



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: 02 September
2011
Original: English

IN TRIAL CHAMBER II

Before: Judge Bakone Justice Moloto, Presiding
Judge Burton Hall
Judge Guy Delvoie
Registrar: Mr. John Hocking
Decision: 02 September 2011

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

**ORDER DIRECTING THE PROSECUTOR TO INVESTIGATE
POSSIBLE CONTEMPT OF THE INTERNATIONAL
TRIBUNAL BY SHEFQET KABASHI**

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 (“International Tribunal”);

NOTING the Subpoena Ad Testificandum issued by the Chamber confidentially and *ex parte* on 16 June 2011 ordering Shefqet Kabashi (“Kabashi”) to appear to testify before the Chamber in the proceedings of *Prosecutor v Haradinaj et al*, Case No. IT-04-84bis, at the seat of the International Tribunal on 18 August 2011 or on a day to be otherwise notified;

NOTING that on 22, 23 and 24 August 2011 Kabashi appeared in the present proceedings;

NOTING that when asked questions on these three days, Kabashi repeatedly refused to answer, instead stating amongst others: “I have no reason to answer your questions and you know why”;¹ “may the gentleman on the right ask no further questions because I’ve got no answers to give”;² “I won’t allow you to ask questions of me because what I’ve been through, I don’t know how I have put up with being here”;³ “There is nothing more I can add to this trial. It’s beyond me, it’s impossible”;⁴ “I said what I wanted to say. I don’t think I can say something else”;⁵

NOTING that Rule 77(A)(i) of the Rules of Procedure and Evidence (“Rules”) provides that the Tribunal “in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who [...] being a witness before a Chamber, contumaciously refuses or fails to answer a question”;

NOTING that pursuant to Rule 77(C)(i) of the Rules, when “a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may [...] direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for contempt”;

CONSIDERING that in the circumstances the Chamber has reason to believe that Kabashi may be in contempt of the International Tribunal;

PURSUANT to Rule 77(A)(i) and 77(C)(i);

HEREBY ORDERS the Prosecutor

¹ *Prosecutor v Haradinaj*, Case No. IT-04-84bis-T, T 335, lines 14-15.

² *Prosecutor v Haradinaj*, Case No. IT-04-84bis-T, T 337, lines 6-7.

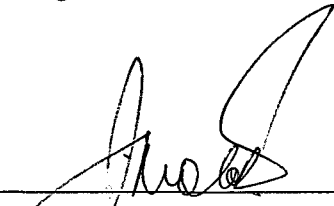
³ *Prosecutor v Haradinaj*, Case No. IT-04-84bis-T, T 356, lines 20-21.

⁴ *Prosecutor v Haradinaj*, Case No. IT-04-84bis-T, T 401, lines 9-10.

⁵ *Prosecutor v Haradinaj*, Case No. IT-04-84bis-T, T 405, lines 21-22.

- (1) to investigate the matter with a view to the preparation and submission of an indictment for contempt;
- (2) to inform the Chamber as to its progress with this investigation by 16 September 2011.

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



Judge Bakone Justice Moloto,
Presiding

Dated this second day of September 2011
At The Hague
The Netherlands

[Seal of the Tribunal]