

**UNITED
NATIONS**



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-04-84bis-T
Date: 26 October 2011
Original: English

IN TRIAL CHAMBER II

Before: Judge Bakone Justice Moloto, Presiding
Judge Burton Hall
Judge Guy Delvoie
Registrar: Mr. John Hocking
Order of: 26 October 2011

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

ORDER FOR EXTENSION OF TIME

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for the Accused:

Mr. Ben Emmerson QC and Mr. Rodney Dixon for Ramush Haradinaj
Mr. Gregor Guy-Smith and Ms. Colleen M. Rohan for Idriz Balaj
Mr. Richard Harvey and Mr. Paul Troop for Lahi Brahimaj

THIS TRIAL 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 (“Chamber”);

BEING SEISED of “Motion for Extension of Time”, filed publicly by the Office of the Prosecutor (“Prosecution”) on 19 October 2011 (“Motion”) in which the Prosecution requests an extension of time of nine days, until 28 October 2011, to comply with the Chamber’s order in paragraph 71(f) of the Chamber’s “Decision on Joint Defence Motion for Relief from Rule 68 Violations by the Prosecution and for Sanctions Pursuant to Rule 68bis”¹ (“Decision”);

RECALLING that in its Decision the Chamber, *inter alia*, ordered the Prosecution to disclose pursuant to Rule 68 of the Rules of Procedure and Evidence (“Rules”), all Rule 68 material in its possession with respect to Witness 75 and all remaining Prosecution witnesses within seven days of the filing of that Decision and simultaneously file a report specifying what searches have been made, where they have been made and the results of such searches;²

NOTING the Prosecution’s submissions that it has been conducting a review of its evidence collection and has identified a number of items for disclosure which have been provided to the Defence on 19 October 2011;³

NOTING the Prosecution’s submissions that the remaining searches of its evidence collection have not been completed due to the limited staff available to run the searches;

NOTING further that with respect to its compliance with paragraphs 52 and 53 of the Chamber’s Decision, the Prosecution submits that it has sent an urgent Request for Assistance to the Undisclosed Country seeking authorisation to disclose the communications of its immigration authorities with the Prosecution, that it has not yet received a response to this request, that the Prosecution’s communications with the immigration authorities of the Undisclosed Country are inextricably intertwined and cannot be understood in isolation, and that accordingly the Prosecution is unable to provide the material to the Defence at this stage;⁴

¹ *Prosecutor v Haradinaj et al*, Case No. IT-04-84bis-T, Decision on Joint Defence Motion for Relief from Rule 68 Violations by the Prosecution and for Sanctions Pursuant to Rule 68bis, filed publicly on 12 October 2011.

² Decision, para. 71(f).

³ Motion, para. 2; *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Prosecution’s Report on Disclosure, filed publicly on 19 October 2011 (“Report on Disclosure”), paras 10, 12.

⁴ Motion, paras 2-3.

NOTING that Haradinaj does not object to the granting of the extension of time until 28 October 2011 in respect of Witnesses 80 and 81⁵ but opposes the extension of time with respect to Witnesses 3 and 75 who are scheduled to testify next week and requests disclosure of material pertaining to them within 24 hours and further, requests that the Prosecution be ordered to file a more detailed disclosure report by no later than 28 October 2011 in compliance with the Chamber's Decision;⁶

NOTING that Brahimaj opposes the request for extension of time, submitting that the filing by the Prosecution of a motion seeking extension of time in the last possible moment is tantamount to an abuse of process;⁷

NOTING that Brahimaj submits in respect of the Prosecution's obligations pursuant to paragraphs 52 and 53 of the Chamber's Decision, that although a letter dated 20 October 2011 has been received by the Prosecution, no copies of any Prosecution communications have been provided by the Prosecution to date;⁸

NOTING that Brahimaj further adopts the reasoning of and the requests made by Haradinaj with regard to Witnesses 80 and 81 and requests that the Chamber order the Prosecution to disclose by 26 October 2011 all outstanding materials in respect of Witnesses 3 and 75, file a further disclosure report by no later than 28 October 2011 in compliance with the Chamber's Decision, and provide all outstanding material for disclosure for Witness 6, Witness 80 and Witness 81 by no later than 28 October 2011;⁹

NOTING that on 25 October 2011, Balaj indicated that he did not intend to file a response to the Motion;¹⁰

NOTING that on 26 October 2011 the Prosecution filed confidentially its "Notice of Compliance with Paragraphs 52 and 53 of Order of 12 October 2011 with Confidential Annexes A and B" ("Notice") notifying the Chamber that it has disclosed the relevant material to the Defence on 25 October 2011 following the receipt on 20 October 2011 of a letter from the authorities of the Undisclosed Country, and indicating that they had responded to requests for information from the Defence and regarded the matter as resolved;

⁵ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Response on Behalf of Ramush Haradinaj to Prosecution Motion for Extension of Time, 25 October 2011 ("Haradinaj Response"), paras 4, points 2 and 4, 16(b) .

⁶ Haradinaj Response, paras 16(a) and 16(c).

⁷ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Lahi Brahimaj's Opposition to Prosecution Motion for Extension of Time and Motion for Relief From Continuing Rule 68 Violations by the Prosecution, filed publicly with confidential annexes A to E on 25 October 2011 ("Brahimaj Response"), para. 4(a).,

⁸ Brahimaj Response, para. 4(f).

⁹ Brahimaj Response, para. 6.

¹⁰ Balaj communicated by means of an informal communication that he did not wish to respond to the Motion.

CONSIDERING that while Haradinaj and Brahimaj make a number of submissions regarding the compliance by the Prosecution with the Chamber's order to date,¹¹ the permissible scope of a response is limited to answering the issues raised by the moving party,¹² and that, accordingly, such submissions are not appropriately made in response to a motion for extension of time;

CONSIDERING that in light of the Prosecution's Notice of 26 October 2011, the Prosecution's request for extension of time for compliance with paragraphs 52 and 53 of the Chamber's Decision is moot;

NOTING WITH CONCERN that the Prosecution filed its Motion at the very moment of the closing of the deadline which extension it requested;

CONSIDERING that the deadline set down in the Decision passed as of 19 October 2011, and that a timely decision on the Motion is required to avoid further delay;

CONSIDERING, however, that there are no witnesses scheduled to testify until 31 October 2011,¹³ and consequently that proceedings shall not be delayed by the granting of a time extension;

CONSIDERING that allowing a time extension as requested should serve the aim to allow for a thorough research and complete handover of Rule 68 material;

PURSUANT to Rules 54 and 127;

FINDS it in the interests of justice to extend the deadline provided in its Decision; and

GRANTS the request for extension of time until 28 October 2011.

¹¹ Haradinaj Response, paras 4, point 1, 5 et seq; Brahimaj Response, paras 4(c), 4(d), 4(e)

¹² *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Order for Change in Status of Prosecution Motions, 12 October 2011, p 4. See also *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-AR73, Decision on Joseph Kanyabashi's Appeal Against the Decision of Trial Chamber II of 21 March 2007 Concerning the Dismissal of Motions to Vary his Witness List, 21 August 2007, paras 11-13; *Prosecutor v. Blaškić*, Case No. IT-95-14-R, Decision on the Prosecution's Motion Seeking a Declaration, 20 June 2006, p. 4; *Prosecutor v. Gotovina et al*, Case No. IT-06-90-AR73.2, Decision on Ivan Čermak's Interlocutory Appeal against Trial Chamber's Decision on Conflict of Interest of Attorneys Čedo Prodanović and Jadranka Sloković, 29 June 2007, para. 12.

¹³ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Notice on Witness Scheduling for Weeks of 26 and 31 October 2011, 19 October 2011.

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



Judge Bakone Justice Moloto,
Presiding

Dated this twenty-sixth day of October 2011
At The Hague
The Netherlands

[Seal of the Tribunal]