

United Nations
Nations UniesInternational Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yugoslavie

(IT-04-84)

HARADINAJ***et al.****The Prosecutor v. Ramush Haradinaj, Idriz Balaj & Lahi Brahimaj***RAMUSH HARADINAJ***Found not guilty*

Commander of the Kosovo Liberation Army (KLA) in the Dukagjin operational zone, located to the west of Priština/Prishtinë, which encompassed the municipalities of Peć/Pejë, Dečani/Dečan, Đakovica/Gjakovë, and parts of the municipalities of Istok/Istog and Kline/Klinë; also known as "Smajl".

- Found **not guilty**
- The case is pending before the Appeals Chamber

Born	3 July 1968 in Glodane/Glllogjan in Kosovo
Indictment	Initial: 4 March 2005, made public on 10 March 2005; amended: 25 October 2006; revised second amended: 12 January 2007; third amended: 5 September 2007; fourth amended: 15 October 2007
Surrendered	9 March 2005
Transferred to ICTY	9 March 2005
Initial and further appearances	14 March 2005, pleaded not guilty to all charges; 1 March 2007, pleaded not guilty to all charges
Trial Chamber Judgement	3 April 2008, found not guilty and released

IDRIZ BALAJ*Found not guilty*

Member of the KLA, acted as the commander of the special unit known as the "Black Eagles"; was subordinate to Ramush Haradinaj; also known as "Toger/Togeri" or "Lieutenant".

- Found **not guilty**
- The case is pending before the Appeals Chamber

Born	23 August 1971 in Iglarevo/Gllarevë, municipality of Klina/Klinë in Kosovo
Indictment	Initial: 4 March 2005, made public on 10 March 2005; amended: 25 October 2006; revised second amended: 12 January 2007; third amended: 5 September 2007; fourth amended: 15 October 2007
Surrendered	9 March 2005
Transferred to ICTY	9 March 2005
Initial and further appearances	14 March 2005, pleaded not guilty to all charges; 1 March 2007, pleaded not guilty to all charges
Trial Chamber Judgement	3 April 2008, found not guilty and released

LAHI BRAHIMAJ*Convicted of cruel treatment and torture*

Member of the KLA General Staff stationed at the headquarters in Jablanica/Jabllanicë, in Đakovica/Gjakovë municipality; acted as the deputy commander in the Dukagjin area for a short period; was subordinate to, and worked closely with, Ramush Haradinaj; also known as "Maxhup" or "Gipsy".

- Sentenced to six years' imprisonment
- The case is pending before the Appeals Chamber

*Crimes convicted of (examples):***Cruel treatment, torture** (violations of the laws or customs of war)

- He personally participated in the cruel treatment and torture of Witness 6;
- His role in the interrogations, as well as his position of authority, established his intent to inflict serious physical suffering on Witness 3 for the purpose of punishing him for withholding a weapon, and discriminating against him on the basis of his perceived ties to the Serbs;

Born	26 January 1970 in Jablanica/Jabllanicë, municipality of Đakovica/Gjakovë in Kosovo
Indictment	Initial: 4 March 2005, made public on 10 March 2005; amended: 25 October 2006; revised second amended: 12 January 2007; third amended: 5 September 2007; fourth amended: 15 October 2007
Surrendered	9 March 2005
Transferred to ICTY	9 March 2005
Initial and further appearances	14 March 2005, pleaded not guilty to all charges; 1 March 2007, pleaded not guilty to all charges
Trial Chamber Judgement	3 April 2008, sentenced to six years' imprisonment

STATISTICS

Trial days	113
Witnesses called by Prosecution	81
Prosecution exhibits	1044
Witnesses called by Defence	0
Defence exhibits	145

TRIAL	
Commenced	5 March 2007
Closing arguments	21-23 January 2008
Trial Chamber I	Judge Alphons Orié (presiding), Judge Frank Höpfel, Judge Ole Bjørn Støle
Counsel for the Prosecution	David Re, Gilles Dutertre, Gramsci do Fazio, Anees Ahmed, Katrina Gustafson
Counsel for the Defence	For Ramush Haradinaj: Ben Emmerson, Rodney Dixon, Conor Gearty and Michael O'Reilly For Lahi Brahimaj: Richard Harvey, Paul Troop For Idriz Balaj: Gregory Guy-Smith
Judgement	3 April 2008

APPEALS	
Appeals Chamber	Judge Patrick Robinson (presiding), Judge Fausto Pocar, Judge Andréia Vaz, Judge Liu Daqun, Judge Theodor Meron
Counsel for the Prosecution	Peter Kremer
Counsel for the Defence	For Ramush Haradinaj: Ben Emmerson, Rodney Dixon For Lahi Brahimaj: Richard Harvey, Paul Troop For Idriz Balaj: Gregory Guy-Smith, Colleen Rohan

RELATED CASES <i>by geographical area</i>	
LIMAJ <i>et al.</i> (IT-03-66)	
MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA & BOSNIA"	
MILUTINOVIĆ <i>et al.</i> (IT-05-87) "KOSOVO"	

INDICTMENT AND CHARGES

The initial indictment against Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj was confirmed on 4 March 2005 and made public on 10 March 2005. On 26 April 2006, the Prosecution filed an amended indictment, and on 25 October 2006, the Trial Chamber confirmed it as the operative indictment in the case. Finding errors in that submission, the Prosecution then submitted a revised second amended indictment on 10 November 2006, which was confirmed on 12 January 2007.

On 29 May 2007 and 6 June 2007, the Prosecution notified the Trial Chamber of the identification of the remains of two victims listed anonymously in the indictment and therefore sought leave to amend the revised second amended indictment. On 5 September 2007, leave was granted and the third amended indictment was confirmed by the Trial Chamber as the operative indictment in this case. On 7 September 2007, the Prosecution filed the third amended indictment.

On 27 September 2007, the Prosecution notified the Trial Chamber of the identification of the remains of another victim listed anonymously in the indictment and therefore sought leave on 28 September 2007 to amend the third amended indictment. On 15 October 2007, the leave was granted and the fourth amended indictment was confirmed as the operative indictment. On 16 October 2007, the Prosecution filed the fourth amended indictment.

Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj were allegedly co-perpetrators in a joint criminal enterprise (JCE). The purpose of the JCE was the consolidation of total control of the Kosovo Liberation Army (KLA) over the KLA operational zone of Dukagjin, by the unlawful removal and mistreatment of Serb civilians and by the mistreatment of Kosovar Albanians, Kosovar Roma/Egyptian civilians and other civilians, who were, or were perceived to have been, collaborating with Serbian Forces or have not supported the KLA.

The indictment alleges that, after 24 March 1998, KLA forces under the command and control of Ramush Haradinaj mounted a military campaign to seize control of the area between the villages of Glodane/Gllogjan and Dečani/Dečan and particularly the villages of Dubrava/Dubravë, Rznić/Irznik, Ratiš/Ratishe and Dašinovac/Dashinoc and to drive ethnic Serbs out of the villages where they were living, and that they also continued to launch attacks against the camp of refugees in Babaloć/Baballog near Dečani/Dečan (this camp had been the target of similar KLA attacks since 1997).

The indictment also states that the KLA forces under the command and control of Ramush Haradinaj, including the "Black Eagles" under the direct command of Idriz Balaj, harassed, beat or otherwise drove Serb civilians and Roma/Egyptian civilians out of these villages, and killed those civilians that remained behind or had refused to abandon their homes, and that they continued to mount similar attacks on Serb, Kosovar Albanian and Kosovar Roma/Egyptian civilians.

According to the indictment, in mid-May 1998, a make-shift detention facility at the KLA headquarters in Jablanica/Jabllanicë was established. During their detention, detainees were given very little food or water, were regularly beaten and subjected to other forms of physical mistreatment, and were denied medical treatment for their injuries. A number of prisoners at the Jablanica/Jabllanicë detention facility died as a result of their injuries, or were executed on orders of the accused.

The indictment also states that during the end of August and the beginning of September 1998, Serb forces temporarily retook the area surrounding Glodane/Gllogjan, and that a Serbian forensic crime scene team conducted an investigation in that area. They recovered 32 identifiable bodies in the Lake Radonjić/Radoniq canal area. The team also found two bodies on the road leading to Dašinovac/Dashinoc, approximately nine kilometres from Glodane/Gllogjan.

The indictment charges the accused as follows:

Ramush Haradinaj is charged on the basis of individual criminal responsibility (Article 7(1) of the Statute) with:

- **Persecutions (harassment, torture, deportation or forcible transfer of civilians, murders, rape)** (crimes against humanity, Article 5)
- **Cruel treatment, murder, torture, rape** (violations of the laws or customs of war, Article 3)

Idriz Balaj is charged on the basis of individual criminal responsibility (Article 7(1) of the Statute) with:

- **Persecutions (harassment, deportation or forcible transfer of civilians, murder, rape)** (crimes against humanity, Article 5)
- **Cruel treatment, murder, torture, rape** (violations of the laws or customs of war, Article 3)

Lahi Brahimaj is charged on the basis of individual criminal responsibility (Article 7(1) of the Statute) with:

- **Persecutions (harassment, deportation or forcible transfer of civilians, murder, rape)** (crimes against humanity, Article 5)
- **Cruel treatment, murder, torture** (violations of the laws or customs of war, Article 3)

PRE-TRIAL PROCEEDINGS

On 16 April 2005, Ramush Haradinaj was granted temporary provisional release from 17 to 19 April 2005, to attend his brother's funeral in Kosovo.

On 6 June 2005, Ramush Haradinaj was granted provisional release. According to the Trial Chamber's decision, during the first period of ninety days Ramush Haradinaj was not allowed to make any public appearance or to get involved in any public political activity.

In response to Ramush Haradinaj's request, the Trial Chamber, in its decision of 12 October 2005, allowed Ramush Haradinaj's appearance in public and engagement in political activities in Kosovo, subject to specific conditions.

On 14 October 2005, following a motion filed by the Prosecution, the Trial Chamber ordered a stay of its decision of 12 October 2005.

On 16 December 2005, the Appeals Chamber ruled to stay the Trial Chamber's decision rendered on 12 October 2005 which would have allowed Ramush Haradinaj "to appear in public and engage in public political activities". This meant that the conditions laid out in the Decision for Provisional Release of Ramush Haradinaj would apply until the Appeals Chamber has rendered its final decision.

On 10 March 2006, the Appeals Chamber issued a majority Decision on Ramush Haradinaj's modified provisional release in which it denied the Prosecution's motion to set aside the Trial Chamber's decision of 12 October 2005 and allowed Ramush Haradinaj to appear in public and engage in political activities.

Ramush Haradinaj returned to the UN Detention Unit on 26 February 2007 for the start of the trial.

THE TRIAL

The trial of Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj commenced on 5 March 2007. The Trial Chamber pronounced the Prosecution case closed on 26 November 2007.

From 3 October until 7 October 2007, Ramush Haradinaj was granted provisional release to attend the funeral of a close family member.

On 29 November 2007, all three Defence teams reported that none of them would call any evidence.

Ramush Haradinaj and Lahi Brahimaj were granted provisional release from 21 December 2007 until 4 January 2008.

The closing arguments were held from 21 to 23 January 2008.

TRIAL CHAMBER JUDGEMENT

The Trial Chamber rendered its judgement on 3 April 2008. Before the actual findings, the Trial Chamber emphasized that “during the trial the Chamber received evidence from almost 100 witnesses. Nevertheless, the Chamber encountered significant difficulties in securing the testimony of a large number of these witnesses. Many cited fear as a prominent reason for not wishing to appear before the Chamber to give evidence. In this regard, the Chamber gained a strong impression that the trial was being held in an atmosphere where witnesses felt unsafe, due to a number of factors set out in the Judgement. The parties furthermore agreed that an unstable security situation existed in Kosovo that was particularly unfavourable to witnesses. As a reflection of the difficulties encountered in obtaining testimony, 34 witnesses were granted certain protective measures.”

Having considered the evidence presented on individual counts of the indictment, the Chamber found that a large number of alleged crimes were committed by KLA soldiers or persons affiliated with the KLA. These crimes included, in particular, the ill-treatment of persons detained in the Jablanica compound. The Chamber found that KLA soldiers in the compound, or persons affiliated with the KLA, severely beat Witness 6, Nenad Remištar, Pal Krasniqi, Skender Kuqi, Witness 3, three unidentified Montenegrin men, and one unidentified Bosnian man. The ill-treatment of these persons amounted to cruel treatment and, in several cases, torture. The Chamber also found that two of these individuals, Skender Kuqi and Pal Krasniqi, died as a result of the ill-treatment.

The Chamber found that KLA soldiers interrogated and ill-treated Novak Stijović and Staniša Radošević outside Glođane in April 1998, after the two men had been stopped at a KLA checkpoint. The Chamber also found that a KLA soldier raped Witness 61 in the KLA headquarters in Rznić sometime in the summer of 1998. The ill-treatment of these persons amounted to both cruel treatment and torture.

The Prosecution had charged the three accused with 30 murders where the victims’ remains were found in the Radonjić canal area. The Chamber found, however, that only seven of these murders could be proven beyond a reasonable doubt and were committed by KLA soldiers. These were the murders of Zenun Gashi, Nurije Krasniqi, Istref Krasniqi, Sanije Balaj, and the mother and the two sisters of Witnesses 4 and 19.

The Chamber received less evidence for most of the other alleged murders where the victims’ remains were found in the Radonjić canal area. In some instances, nothing was known about the circumstances in which the victim disappeared. Some remains found in the Radonjić canal area were not identified. Even those murders for which the Chamber received ample evidence could not consistently be attributed to the KLA. Consequently, the Chamber could not draw conclusions of a more general nature from the fact that victims were found in the Radonjić canal area, as to who committed the killing and with which group, if any, the perpetrator was affiliated.

In conclusion, the Chamber found that KLA soldiers committed acts of cruel treatment, torture, rape, and murder as charged in:

- Count 6,
- Count 14,
- Count 20,
- Count 22, but only with regard to the murder of Nurije and Istref Krasniqi and the murder of Sanije Balaj,
- Count 28,
- Count 30,
- Count 32, and
- Counts 36 and 37, but only with regard to Witness 61.

The Prosecution charged all three accused with the above crimes as participants in a joint criminal enterprise. The objective of this alleged joint criminal enterprise was to consolidate total KLA control over the Dukagjin area by the unlawful removal and mistreatment of Serb civilians, and by the mistreatment of Kosovar Albanian and Kosovar Roma civilians, and other civilians, who were, or were perceived to have been, collaborators with the Serbian forces or otherwise not supporting the KLA. The Chamber found that the Prosecution presented little direct evidence with regard to the alleged common criminal objective. The Prosecution instead asked the Chamber to infer from circumstantial evidence, principally from evidence on crimes committed by KLA soldiers, that there existed a joint criminal enterprise. In conclusion, considering both the direct and the circumstantial evidence, the Chamber was

not convinced beyond a reasonable doubt that the three accused participated in a joint criminal enterprise, as charged.

All the accused were charged, in the alternative, with having committed, planned, instigated, ordered, or aided and abetted many of the crimes. For only two of the Counts, the Chamber received sufficient evidence to be convinced beyond a reasonable doubt as to the individual criminal responsibility of one of the accused, Lahi Brahimaj.

The Prosecution alleged that on or about 13 June 1998, KLA soldiers arrested Witness 6 after searching his car and finding a gun. According to the Indictment, Witness 6 was subsequently detained at the Jablanica compound where he was regularly beaten by KLA soldiers, including Lahi Brahimaj. Based on the evidence presented, the Chamber was convinced that Witness 6 was detained at the Jablanica compound for around six weeks, starting on or about 13 June 1998. During approximately the first four of these weeks he was regularly beaten by KLA soldiers causing serious physical suffering and injury, and resulting in lasting physical consequences. Additionally, Witness 7 and Witness 16 testified that a commander at the compound told them that Witness 6 had been convicted or sentenced. The commander spoke angrily against President Rugova and those who did not fight. Witness 6 himself testified that when he was released, he received a written decision from Nazmi Brahimaj stating that if Witness 6 repeated his mistake, he would be prosecuted. On the basis of this evidence, the Chamber was convinced that KLA soldiers mistreated Witness 6 to punish him. For this reason, the Chamber concluded that Witness 6 was a victim of cruel treatment and torture committed by KLA soldiers or persons affiliated with the KLA.

Witness 6 testified that Lahi Brahimaj participated in some of his beatings, and was sometimes present while others beat him. Witness 6 also testified that Lahi Brahimaj was among those who accused him of associating with and spying for the Serbs. Witness 6 had ample opportunity to observe Lahi Brahimaj throughout the approximately four weeks during which he was beaten. Furthermore, Witness 6 testified that, during the following couple of weeks, he repeatedly observed Lahi Brahimaj at the Jablanica compound. Witness 6 heard others address him as Lahi or Maxhup, and learned that Maxhup was Lahi Brahimaj's nickname. Witness 6 later recognized Lahi Brahimaj on a Prosecution photo board. Based on the evidence as a whole, the Chamber was therefore convinced that Lahi Brahimaj personally participated in the cruel treatment and torture of Witness 6, and concluded that he should be convicted for having committed these crimes.

Furthermore, the Prosecution alleged that in July 1998, Witness 3 was detained at the Jablanica KLA headquarters and submitted to severe beatings by the KLA. The Chamber was convinced that Witness 3 was subject to beatings by KLA soldiers or persons affiliated with the KLA, which caused him serious physical suffering, and that the perpetrators intended to cause such suffering. The Chamber was also convinced that the beatings of Witness 3 were aimed at punishing him for withholding a weapon, and discriminating against him on the basis of his perceived ties to the Serbs. For these reasons, the Chamber was convinced beyond a reasonable doubt that KLA soldiers or persons affiliated with the KLA committed cruel treatment and torture against Witness 3.

The Chamber found that Lahi Brahimaj's role in the interrogations, as well as his position of authority, established his intent to inflict serious physical suffering on Witness 3 for the purpose of punishing him for withholding a weapon, and discriminating against him on the basis of his perceived ties to the Serbs. For these reasons the Chamber concluded that Lahi Brahimaj should be convicted of having committed cruel treatment and torture under Count 32.

For the other crimes committed under Counts 6, 20, 30, 36 and 37, the Chamber found that insufficient evidence was advanced by the Prosecution to hold any of the accused criminally liable.

Count 14 charged Idriz Balaj with committing, planning, instigating, or aiding and abetting the commission of the murders of the mother and the two sisters of Witnesses 4 and 19. The majority found that there was no evidence that he knowingly contributed to or facilitated the commission of any of the murders, noting in particular the absence of evidence that he was aware at that time that these murders were or would be committed. Judge Höpfel dissents as to Idriz Balaj's criminal liability for aiding and abetting the commission of the murder of sister "S".

On 3 April 2008, the Trial Chamber rendered its judgement: Ramush Haradinaj and Idriz Balaj were found not guilty on all counts of the indictment. The Trial Chamber ordered their release.

Lahi Brahimaj was found guilty on the basis of individual criminal responsibility with:

- Cruel treatment and torture (violations of the laws or customs of war, Article 3)

Sentence: Six years' imprisonment.

Credit was given for 1109 days spent in detention.

APPEAL PROCEEDINGS

On 1 May 2008, the Prosecution filed a notice of appeal against the Trial Chamber Judgement.

On 5 May 2008, the Defence of Lahi Brahimaj filed its notice of appeal against the Judgement.

On 17 July 2008, the Prosecution filed a public redacted version of its appeal brief.

On 19 July 2008, the Defence of Lahi Brahimaj filed its appeal brief.

On 25 May 2009, Lahi Brahimaj was granted provisional release pending the hearing of his appeal.