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for the former  
Yugoslavia

Tribunal Pénal  
International pour  
l'ex-Yougoslavie

# JUDGEMENT SUMMARY

(Exclusively for the use of the media. Not an official document)

APPEALS CHAMBERS

The Hague, 21 July 2010

## Judgement Summary for Haradinaj *et al.*

Please find below the summary of the Judgement read out today by Judge Patrick Robinson:

The Appeals Chamber of the International Criminal Tribunal for former Yugoslavia is sitting today publicly to pronounce its Judgement in the case of *Prosecutor v. Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj*, which was rendered on 19 July 2010.

Following the practice of the Tribunal, I will summarise the findings of the Appeals Chamber. This summary is not part of the written judgement, which is the only authoritative account of the Appeals Chamber's rulings and reasons therefor. Copies of the written judgement will be made available to the parties as soon as possible following this hearing.

In the written Judgement, when referring to the names of places in Kosovo, which differ between the Albanian and the Bosnian/Croatian/Serbian versions, both versions were used, separated by a slash. Solely for the convenience of today's summary, I will use only the Bosnian/Croatian/Serbian version.

Ramush Haradinaj was born on 3 July 1968 in the municipality of Dečani in Kosovo, in the former Yugoslavia. The Indictment alleges that from about 1 March until mid-June 1998, he served as a *de facto* commander in the Kosovo Liberation Army—or KLA—and that in mid-June 1998, he was appointed a commander, with overall command of the KLA forces in the Dukagjin area.

Idriz Balaj was born on 23 August 1971 in the municipality of Klina in Kosovo. The Indictment alleges that he was a member of the KLA and commanded a special unit known as the Black Eagles.

Lahi Brahimaj was born on 26 January 1970 in the municipality of Đakovica in Kosovo. The Indictment alleges that he was a member of the KLA, serving as Deputy Commander of the Dukagjin Operative Staff from 23 June to 5 July 1998, and then as Finance Director of the KLA General Staff.

The events giving rise to this case took place between 1 March and 30 September 1998 in Kosovo. The Indictment alleges that the KLA persecuted and abducted civilians who were perceived to be collaborating with Serbian forces in the Dukagjin area. The Prosecution charged Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj as participants in a joint criminal enterprise in relation to the commission of crimes against humanity and violations of the laws or customs of war. The common criminal purpose of the alleged joint criminal enterprise was to consolidate total KLA control over the Dukagjin area through the unlawful removal and mistreatment of these civilians. In the alternative, the Prosecution alleged that the accused were individually criminally responsible under other modes of liability under Article 7(1) of the Statute.

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Media Office/Communications Service

Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 EW The Hague. Netherlands

Tel.: +31-70-512-8752; 512-5343; 512-5356 Fax: +31-70-512-5355

In the Trial Judgement, the Trial Chamber found the evidence before it insufficient to establish the existence of a joint criminal enterprise and acquitted all three accused of any criminal liability through such an enterprise. The Trial Chamber further acquitted Mr. Haradinaj and Mr. Balaj of all alternative charges in the Indictment. However, the Trial Chamber found Mr. Brahimaj guilty of one count of torture and one count of torture and cruel treatment, all as violations of the laws or customs of war. Mr. Brahimaj was found not guilty under all other counts. The Trial Chamber sentenced Mr. Brahimaj to a single sentence of six years of imprisonment.

The Prosecution and Mr. Brahimaj both filed appeals against the Trial Judgement. The hearing on the merits of these appeals was held on 28 October 2009.

I first will turn to the Prosecution's appeal. In the Prosecution's first ground of appeal, it argued that the Trial Chamber erred when it refused the Prosecution's requests for additional time to exhaust all reasonable steps to secure the testimony of two crucial witnesses and ordered the close of the Prosecution case before such reasonable steps could be taken. The Prosecution asserted that these witnesses possessed direct evidence relating to the guilt of the three accused, who had refused to testify due to intimidation and fear. The Prosecution therefore asked for a re-trial on certain counts identified in its brief.

The Appeals Chamber—by majority and with Judge Robinson dissenting—has decided to grant this ground of appeal and to order a partial re-trial. Taken individually and outside the context of the trial, each of the Trial Chamber's decisions concerning the testimony of the relevant witnesses could be considered as falling within the scope of the Trial Chamber's discretion. However, when these decisions are evaluated together—and particularly in the context of the serious witness intimidation that formed the context of the Trial—it is clear that the Trial Chamber seriously erred in failing to take adequate measures to secure the testimony of certain witnesses. The Trial Chamber placed undue emphasis upon ensuring that the Prosecution took no more than its pre-allotted time to present its case and that the Trial Chamber's deadlines for presenting evidence were respected, irrespective of the possibility of securing potentially important testimony. This misplaced priority demonstrates that the Trial Chamber failed to appreciate the gravity of the threat that witness intimidation posed to the trial's integrity. Some of these failures were in response to specific requests by the Prosecution, while in certain other cases the Trial Chamber should have acted *proprio motu* to facilitate witness testimony. For the reasons set out in the Judgement, the Appeals Chamber therefore has found that the Trial Chamber failed to take sufficient steps to counter the witness intimidation that permeated the trial. Given the potential importance of these witnesses to the Prosecution's case, the error undermined the fairness of the proceedings and resulted in a miscarriage of justice.

I have appended a separate opinion to the Judgement, registering my disagreement with the Majority of my colleagues in relation to ground 1 of the Prosecution's appeal.

In the Prosecution's second ground of appeal, it challenged the Trial Chamber's acquittal of Idriz Balaj for aiding and abetting the commission of the murders of three civilian women, arguing that the Trial Chamber erred when it held that the *mens rea* and *actus reus* requirements of aiding and abetting were not satisfied. The Appeals Chamber has identified no error on the part of the Trial Chamber in its application of the legal standards for aiding and abetting, and therefore has dismissed this ground of appeal.

In its third ground of appeal, the Prosecution challenged the Trial Chamber's findings regarding the rape, torture, and cruel treatment of Witness 61 and the cruel treatment of Witness 1. The Prosecution first argued that the Trial Chamber erred when it found that Idriz Balaj was not guilty of the rape, cruel treatment, and torture of Witness 61, arguing that it was patently unreasonable for the Trial Chamber to acquit Mr. Balaj, once it had found that he was the man known as Toger. For the reasons given in the written Judgement, the Appeals Chamber rejected the Prosecution's argument and upheld the acquittal of Mr. Balaj on this count. Also in ground of appeal 3, the Prosecution averred

that the Trial Chamber committed an error in law when it failed to find that KLA soldiers throwing Witness 1 into a well constituted cruel treatment, arguing that this constituted a serious attack upon Witness 1's human dignity. Having analysed the evidence before the Trial Chamber, the Appeals Chamber considered that, although Witness 1 was not the victim of an intentional act or omission causing serious *physical* suffering or injury, his treatment caused him serious *mental* suffering and constituted a serious attack upon the human dignity of Witness 1, who was incapacitated in a well and separated from his wife, who was now in the hands of armed KLA soldiers. The Appeals Chamber therefore granted the Prosecution's ground of appeal, in part, and reversed the finding of the Trial Chamber that the treatment of Witness 1 did not constitute cruel treatment. However, although the Prosecution proved that the KLA soldiers committed cruel treatment against Witness 1, it did not prove that Mr. Balaj was responsible for it under the modes of liability charged by the Prosecution. The Appeals Chamber therefore upheld Mr. Balaj's acquittal on this count.

I now turn to Lahi Brahimaj's nineteen grounds of appeal, in which he requested the Appeals Chamber to reverse his convictions in relation to the torture and cruel treatment of Witness 6 and Witness 3 and in which he challenges his sentence.

In grounds of appeal 1 and 2, Mr. Brahimaj alleged that the Trial Chamber committed numerous errors relating to its findings that he was responsible for the torture of Witness 6. For the detailed reasons set forth in the written Judgement, the Appeals Chamber has dismissed these grounds of appeal.

In grounds of appeal 3 through 8, Mr. Brahimaj lodged a multitude of challenges to the Trial Chamber's findings that he was responsible for the torture and cruel treatment of Witness 3. For the detailed reasons set forth in the written Judgement, the Appeals Chamber has dismissed these grounds of appeal.

In ground of appeal 9, Mr. Brahimaj submitted that the Trial Chamber erred in its findings with respect to his conviction for the torture of Witness 3 on the basis that the Prosecution failed to prove that any of the motivations behind the mistreatment of Witness 3 were necessary for a torture conviction. The Appeals Chamber has held that the Prosecution failed to plead the material facts for one of the motives that underlay the torture conviction and that the Trial Chamber therefore erred in this regard because Mr. Brahimaj was not given proper notice of this basis for his torture conviction. However, because the Trial Chamber based Mr. Brahimaj's conviction for torture upon more than one motive, Mr. Brahimaj's conviction for the torture of Witness 3 still stands.

In grounds of appeal 10 through 19, Mr. Brahimaj submitted that the Trial Chamber made numerous errors in determining his sentence of six years of imprisonment. For the detailed reasons set forth in the written Judgement, the Appeals Chamber has dismissed all of these grounds of appeal and has affirmed Mr. Brahimaj's sentence.

I will now read out in full the disposition of the Judgement of the Appeals Chamber.

May I ask Mr. Haradinaj, Mr. Balaj, and Mr. Brahimaj please to stand.

For the foregoing reasons, THE APPEALS CHAMBER,

PURSUANT TO Article 25 of the Statute of the Tribunal and Rules 117 and 118 of the Rules of Procedure and Evidence of the Tribunal;

NOTING the respective written submissions of the parties and the arguments they presented at the appeal hearing on 28 October 2009;

In respect to the Prosecution's appeal,

GRANTS Prosecution Ground of Appeal 1—Judge Robinson dissenting—and QUASHES the Trial Chamber's decisions to: (a) acquit Ramush Haradinaj and Idriz Balaj of

participation in a joint criminal enterprise to commit crimes at the KLA headquarters and the prison in Jablanica under Counts 24, 26, 28, 30, 32, and 34 of the Indictment; (b) acquit Lahi Brahimaj of participation in a joint criminal enterprise to commit crimes at the KLA headquarters and the prison in Jablanica under Counts 24, 26, 30, and 34 of the Indictment; (c) acquit Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj of individual criminal responsibility under Counts 24 and 34 of the Indictment; and (d) acquit Lahi Brahimaj of individual criminal responsibility under Count 26 of the Indictment, and ORDERS that Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj be retried on these counts;

DISMISSES Prosecution Ground of Appeal 2;

GRANTS, in part, and DISMISSES, in part, Prosecution Ground of Appeal 3 and AFFIRMS Idriz Balaj's acquittal under Count 37;

In respect of Lahi Brahimaj's appeal,

DISMISSES Lahi Brahimaj's Grounds of Appeal 1-8;

GRANTS, in part, and DISMISSES, in part, Lahi Brahimaj's Ground of Appeal 9 and AFFIRMS Lahi Brahimaj's conviction under Count 28;

DISMISSES Lahi Brahimaj's Grounds of Appeal 10-19;

AFFIRMS Lahi Brahimaj's sentence; and

PURSUANT TO Rule 64 and Rule 107 of the Rules,

ORDERS the detention on remand of Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj and ENJOINS the Commanding Officer of the United Nations Detention Unit in The Hague to detain them until further order.

I have appended a partially dissenting opinion to the Judgement, registering my disagreement with the Majority's findings in respect of the Prosecution's first ground of appeal.

You may now be seated.

The Appeals Chamber hereby lifts the confidentiality of the arrest warrant that was issued for Ramush Haradinaj on 19 July 2010.

Copies of the Judgement will be delivered to the parties after this hearing.

This hearing of the Appeals Chamber of the International Criminal Tribunal for former Yugoslavia—now stands adjourned.