



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-04-84-PT

Date: 17 October 2006

Original: English

IN TRIAL CHAMBER II

Before: Judge O-Gon Kwon, Pre-Trial Judge

Registrar: Mr. Hans Holthuis

Order of: 17 October 2006

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

**ORDERS ARISING FROM 13 OCTOBER 2006
STATUS CONFERENCE**

Office of the Prosecutor

Mr. Gilles Dutertre
Ms. Patricia Sellers
Mr. Gramsci di Fazio
Mr. Anees Ahmed

Counsel for Ramush Haradinaj

Mr. Ben Emmerson
Mr. Rodney Dixon
Mr. Michael O'Reilly

Counsel for Idriz Balaj

Mr. Gregor Guy-Smith

Counsel for Lahi Brahimaj

Mr. Richard Harvey
Mr. Paul Troop

I, **O-GON KWON**, Judge of Trial Chamber II 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 (“Tribunal”);

HAVING BEEN APPOINTED, pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence of the Tribunal (“Rules”), as Pre-Trial Judge in this case by the Presiding Judge of Trial Chamber II on 14 July 2006;¹

RECALLING that, during the status conference held on 13 October 2006, I ordered the parties to file on the record the letters submitted by them on 11 and 12 October 2006 to the Senior Legal Officer pursuant to Rule 65 *ter*;²

NOTING that, during the status conference, frequent reference was made to the items set forth in the letter of Ramush Haradinaj (“Haradinaj 65 *ter* letter”), and that Haradinaj filed this letter on the record confidentially on 16 October 2006;³

NOTING the “Confidential Order on Motion requesting Protective Measures for Certain Forensic Documents”, issued on 12 October 2006 (“October 2006 Forensic Documents Order”), in which I ordered that the Prosecution disclose certain forensic materials to Counsel for Haradinaj, Idriz Balaj, and Lahi Brahimaj (collectively, “Accused”); and that Counsel for the Accused further disclose these materials to no other person except certain named forensic experts;

CONSIDERING that, although the Prosecution stated expressly in the motion disposed of in the October 2006 Forensic Documents Order that it did not consent to the disclosure of the forensic materials to the legal assistants of Counsel for the Accused sooner than 30 days before trial,⁴ at the status conference the parties agreed that these materials, and all similar forensic materials in the future, may be disclosed not only to Counsel for the Accused and the agreed-upon forensic experts, but also to the legal assistants of Counsel for the Accused, including Susan Park, Bart Willemsen,

¹ *Prosecutor v. Haradinaj, Balaj, and Brahimaj*, Case No. IT-04-84-PT (“*Haradinaj et al.*”), Order regarding Composition of Trial Chamber and Designating Pre-Trial Judge, 14 July 2006, p. 2.

² *Haradinaj et al.*, Transcript of Status Conference, T. 169–170 (13 October 2006).

³ See *Haradinaj et al.*, [Confidential] Submission on behalf of the Defence for Mr. Ramush Haradinaj in respect of the Issues for the Agenda of the Status Conference held on 13 October 2006, 16 October 2006.

⁴ See *Haradinaj et al.*, [Confidential] Prosecution Motion for Protective Measures because of the Sensitive Character of the Information for the Witnesses Contained in the Forensic Documents submitted with *Ex Parte* Annexes A and F[;] with Confidential Annexes B, C, D, E[;] and *Ex Parte* Annex G”, 28 August 2006 (French original), 6 September 2006 (English translation), para. 38. This stance varied from that of the Prosecution at the Rule 65 *ter* Conference of 17 May 2006, where it stated in respect of similar forensic documents that “Mrs. Susan Park and Mr. Will[e]ms[e]n[] may have these data under the full responsibility and accountability of the Defence counsel which will instruct them and which employ them.” *Haradinaj et al.*, Transcript of Rule 65 *ter* Conference, T. 126 (17 May 2006) (closed session).

and Antonietta Trapani;⁵ and that this list of experts and assistants may be modified upon agreement between the parties (“agreed-upon experts and assistants”);⁶

RECALLING that, during the status conference of 13 October 2006, I also made several other oral orders, including the following:

- a. the Prosecution shall submit its motion seeking leave to make the further proposed amendments to the Indictment discussed at the status conference by 25 October 2006;⁷
- b. the Prosecution shall disclose a redacted version of the statement of Witness SST7/38 to the Accused, on a provisional basis, by 25 October 2006, making any redactions the Prosecution deems necessary; and the Accused shall maintain the confidentiality of this statement;⁸
- c. with the exception of the statement of investigator Barney Kelly, the Prosecution shall disclose, by 25 October 2006, the items listed on page 3 of the Haradinaj 65 *ter* letter and falling under the heading “Forensic disclosure” to Counsel for the Accused, unless the Prosecution demonstrates to the Trial Chamber good cause for the non-disclosure of a specific item; and Counsel for the Accused shall further disclose these items to no other person except the agreed-upon experts and assistants;⁹
- d. the Prosecution shall disclose to the Accused the most recent version of the statement of Barney Kelly by 31 October 2006, and shall thereafter disclose any necessary addenda to this statement if and when Mr. Kelly provides the Prosecution with his views on any further genetic reports;¹⁰
- e. if the Accused wish to obtain the Trial Chamber’s assistance in securing the cooperation of the United Nations Mission in Kosovo with the Accused’s investigators in relation to the examination of certain repatriated remains, they shall file a written request to the Chamber to this effect;¹¹
- f. the Prosecution shall make efforts to secure the consent of the “source”, referred to in the first item under the heading “Other disclosure” on page 4 of the Haradinaj 65 *ter* letter, to disclose the identity of the source to the Accused; the Prosecution shall effect such disclosure by 25 October 2006, or request an extension of time if it is not able to locate the source by that date; and if the source does not consent to such disclosure, the Prosecution shall nevertheless disclose the source’s identity pursuant to Rule 68, or file a motion seeking appropriate protective measures from the Trial Chamber;¹² and
- g. the time limits established by the Pre-Trial Judge on 15 August 2006 for the filing of pre-trial briefs are suspended;¹³ and guidance concerning new time limits will be provided simultaneously with or shortly after the Trial Chamber issues its decision on the anticipated motion to amend the Indictment referred to in paragraph (a) above;¹⁴

⁵ *Haradinaj et al.*, Transcript of Status Conference, T. 184–186 (13 October 2006) (private session); *ibid.*, T. 204.

⁶ *See ibid.*, T. 230.

⁷ *Ibid.*, T. 179–180.

⁸ *Ibid.*, T. 191–193.

⁹ *Ibid.*, T. 203–204.

¹⁰ *Ibid.*, T. 207–208.

¹¹ *Ibid.*, T. 214.

¹² *Ibid.*, T. 222–223.

¹³ *Haradinaj et al.*, Order on Submission of Pre-Trial Briefs, 15 August 2006, p. 3.

¹⁴ *Haradinaj et al.*, Transcript of Status Conference, T. 180 (13 October 2006).

RECALLING FURTHER my suggestion to the Prosecution to provide the Accused with a new list of proposed agreed facts that might be “practically and easily agreeable” among the parties;¹⁵

CONSIDERING that this renewed dialogue between the parties concerning agreed facts should take place as expeditiously as possible, and that time limits for the Prosecution’s new proposal and the Accused’s respective responses have accordingly been set forth below in the Disposition;

RECALLING the Trial Chamber’s statements on previous occasions that everything to do with proceedings before the Tribunal should be done in public unless good cause is shown to the contrary;¹⁶ that *ex parte* filings, or *ex parte* portions of otherwise *inter partes* filings, will be accepted only where disclosure to the other party of the information conveyed in the filing would likely prejudice unfairly either the party making the filing, or some person involved in or related to that filing; and that the party making the filing is under an obligation to identify why disclosure of the filing to the other party would cause such prejudice;¹⁷

¹⁵ *Ibid.*, T. 224–225 (quotation at T. 225).

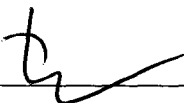
¹⁶ *Haradinaj et al.*, Order on Motions for Access to Confidential Material, 27 September 2006, pp. 5, 7 (considering that none of the filings contained any information of a sensitive nature, and that no good cause had been shown for making these filings confidentially, and consequently ordering the Registry to lift their confidential status); *Prosecutor v. Trbić*, Case No. IT-05-88/1-PT, Order on Defence Motions for Reconsideration of Severance Decision and Time Extensions, 5 July 2006, p. 5 (same).

¹⁷ October 2006 Forensic Documents Order, p. 4; *Haradinaj et al.*, Confidential Order on Motion for Protective Measures, 12 October 2006, p. 3; *Haradinaj et al.*, Decision on Prosecution’s Application for Pre-Trial Protective Measures for Witnesses, 20 May 2005, pp. 4–5.

PURSUANT TO Rules 54, 65 *bis*, 65 *ter*, 66, 68, 69, and 75 of the Rules, hereby order as follows:

1. The parties shall comply with all orders issued at the status conference of 13 October 2006, including those reiterated in this Order.
2. The October 2006 Forensic Documents Order is hereby modified to the extent that Counsel for the Accused may disclose the forensic materials identified therein to Susan Park, Bart Willemsen, Antonietta Trapani, and any other legal assistants or forensic experts for whom there is agreement among the parties, and this regime shall govern the disclosure of forensic materials in the future unless otherwise ordered by the Pre-Trial Judge, this Trial Chamber, or another Trial Chamber properly seised of these proceedings.
3. The Prosecution shall provide the Accused with a new list of proposed agreed facts by 31 October 2006; and the Accused shall transmit their respective responses to the Prosecution by 14 November 2006.
4. The parties shall endeavour to maintain, as far as possible, the public and *inter partes* nature of these proceedings by making confidential or *ex parte* filings only when strictly necessary; by showing good cause each time a filing is made confidentially; and, whenever an *ex parte* filing is made, by demonstrating how the party making the filing, or some other person involved in or related to the filing, would be prejudiced if it were made on an *inter partes* basis.

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



O-Gon Kwon
Pre-Trial Judge

Dated this seventeenth day of October 2006
At The Hague
The Netherlands

[Seal of the Tribunal]