



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-A
Date: 19 July 2010
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

Arrest Warrant: 19 July 2010

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

CONFIDENTIAL AND *EX PARTE*

**WARRANT OF ARREST AND ORDER FOR SURRENDER OF
RAMUSH HARADINAJ**

The Office of the Prosecutor:

Mr. Peter Kremer
Mr. Marwan Dalal
Ms. Elena Martin Salgado

Counsel for Ramush Haradinaj:

Mr. Ben Emmerson
Mr. Rodney Dixon

The Kingdom of The Netherlands

**The European Union Rule of Law Mission
in Kosovo**

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 “Judgement”, issued by Trial Chamber I on 3 April 2008 in the case of *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-T;

NOTING the “Prosecution’s Notice of Appeal (Public with Confidential Annex)”, filed on 2 May 2008;

NOTING the “Notice of Appeal on Behalf of Third Defendant Lahi Brahimaj”, filed on 5 May 2008;

NOTING that an appeal hearing was held on 28 October 2009;

NOTING the “Scheduling Order for Pronouncement of Judgement”, issued on 2 July 2010, ordering that a hearing shall be held in Courtroom 1 on Wednesday, 21 July 2010 at 9:30 a.m. at which the Judgement in this appeal shall be pronounced in public;

CONSIDERING that the Appeals Chamber has rendered the Judgement in this appeal on 19 July 2010, in which it,

(a) pursuant to Article 25 of the Statute of the Tribunal (“Statute”) and Rules 117 and 118 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), **GRANTED** Prosecution Ground of Appeal 1, Judge Robinson dissenting, and **QUASHED** the Trial Chamber’s decisions to:

(i) acquit Ramush Haradinaj and Idriz Balaj of participation in a joint criminal enterprise (“JCE”) to commit crimes at the KLA headquarters and the prison in Jablanica/Jabllanicë under Counts 24, 26, 28, 30, 32, and 34 of the Fourth Amended Indictment, dated 16 October 2007 (“Indictment”);

(ii) acquit Lahi Brahimaj of participation in a JCE to commit crimes at the KLA headquarters and the prison in Jablanica/Jabllanicë under Counts 24, 26, 30, and 34 of the Indictment;

(iii) acquit Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj of individual criminal responsibility under Counts 24 and 34 of the Indictment; and

(iv) acquit Lahi Brahimaj of individual criminal responsibility under Count 26 of the Indictment, and

ORDERED that Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj be retried on these counts; and

(b) pursuant to Rule 64 and Rule 107 of the Rules, **ORDERED** the detention on remand of Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj and **ENJOINED** the Commanding Officer of the United Nations Detention Unit in The Hague (“UNDU”) to detain them until further order;¹

NOTING the “Notice on Behalf of Mr. Ramush Haradinaj”, filed on 12 July 2010, in which Ramush Haradinaj informs the Appeals Chamber and the Registry that he will not be attending the pronouncement of the Judgement in this appeal on 21 July 2010;

PURSUANT TO Articles 18, 20, 21, 25, and 29 of the Statute and Rules 54, 55, 56, 57, 58, 59, 59 *bis*, and 107 of the Rules;

THE APPEALS CHAMBER HEREBY ORDERS AS FOLLOWS:

1. The competent authorities in the European Union Rule of Law Mission in Kosovo (“EULEX”) to whom this warrant is transmitted are hereby **DIRECTED AND AUTHORISED** to search for, arrest, detain, and surrender promptly to the Tribunal

RAMUSH HARADINAJ

who is charged with crimes committed at the KLA headquarters and the prison in Jablanica/Jabllanicë under the following Counts of the Indictment:

Count 24, murder, cruel treatment, and torture (as a violation of the laws or customs of war);

Count 26, murder and cruel treatment (as a violation of the laws or customs of war);

Count 28, cruel treatment and torture (as a violation of the laws or customs of war);

Count 30, murder, cruel treatment, and torture (as a violation of the laws or customs of war);

¹ Judgement, 19 July 2010, para. 377; *see also* *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-I, Order for Detention on Remand, 11 March 2005.


Count 32, murder, cruel treatment, and torture (as a violation of the laws or customs of war); and

Count 34, cruel treatment and torture (as a violation of the laws or customs of war).

2. EULEX is hereby **REQUESTED** to advise Ramush Haradinaj, at the time of his arrest and in a language that he understands, of his rights set forth in Article 21 of the Statute and in Rules 42 and 43 of the Rules, which are annexed hereto in English and Albanian, and of his right to remain silent, and to caution him that any statement he makes shall be recorded and may be used in evidence.
3. EULEX, the authorities of the Kingdom of The Netherlands ("The Netherlands"), and the Registrar of the Tribunal ("Registrar") are hereby **REQUESTED** to communicate with each other to facilitate the orderly transfer of Ramush Haradinaj to the UNDU.
 - a. EULEX is hereby **REQUESTED** to escort Ramush Haradinaj to an airport in Kosovo and to deliver him into the custody of a security officer of the Tribunal designated by the Registrar.
 - b. EULEX is hereby **REQUESTED** to ensure the personal security and safety of Ramush Haradinaj until he is delivered into the custody of the Tribunal's security officer at the relevant airport.
 - c. The Registrar is hereby **DIRECTED** to follow the procedures set forth in Rule 59 *bis* of the Rules.
 - d. The Netherlands is hereby **REQUESTED** to take Ramush Haradinaj into custody upon his arrival in The Netherlands and to escort him to the UNDU.
4. The authorities of all States through whose territory Ramush Haradinaj may travel are hereby **REQUESTED** to
 - a. hold Ramush Haradinaj in custody for any time that he will spend in transit; and
 - b. arrest and detain Ramush Haradinaj, should he attempt to escape during his transfer to the UNDU.
5. The Registrar is hereby **DIRECTED** to serve this arrest warrant upon EULEX and The Netherlands as soon as possible.

6. EULEX and The Netherlands are hereby **DIRECTED** to execute this arrest warrant as soon as possible and to notify the Registrar as soon as possible once the arrest warrant has been executed.
7. EULEX is hereby **DIRECTED** immediately to report to the Registrar if it is unable to execute this warrant of arrest and to indicate the reasons for such non-execution.
8. The Registrar is hereby **DIRECTED** to serve this arrest warrant upon the Prosecution and counsel for Ramush Haradinaj once the Registrar has been notified that the arrest warrant has been executed.
9. The Registrar is hereby **DIRECTED** to lift the confidential status of this arrest warrant, once Ramush Haradinaj has been arrested and transferred to the UNDU.

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



Judge Patrick Robinson
Presiding

Dated this nineteenth day of July 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

ANNEX (IN ENGLISH)

STATUTE OF THE TRIBUNAL

Article 21

Rights of the accused

1. All persons shall be equal before the International Tribunal.
2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
 - (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) to be tried without undue delay;
 - (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;
 - (g) not to be compelled to testify against himself or to confess guilt.

RULES OF PROCEDURE AND EVIDENCE OF THE TRIBUNAL

Rule 42

Rights of Suspects during Investigation

- (A) A suspect who is to be questioned by the Prosecutor shall have the following rights, of which the Prosecutor shall inform the suspect prior to questioning, in a language the suspect understands:
- (i) the right to be assisted by counsel of the suspect's choice or to be assigned legal assistance without payment if the suspect does not have sufficient means to pay for it;
 - (ii) the right to have the free assistance of an interpreter if the suspect cannot understand or speak the language to be used for questioning; and
 - (iii) the right to remain silent, and to be cautioned that any statement the suspect makes shall be recorded and may be used in evidence.
- (B) Questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived the right to counsel. In case of waiver, if the suspect subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the suspect has obtained or has been assigned counsel.

Rule 43

Recording Questioning of Suspects

Whenever the Prosecutor questions a suspect, the questioning shall be audiorecorded or video-recorded, in accordance with the following procedure:

- (i) the suspect shall be informed in a language the suspect understands that the questioning is being audio-recorded or video-recorded;
- (ii) in the event of a break in the course of the questioning, the fact and the time of the break shall be recorded before audio-recording or videorecording ends and the time of resumption of the questioning shall also be recorded;
- (iii) at the conclusion of the questioning the suspect shall be offered the opportunity to clarify anything the suspect has said, and to add anything the suspect may wish, and the time of conclusion shall be recorded;
- (iv) a copy of the recorded tape will be supplied to the suspect or, if multiple recording apparatus was used, one of the original recorded tapes;
- (v) after a copy has been made, if necessary, of the recorded tape, the original recorded tape or one of the original tapes shall be sealed in the presence of the suspect under the signature of the Prosecutor and the suspect; and
- (vi) the tape shall be transcribed if the suspect becomes an accused.

ANNEX (IN ALBANIAN)

STATUTI I TRIBUNALIT NDËRKOMBËTAR

Neni 21

Të drejtat e të akuzuarit

1. Të gjithë personat janë të barabartë para Tribunalit Ndërkombëtar.
2. Në vërtetimin e akuzave kundër tij, i akuzuari do të ketë të drejtën e një gjyqi të drejtë dhe publik, në varësi nga Neni 22 i Statutit.
3. I akuzuari konsiderohet i pafajshëm derisa fajësia e tij nuk vërtetohet sipas dispozitave të këtij Statuti.
4. Në vërtetimin e çdo akuze kundër të akuzuarit në bazë të këtij Statuti, i akuzuari ka të drejtën e këtyre garancive minimale, në barazi të plotë:
 - (a) të informohet me kohë dhe në hollësi, në një gjuhë që ai e kupton, për natyrën dhe shkakun e akuzës kundër tij;
 - (b) të ketë kohë të mjaftueshme dhe kushte për përgatitjen e mbrojtjes me avokatin që e ka zgjedhur vetë;
 - (c) t'i nënshtrohet procesit gjyqësor pa vonesë të panevojshme;
 - (d) të jetë i pranishëm në gjyqin e vet; të mbrohet vetë ose me anë të avokatit që e ka zgjedhur vetë; të informohet për këtë të drejtë, në qoftë se nuk ka ndihmë juridike; dhe në qoftë se interesat e drejtësisë e kërkojnë këtë, t'i caktohet ndihma juridike pa pagesë po qe se të ai nuk ka mjete të mjaftueshme për të paguar për të;
 - (e) të pyesë, ose të kërkojë të pyeten, dëshmitarët kundër tij dhe të sigurojë praninë dhe pyetjen e dëshmitarëve të mbrojtjes në kushte të njëjta si dëshmitarët kundër tij;
 - (f) të ketë ndihmën pa pagesë të përkthyesit në qoftë se nuk e kupton ose nuk e flet gjuhën e përdorur në Tribunalin Ndërkombëtar;
 - (g) të mos detyrohet të dëshmojë kundër vetvetes ose të pranojë fajësinë.

RREGULLORJA E PROCEDURËS DHE E PROVAVE

Rregulla 42

Të Drejtat e të Dyshuarve gjatë Hetimit

- (A) Një i dyshuar i cili do të merret në pyetje nga Prokurori, ka këto të drejta për të clat ai/ajo informohet nga Prokurori para marrjes në pyetje në një gjuhë që i dyshuari e kupton;
- (i) e drejta për t'u ndihmuar nga një avokat i zgjedhur nga i dyshuari ose për caktimin e ndihmës juridike pa pagesë nëqoftëse i dyshuari nuk ka fonde të mjaftueshme për të paguar për të;
 - (ii) e drejta e ndihmës pa pagesë të një përkthyesi nëqoftëse i dyshuari nuk e kupton apo nuk e flet gjuhën që do të përdoret gjatë marrjes në pyetje; dhe
 - (iii) e drejta për të heshtur, dhe për t'u paralajmëruar se çdo deklaratë e të dyshuarit shënohet dhe mund të përdoret si provë.
- (B) Marrja në pyetje e të dyshuarit nuk fillon pa praninë e avokatit mbrojtës, përveç nëse i dyshuari ka hequr dorë vullnetarisht nga e drejta për avokat. Pasi ka hequr dorë nga e drejta për avokat, nëqoftëse më pas i dyshuari shpreh dëshirën që të ketë avokat, ndërpritet marrja në pyetje dhe rifillon vetëm kur i dyshuari ka siguruar avokat ose i është caktuar avokat.

Rregulla 43

Incizimi i Marrjes në Pyetje të të Dyshuarve

Sa herë që Prokurori merr në pyetje një të dyshuar, marrja në pyetje incizohet ose filmohet, në përputhje me procedurën e mëposhtme:

- (i) i dyshuari informohet në një gjuhë që i dyshuari e kupton se marrja në pyetje po incizohet ose filmohet;
- (ii) në rast të ndërprerjes së marrjes në pyetje, fakti i ndërprerjes dhe koha e saj përmenden para se të ndërpritet incizimi zanor ose filmimi dhe gjithashtu përmendet koha e rifillimit të marrjes në pyetje;
- (iii) në fund të marrjes në pyetje, të dyshuarit i jepet mundësia të sqarojë çfarëdo që të ketë thënë dhe të shtojë çfarëdo dëshiron, dhe përmendet koha e përfundimit të marrjes në pyetje;
- (iv) një kopje e kasetës së incizimit i jepet të dyshuarit, ose, nëqoftëse përdoret aparat incizues shumëfishues, i jepet një prej kasetave origjinale të incizimit; dhe
- (v) pasi është bërë një kopje e kasetës së incizimit, në qoftë se është e nevojshme, kaseta e incizimit origjinal apo një prej kasetave origjinale mbyllet me vulë në praninë e të dyshuarit dhe nënshkruhet prej Prokurorit dhe të dyshuarit; dhe
- (vi) incizimi transkriptohet nëqoftëse i dyshuari bëhet i akuzuar.