



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: 19 October 2006

Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge O-Gon Kwon
Judge Kimberly Prost

Registrar: Mr. Hans Holthuis

Order of: 19 October 2006

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

**ORDER REQUESTING ASSISTANCE OF
UNMIK WITH CERTAIN INVESTIGATIONS**

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

United Nations Interim Mission in Kosovo

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”);

NOTING that, at the status conference of 13 October 2006, Counsel for Ramush Haradinaj expressed his desire for Defence investigators to examine 15 sets of remains of alleged victims in the Indictment that have since been repatriated in Kosovo; that consent for the exhumation of these remains, and the necessary arrangements for the exhumations, would have to be provided by authorities of the United Nations Interim Mission in Kosovo (“UNMIK”); and that he requires the assistance of the Trial Chamber in requesting the necessary cooperation from UNMIK;¹

NOTING that the Pre-Trial Judge directed Counsel to file a written motion seeking the Trial Chamber’s assistance in this matter;²

NOTING that the Prosecution stated expressly that it does not object to Haradinaj’s request;³

BEING SEISED OF the “Confidential Defence Motion for the Trial Chamber to Request UNMIK’s Assistance in the Conduct of Examinations of Certain Remains”, filed on 17 October 2006 (“Motion”), in which Haradinaj renews his petition for the Trial Chamber to request the cooperation of UNMIK in the conduct of the exhumations in question;⁴ and lists the names of 14 alleged victims to be exhumed and examined, along with the counts in the Indictment in which they are mentioned, and the UNMIK sample code or label under which each victim has been classified;⁵

RECALLING this Trial Chamber’s own prior statements, as well as those of the Pre-Trial Judge in this case and of other Chambers of this Tribunal, that Article 20(4) of the Statute of the Tribunal

¹ *Prosecutor v. Haradinaj, Balaj, and Brahimaj*, Case No. IT-04-84-PT (“*Haradinaj et al.*”), Transcript of Status Conference, T. 211–213 (13 October 2006). *See also 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, pp. 3–4.

² *Haradinaj et al.*, Orders Arising from 13 October 2006 Status Conference, 17 October 2006 (“17 October 2006 Order”), p. 2 (“[I]f the Accused wish to obtain the Trial Chamber’s assistance in securing the cooperation of [UNMIK] 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.”). *See also Haradinaj et al.*, Transcript of Status Conference, T. 214 (13 October 2006).

³ *Ibid.*

⁴ Motion, paras. 1, 8.

⁵ *Ibid.* para. 4.

and Rule 78 of the Rules of Procedure and Evidence (“Rules”) demand that all proceedings before the Tribunal take place in public, unless good cause can be shown to the contrary;⁶

NOTING that, while an examination of the Motion reveals that it contains sensitive information in paragraph 4 that should remain confidential, Haradinaj has not made any express argument to demonstrate good cause for making this filing confidentially, and that the sensitive information in paragraph 4 would more properly have been set forth as a confidential annex to a public motion;

CONSIDERING that Haradinaj, the other Accused, and the Prosecution must to do their utmost 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, and utilising confidential or *ex parte* annexes, where necessary, so that the filing itself may remain public;⁷

PURSUANT TO Rule 54 of the Rules,

HEREBY GRANTS the Motion; **CALLS UPON** UNMIK to provide all necessary assistance to Haradinaj, Idriz Balaj, and Lahi Brahimaj in the exhumation and examination of the 14 sets of remains in question; and **ORDERS** the Registry to transmit this Order to UNMIK.

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



Carmel Agius
Presiding

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

[Seal of the Tribunal]

⁶ 17 October 2006 Order, *supra* note 2, p. 3; *Haradinaj et al.*, Order on Motions for Access to Confidential Material, 27 September 2006, pp. 5, 7 (considering that none of the relevant filings contained any information of a sensitive nature, and that no good cause had been shown for classifying them as confidential, 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); *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-PT, Decision on Stanišić Defence’s Motion for Temporary Modification of Provisional Release Conditions, 8 February 2006, p. 3 (same); *Prosecutor v. Simić, Tadić, and Zarić*, Case No. IT-95-9-T, Order, 24 September 2002, p. 2 (considering that “proceedings must be in public unless good cause is shown for filings to be made on a ‘confidential’ basis”).

⁷ See 17 October 2006 Order, *supra* note 2, p. 4 (ordering the same).