

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

(IT-04-84 and IT-04-84bis)

HARADINAJ***et al.****The Prosecutor v. Ramush Haradinaj, Idriz Balaj & Lahi Brahimaj***RAMUSH HARADINAJ**

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

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
Appeals Chamber judgement	21 July 2010, partial re-trial ordered

IDRIZ BALAJ

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" meaning "Lieutenant".

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
Appeals Chamber judgement	21 July 2010, partial re-trial ordered

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 "Gypsy".

- Sentenced to six years' imprisonment

*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; 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.

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
Appeals Chamber judgement	21 July 2010, sentence affirmed (partial re-trial ordered)

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 Andrésia 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
Judgement	21 July 2010

RE-TRIAL	
Commenced	18 August 2011
Trial Chamber II	Judge Bakone Justice Moloto (presiding), Judge Burton Hall and Judge Guy Delvoie
Counsel for the Prosecution	Paul Rogers, Daniela Kravetz, Barbara Goy, Aditya Menon
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 by geographical area	
LIMAJ <i>et al.</i> (IT-03-66)	
MILOŠEVIĆ (IT-02-54) “KOSOVO, CROATIA & BOSNIA”	
SAINOVIC <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 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 the case. On 7 September, 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 to amend the third amended indictment. On 15 October, leave was granted and the fourth amended indictment was confirmed as the operative indictment. On 16 October, the Prosecution filed the fourth amended indictment.

Haradinaj, Balaj and Brahimaj were alleged to have been co-perpetrators in a joint criminal enterprise (JCE). The purpose of the JCE was to consolidate the total control of the KLA over the Dukagjin Operational Zone 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 otherwise not supporting the KLA.

The indictment alleged that, after 24 March 1998, KLA forces under the command and control of 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/Irznîq, Ratiš/Ratishe and Dašinovac/Dashinoc, and to drive ethnic Serbs out of the villages where they were living, and that the same forces continued to launch attacks against the refugee camp in Babaloć/Baballoq near Dečani/Dečan (this camp had been the target of similar KLA attacks since 1997). The indictment also stated that the KLA forces under the command and control of Haradinaj, including the "Black Eagles" under the direct command of Balaj, harassed, beat or otherwise drove Serb civilians and Roma/Egyptian civilians out of these villages, and killed those civilians that remained behind or 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, a makeshift detention facility at the KLA headquarters in Jablanica/Jabllanicë was established in mid-May 1998. 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 stated that during a period covering 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 the area. The team recovered 32 identifiable bodies in the Lake Radonjić/Radonîq canal area. They also found two bodies on the road leading to Dašinovac/Dashinoc, approximately nine kilometres from Glodane/Gllogjan.

The indictment charged the accused as follows:

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

In response to a request from Haradinaj, the Trial Chamber, in its decision of 12 October 2005, allowed him to appear in public and engage 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.

On 16 December 2005, the Appeals Chamber ruled to stay the Trial Chamber's decision rendered on 12 October which would have allowed 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 Haradinaj's modified provisional release in which it denied the Prosecution's motion to set aside the Trial Chamber's decision of 12 October and allowed Haradinaj to appear in public and engage in political activities.

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

THE TRIAL

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

On 29 November 2007, all three Defence teams reported that they would not call any evidence.

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

TRIAL CHAMBER JUDGEMENT

The Trial Chamber rendered its judgement on 3 April 2008. In its introduction to the judgement, the Chamber emphasized that although they had received evidence from almost 100 witnesses, they had nevertheless "encountered significant difficulties in securing the testimony of a large number of witnesses. Many witnesses cited fear as a prominent reason for not wishing to appear before the Trial Chamber to give evidence. The Trial Chamber gained a strong impression that the trial was being held in an atmosphere where witnesses felt unsafe. This was due to a number of factors specific to Kosovo/Kosova, for example Kosovo/Kosova's small communities and tight family and community networks which made guaranteeing anonymity difficult. The parties themselves agreed that an unstable security situation existed in Kosovo/Kosova that was particularly unfavourable to witnesses. Given these circumstances, the Trial Chamber made use of all its powers under the Rules to ensure the fair and expeditious conduct of the proceedings as well as the protection and well-being of witnesses who appeared before it." In all, 34 witnesses were granted certain protective measures during the trial.

Having considered the evidence presented on individual counts of the indictment, the Chamber found that a large number of 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 found that two of these individuals, Skender Kuqi and Pal Krasniqi, died as a result of the ill-treatment.

The Chamber also 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 further found that a KLA soldier raped Witness 61 in the KLA headquarters in Rznić sometime during 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. 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 as to who committed the killings and with which group, if any, the perpetrator was affiliated, from the fact that victims were found in the Radonjić canal area.

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 (JCE). The objective of this alleged JCE 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, collaborating 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 JCE. The Chamber, considering both the direct and the circumstantial evidence, was not convinced beyond a reasonable doubt that the three accused participated in a JCE.

Each of the accused was charged, in the alternative, with having committed, planned, instigated, ordered, or aided and abetted many of the crimes. The Chamber judged that they had received sufficient evidence to be convinced beyond a reasonable doubt as to the individual criminal responsibility of one of the accused, Lahi Brahimaj on two of the Counts of the alternative charges.

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 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 on 25 July he was given a written release decision bearing Brahimaj's signature stating that his release was conditional and that if he repeated his "mistakes", 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 Brahimaj participated in some of his beatings, and was sometimes present while others beat him. Witness 6 also testified that Brahimaj was among those who accused him of associating with and spying for the Serbs. Witness 6 had ample opportunity to observe 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 Brahimaj at the Jablanica compound. Witness 6 heard others address him as Lahi or Maxhup, and learned that Maxhup was Brahimaj's nickname. Witness 6 later recognized Brahimaj on a Prosecution photo board. Based on the evidence as a whole, the Chamber was convinced that 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 subjected 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 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 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 of the Chamber 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 dissented as to 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.

APPEALS CHAMBER JUDGEMENT

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

On 5 May 2008, the Defence of 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 Brahimaj filed its appeal brief.

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

The appeal hearing was held on 28 October 2009.

In the Prosecution's first ground of appeal, it argued that the Trial Chamber erred when it refused the Prosecution's requests for additional time to exhaust all reasonable steps to secure the testimony of two crucial witnesses and ordered the close of the Prosecution case before such reasonable steps could be taken. The Appeals Chamber, by majority and with Judge Robinson dissenting, granted this ground of appeal and ordered a partial re-trial. It held that, taken individually and outside the context of the trial, each of the Trial Chamber's decisions concerning the testimony of the relevant witnesses could be considered as falling within the scope of the Trial Chamber's discretion, but that, when these decisions were evaluated together, and particularly in the context of the serious witness intimidation that formed

the context of the trial, it was clear that the Trial Chamber seriously erred in failing to take adequate measures to secure the testimony of certain witnesses.

The Prosecution's second ground of appeal was dismissed; the third ground was granted in part, although Balaj's acquittal on the relevant count (37) was upheld.

The Appeals Chamber dismissed Brahimaj's grounds of appeal 1 to 8 and 10 to 19. The Chamber granted Brahimaj's ninth ground of appeal in part, but dismissed it in all other respects and upheld Brahimaj's conviction for torture under count 32 of the indictment.

On 21 July 2010, the Appeals Chamber rendered its judgement and quashed the Trial Chamber's decisions to:

(a) acquit Haradinaj and Balaj of participation in a 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 Indictment;

(b) acquit 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;

(c) acquit Haradinaj, Balaj, and Brahimaj of individual criminal responsibility under counts 24 and 34 of the Indictment; and

(d) acquit Brahimaj of individual criminal responsibility under count 26 of the Indictment.

The Appeals Chamber ordered that Haradinaj, Balaj, and Brahimaj be retried on these counts.

THE RE-TRIAL

The re-trial commenced on 18 August 2011.