLA soldiers at the KLA

headquarters in Rznić/Irznik.<sup>6</sup> The only reasonable conclusion was that Idriz Balaj committed those crimes.

19. The Trial Chamber erred in law in paragraph 467 in concluding that the acts committed against Witness 1 did not constitute cruel treatment. As a result of this error the Trial Chamber failed to find that cruel treatment was committed against Witness 1, and failed to make any findings as to Idriz Balaj's responsibility for committing cruel treatment against Witness 1 together with the other KLA soldiers.

20. The Appeals Chamber should apply the correct legal standard to the evidence and find that Witness 1 was cruelly treated in relation to the acts that occurred that night in the summer of 1998.<sup>7</sup> Further, the Appeals Chamber should find on the basis of the evidence that Idriz Balaj, together with other KLA soldiers, committed cruel treatment against Witness 1.

21. The Prosecution requests the Appeals Chamber to reverse the acquittal of Idriz Balaj for rape, torture and cruel treatment of Witness 61 and for cruel treatment of Witness 1, to enter convictions against him under Counts 36 and 37 for rape, torture and cruel treatment of Witness 61 and cruel treatment of Witness 1 as violations of the laws or customs of war under Article 3 of the Statute, and sentence Idriz Balaj accordingly.



Serge Brammertz  
Prosecutor

Dated this 1<sup>st</sup> day of May 2008  
At The Hague, The Netherlands

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<sup>6</sup> Judgement, para.466.

<sup>7</sup> Judgement, paras. 459-469.