

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

(IT-03-66)

LIMAJ et al.*The Prosecutor v. Fatmir Limaj, Isak Musliu & Haradin Bala***FATMIR LIMAJ***Found not guilty*

Alleged to have been a Kosovo Liberation Army (KLA) commander responsible for the operation of the Lapušnik/Llapushnik area and the Lapušnik/Llapushnik KLA prison camp (about 25 km west of Priština/Prishtinë); alleged to have been known as “Çeliku”

- Found not guilty

Born	4 February 1971 in Banja, municipality of Suva Reka, Kosovo
Indictment	Initial: 27 January 2003, made public on 18 February 2003; first amended: 25 March 2003; second amended: 12 February 2004
Arrested	18 February 2003, by Slovenian authorities
Transferred to ICTY	3 March 2003
Initial and further appearances	5 March 2003, pleaded not guilty to all charges; 27 February 2004, pleaded not guilty to the new charges of the second amended indictment
Trial Chamber Judgement	30 November 2005, found not guilty and released
Appeals Chamber Judgement	27 September 2007, found not guilty

ISAK MUSLIU*Found not guilty*

Alleged to have been a KLA commander of the Lapušnik/Llapushnik area and the Lapušnik/Llapushnik prison camp, and at times to have acted as a guard at the Lapušnik/Llapushnik prison camp; alleged to have been known as “Qerqiz”

- Found not guilty

Born	31 October 1970 in Račak/Reçak, municipality of Štimlje/Shtime, Kosovo
Indictment	Initial: 27 January 2003, made public on 18 February 2003; first amended: 25 March 2003; second amended: 12 February 2004
Arrested	17 February 2003, by the multinational Kosovo Force (KFOR)
Transferred to ICTY	18 February 2003
Initial and further appearances	20 February 2003, pleaded not guilty to all charges; 27 February 2004, pleaded not guilty to the new charges of the second amended indictment
Trial Chamber Judgement	30 November 2005, found not guilty and released
Appeals Chamber Judgement	27 September 2007, found not guilty

HARADIN BALA*Convicted of torture, cruel treatment and murder*

Guard at the KLA Lapušnik/Llapushnik prison camp; aka "Shala"

- Sentenced to 13 years' imprisonment

*Crimes convicted of (examples):***Torture, cruel treatment, murder** (violations of the laws or customs of war)

- Bala personally mistreated three individual prisoners and aided in another episode of mistreatment of one of those prisoners.
- He played a role in the maintenance and enforcement of the inhumane conditions of detention in the Lapušnik/Llapushnik prison camp.
- He aided the torture of one prisoner.
- Bala, with one or perhaps two other KLA guards, murdered nine prisoners from the prison camp in the Berishe/Beriša Mountains on 25 or 26 July 1998.

Born	10 June 1957 in Gornja Koretica/Koroticë e Epërme, municipality of Glogovac/Gllogoc, Kosovo
Indictment	Initial: 27 January 2003, made public on 18 February 2003; first amended: 25 March 2003; second amended: 12 February 2004
Arrested	17 February 2003, by KFOR
Transferred to ICTY	18 February 2003
Initial and further appearances	20 February 2003, pleaded not guilty to all charges; 27 February 2004, pleaded not guilty to the new charges of the second amended indictment
Trial Chamber Judgement	30 November 2005, sentenced to 13 years' imprisonment
Appeals Chamber Judgement	27 September 2007, sentence affirmed
Serving sentence	14 May 2008, transferred to serve sentence in France; Credit was given for time spent in detention

STATISTICS

Trial days	88
Witnesses called by Prosecution	30
Witnesses called by Defence	16
Prosecution Exhibits	260
Defence Exhibits	44

TRIAL	
Commenced	15 November 2004
Closing arguments	29 August - 1 September 2005
Trial Chamber II	Judge Kevin Parker (Presiding), Judge Krister Thelin, Judge Chistine Van Den Wyngaert
Counsel for the Prosecution	Alex Whiting, Julian Nicholls, Milbert Shin, Colin Black
Counsel for the Defence	For Fatmir Limaj: Michael Mansfield and Karim A. Khan For Haradin Bala: Gregor Guy-Smith and Richard Harvey For Isak Musliu: Michael Topolski and Steven Powles
Trial Chamber Judgement	30 November 2005

APPEALS	
Appeals Chamber	Judge Fausto Pocar (presiding), Judge Mohamed Shahabuddeen, Judge Andrèsia Vaz, Judge Theodor Meron, Judge Wolfgang Schomburg
Counsel for the Prosecution	Carla del Ponte, Helen Brady
Counsel for the Defence	For Fatmir Limaj: Michael Mansfield and Karim A. Khan For Haradin Bala: Gregor Guy-Smith and Richard Harvey For Isak Musliu: Michael Topolski and Steven Powles
Judgement	27 September 2007

RELATED CASES <i>by geographical area</i>	
HARADINAJ <i>et al.</i> (IT-04-84)	
MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA & BOSNIA"	
SINOVIĆ <i>et al.</i> (IT-05-87) "KOSOVO"	

INDICTMENT AND CHARGES

The initial indictment, containing charges against Fatmir Limaj, Haradin Bala, Isak Musliu, and Agim Murtezi, was confirmed on 27 January 2003 and made public on 18 February 2003. Following the withdrawal of the charges against Murtezi, the Trial Chamber granted the Prosecution leave to amend the indictment. The first amended indictment was filed on 7 March 2003 and confirmed on 25 March 2003. On 6 November 2003, the Prosecution filed the second amended indictment, confirmed by the Trial Chamber on 12 February 2004.

The operative indictment charged Limaj, Bala and Musliu with participation in a joint criminal enterprise (JCE). The goal of the JCE was to target for intimidation, imprisonment, violence and murder, those Serb civilians and perceived Albanian collaborators who refused to cooperate with or resisted the KLA by non-military means.

According to the indictment, in early 1998, KLA forces under the command and control of Limaj and Musliu unlawfully detained Serb and Albanian civilians from the municipalities of Štimlje/Shtime, Glogovac/Glogoc, and Lipljan/Lipjan for prolonged periods in the Lapušnik/Llapushnik prison camp.

According to the indictment, Limaj, Bala and Musliu participated in maintaining and enforcing the inhumane conditions in the camp, which included inadequate food and medical care, and participated in or aided and abetted the beatings, torture, and murder of detainees.

It was further alleged that, shortly before 26 July 1998, Serb forces retook the area around the Lapušnik/Llapushnik prison camp. As a result, on 26 July 1998, the KLA abandoned the prison camp. Bala and another guard marched approximately 21 detainees from the camp into the Beriša/Berisha mountains, about 35 km west of Priština/ Prishtinë. On the way, they met up with Limaj who gave orders to Bala. Shortly thereafter, Bala divided the detainees into two groups. One group of approximately nine detainees was released. The other group of approximately 12 detainees was marched by Bala, another guard and a third KLA soldier, to a clearing in the woods. Bala, the other guard and the third KLA soldier then shot the detainees, killing 10 of them.

The indictment charged the accused as follows:

Fatmir Limaj was charged on the basis of individual criminal responsibility (Article 7(1) of the Statute) and on the basis of superior criminal responsibility (Article 7(3) of the Statute) with:

- **Imprisonment, torture, inhumane acts and murder** (crimes against humanity, Article 5)
- **Cruel treatment, torture, murder** (violations of the laws or customs of war, Article 3)

Haradin Bala was charged on the basis of individual criminal responsibility (Article 7(1) of the Statute) with:

- **Imprisonment, torture, inhumane acts and murder** (crimes against humanity, Article 5)
- **Cruel treatment, torture, murder** (violations of the laws or customs of war, Article 3)

Isak Musliu was charged on the basis of individual criminal responsibility (Article 7(1) of the Statute) and on the basis of superior criminal responsibility (Article 7(3) of the Statute) with:

- **Imprisonment, torture, inhumane acts and murder** (crimes against humanity, Article 5)
- **Cruel treatment, torture, murder** (violations of the laws or customs of war, Article 3)

TRIAL

The trial against Limaj, Musliu and Bala commenced on 15 November 2004. The Prosecution completed its case-in-chief on 13 April 2005. The Defence opened its case on 17 May 2005 and closed it on 27 June 2005.

The parties presented their closing arguments between 29 August 2005 and 1 September 2005.

TRIAL CHAMBER JUDGEMENT

Counts 1, 3, 5, 7, and 9 of the indictment were charged as crimes against humanity under Article 5 of the Statute. For the Tribunal to have the power to deal with crimes against humanity, it must first be proved by the Prosecution that the alleged criminal conduct of the accused was part of a widespread or systematic attack directed against a civilian population. The Chamber heard evidence of abductions, detention, and mistreatment committed by KLA soldiers against both Serbian and Kosovo Albanian civilians between May and July 1998. The Chamber judged, however, that it was not proved that these acts were on a scale or of a nature necessary to constitute a widespread or systematic attack on a civilian population. Therefore Counts 1, 3, 5, 7, and 9 were dismissed with respect to all three accused.

Counts 2, 4, 6, 8, and 10 were charged as war crimes under Article 3 of the Statute. This requires that the alleged criminal acts of the accused be committed in the course of an armed conflict. The Chamber was satisfied that, before the end of May 1998, a state of armed conflict existed in Kosovo between Serbian forces and the KLA.

Count 2 alleged the offence of cruel treatment based on the unlawful seizure, unlawful detention, and interrogation of Serbian and Kosovo Albanian civilians. The Chamber concluded that, at least in the

particular circumstances of this case, the acts of seizure, detention and interrogation, in and of themselves, did not amount to a serious attack on human dignity within the established meaning of cruel treatment under Article 3 of the Statute. Count 2 was therefore dismissed with respect to all three accused.

It was also alleged in the indictment that in addition to direct personal involvement, the three accused were criminally responsible for the offences with which they were charged by virtue of their participation in a joint criminal enterprise. The Chamber found that it was not proven by the Prosecution that there was a joint criminal enterprise involving any of the three accused.

The central allegation in the Prosecution case was that the KLA established a prison camp in a farm compound in the village of Llapushnik/Lapušnik in central Kosovo, in which it held mainly civilian prisoners, of both Kosovo Albanian and Serbian ethnicity, between May and the end of July 1998.

The Chamber was entirely satisfied that the KLA did have a prison camp in the farm compound in Llapushnik/Lapušnik, as alleged by the Prosecution, and that, in June and July 1998, there were mainly civilian prisoners of both Albanian and Serbian ethnicity held there. The evidence proved that the KLA was forced to abandon the prison camp on 25 or 26 July 1998, because Serbian armed forces were then advancing on Llapushnik/Lapušnik (Llapushnik/Lapušnik was eventually captured by the Serbian forces on 26 July).

The most serious charge concerning conduct at the prison camp was Count 8, which alleged that 14 identified civilian prisoners were murdered at the camp. Given the nature of the charges it was necessary for the Prosecution to establish that each of the 14 was murdered at the camp or by KLA soldiers connected with the camp. There was no direct evidence as to what happened to most of these prisoners, and the Prosecution was only able to prove by the available evidence that three prisoners were murdered at the camp.

Count 6 of the indictment alleged that all the prisoners held in the prison camp were subjected to cruel treatment. Over 30 prisoners were alleged to have been detained. The identities of 27 of the detainees were firmly established. Almost all of these were proved to have been detained in either a small basement storage room, or in another room normally used as a cowshed. The Trial Chamber found that the conditions in these rooms were appalling. Food and water were not provided regularly or adequately. There were no cleaning, washing or sanitary facilities, the rooms were not adequately ventilated and were at times overcrowded, there were no sleeping facilities and detainees in the cowshed were typically chained to the wall or tied to other detainees. The atmosphere was oppressive with heat and stench. On rare occasions prisoners in the storage room were allowed fresh air for a short time at night. Many of the prisoners had been badly injured, with broken limbs, bones or internal injuries. Others had been shot. Nothing was done to provide medical care, even though there was a doctor and a medical clinic in the nearby village which was used by KLA personnel. The Chamber found that the detention of a prisoner in these conditions constituted the offence of cruel treatment.

A few prisoners were held at other locations within the farm compound. The evidence did not establish that the conditions in these other locations were such as to constitute cruel treatment.

the Chamber further found that there was a significant body of evidence which detailed individual acts of severe physical violence committed by various KLA members on individual prisoners. The evidence indicated that it was a regular occurrence for a prisoner to be blindfolded, tied and taken from the room at night by KLA soldiers, who often wore hoods to hide their faces. The prisoners were then severely beaten or subjected to other extreme violence, and later were returned to the detention room, at times unconscious or in severe pain. The Chamber identified, in particular, 12 incidents of this nature in which identified prisoners were the victims. In respect to each of these 12 incidents, the Chamber found that the crime of cruel treatment had been established by the Prosecution.

The Chamber was also satisfied that five prisoners were subjected to severe mental suffering caused when they witnessed other prisoners being beaten, or were threatened with death at gunpoint, or were forced to bury the injured and disfigured corpses of other prisoners. This conduct by KLA members was proved to constitute the offence of cruel treatment.

Count 4 of the indictment charged the offence of torture. To prove the offence of torture, one element which the Prosecution must establish is that the perpetrator mistreated the victim for a particular purpose, in this case the purpose of obtaining a confession, or information, or to punish, the victim. The evidence established four incidents involving identified victims in which the crime of torture was found to have been committed.

Limaj and Bala were also charged, in Count 10, for their alleged participation in the execution of detainees from the prison camp in the Berishe/Beriša Mountains. On 25 or 26 July 1998, the remaining detainees of the prison camp, over 20 of them, were marched into the Berishe/Beriša Mountains under armed KLA escort. In the mountains about half of them were set free and allowed to leave. The others remained under KLA guard. The remains of nine bodies were later exhumed from graves located in this area of the Berishe/Beriša Mountains. DNA examination confirmed the identity of eight of these bodies. The identity of the ninth victim was established through identification of clothes by family members. It was proved that all nine victims had been held prisoner by the KLA in the prison camp and that they were in the group that remained under KLA guard in the Berishe/Beriša Mountains on 25 or 26 July, after the other prisoners had been set free. Forensic examination disclosed that six of the nine victims died from bullet wounds fired from Kalashnikov rifles, which was the type of weapon used by the KLA guards. The precise cause of death of the other three bodies was not identified by the forensic examination. These three bodies, however, had bone fractures caused at about the time of death. Some of the bodies had been shot more than once. The Chamber was satisfied that nine of the prisoners from the Llapushnik/Lapušnik prison camp (Emin Emini, Ibush Hamza, Hyzri Harjizi, Shaban Hoti, Hasan Hoxha, Safet Hysenaj, Bashkim Rashiti, Lutfi Xhemshiti and Shyqyri Zymer) were executed in the Berishe/Beriša Mountains by KLA guards.

In addition to direct personal involvement, it was also alleged in the indictment that two of the accused, Limaj and Musliu, were guilty of the offences charged for their failure to prevent or punish the criminal conduct of their subordinates in the KLA. The Chamber found that, while it was clear that Limaj and Musliu were at times subsequent to those relevant to the indictment in positions of command in the KLA, and that Limaj later became a member of the General Staff, the Prosecution had not conclusively proved that either had held positions of command in respect of the Llapushnik/Lapušnik prison camp in May to July 1998.

Therefore, in this case, the issue of criminal responsibility of the three accused, essentially, though not solely, turned on the question of identification.

A few witnesses purported to have seen Limaj in the Llapushnik/Lapušnik prison camp at various times, and one witness purported to have seen him in the Berishe/Beriša Mountains speaking to one of the KLA guards some time before the execution of the nine prisoners. There was also evidence that Limaj had not been in the prison camp and was never in the Berishe/Beriša Mountains on the day of the executions. While the Chamber was not persuaded of the honesty of one of the witnesses who purported to identify Limaj, and considered with care the reliability of the others, the balance of the evidence on this issue indicated the strong possibility that Limaj was the KLA member who was known in the camp to some prisoners as Commander Çeliku. Nevertheless, on a final review of the evidence, the Chamber found that it had not been proved beyond reasonable doubt by the Prosecution that Limaj had any role in the prison camp, or in the executions in the Berishe/Beriša Mountains, or that he had any criminal responsibility for any of the offences with which he was charged.

With respect to Musliu, the Chamber found that there was little evidence to identify Musliu as having any kind of involvement in the prison camp. The evidence presented failed to establish that Musliu had any involvement in the events charged, or in the running of the prison camp, or that he was on any other basis criminally responsible for any of the offences with which he was charged in the indictment.

For these reasons, the Trial Chamber found Fatmir Limaj and Isak Musliu not guilty.

With respect to Bala, the evidence relevant to his identification was more extensive and more varied. The Chamber found that the Prosecution had proved beyond reasonable doubt that Bala was the KLA guard, known as Shala, who was involved in the running of the prison camp in Llapushnik/Lapušnik and who escorted the remaining prisoners to the Berishe/Beriša Mountains on 25 or 26 July 1998.

The Chamber found that the Prosecution did not prove that Bala was criminally responsible for any of the three murders of prisoners at the camp, but that the Prosecution did prove that Bala was guilty of cruel treatment for having himself mistreated three individual prisoners and aided in another episode of mistreatment of one of those prisoners, and for his personal role in the maintenance and enforcement of the inhumane conditions of detention in the prison camp. The Chamber also found that the Prosecution did prove that Bala aided the torture of one prisoner, and that Bala, jointly with one or perhaps two other KLA guards, murdered nine prisoners from the prison camp in the Berishe/Beriša Mountains on 25 or 26 July.

The Chamber emphasised that Bala's role in the prison camp was that of a guard; he was not in a position of command or authority. In particular, in connection with the murders in the Berishe/Beriša Mountains, the Chamber found that Bala was acting as a soldier under orders when he released some prisoners and executed nine others. He did not do this on his own initiative or decision. The Chamber found that while that did not excuse his conduct, it affected the degree of the seriousness of his conduct.

On 30 November 2005, the Trial Chamber rendered its judgement: Fatmir Limaj and Isak Musliu were found not guilty on all counts of the indictment. The Trial Chamber ordered their release.

Haradin Bala was found guilty on the basis of individual criminal responsibility with:

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

Seven counts against him were dismissed.

Sentence: 13 years' imprisonment.

APPEALS CHAMBER JUDGEMENT

On 30 December 2005, the Prosecution and the Defence for Bala filed their notices of appeal. On 29 March 2006 the Prosecution filed a motion of appeal against the acquittals of Limaj and Musliu.

The appeals hearings were held on 5 and 6 June 2007.

The Appeals Chamber rejected all five grounds of Bala's appeal, including his claims of mistaken identity and alibi. The Appeals Chamber rejected the two grounds of Prosecution's appeal, including the argument that a systemic joint criminal enterprise existed, in which the prison camp was run by the KLA, the conditions in the camp amounted to a system of ill-treatment, and the KLA soldiers in the camp intended to further this system of ill-treatment.

The Appeals Chamber found that the Trial Chamber had not erred in its finding that the KLA soldiers who systematically committed cruel treatment and torture in the camp were not necessarily participants in a systemic joint criminal enterprise to commit these crimes. The Appeals Chamber upheld the Trial Chamber's assertion that it could not be ruled out that rogue KLA soldiers or so-called 'outsiders' to the camp mistreated or killed civilian detainees for personal reasons such as revenge, and not in furtherance of any common plan. This finding was also applied in the Prosecution's appeals against Limaj's and Musliu's acquittals in relation to the alleged existence of a joint criminal enterprise. In addition, the Appeals Chamber stated that the Trial Chamber reasonably found that Limaj did not incur criminal responsibility for any of the offences charged in the indictment in the context of command responsibility.

The Appeals Chamber was satisfied, Judge Schomburg dissenting, that the Trial Chamber reasonably assessed the totality of the evidence when it found that Musliu was not present at the Lapušnik prison camp and therefore did not participate in the operation of the camp.

On 27 September 2007, the Appeals Chamber affirmed the Trial Chamber judgement, confirming the acquittals of the accused Limaj and Musliu, and Bala's sentence of 13 years.

On 14 May 2008, Bala was transferred to France to serve the remainder of his sentence.