

**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-04-84-A
Date: 19 July 2010
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Fausto Pocar
Judge Liu Daqun
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. John Hocking

Judgement: 19 July 2010

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

JUDGEMENT

The Office of the Prosecutor:

Mr. Peter Kremer
Mr. Marwan Dalal
Ms. Elena Martin Salgado

Counsel for Ramush Haradinaj:

Mr. Ben Emmerson
Mr. Rodney Dixon

Counsel for Idriz Balaj:

Mr. Gregor Guy-Smith
Ms. Colleen Rohan

Counsel for Lahi Brahimaj:

Mr. Richard Harvey
Mr. Paul Troop

Trial Chamber also noted that Witness 6 was in a poor physical condition and suffered lasting physical consequences from the beatings.³¹⁰ The Trial Chamber then concluded that it considered Witness 6 to be a credible witness, that it was satisfied that the beatings caused him serious physical suffering and injury, that the perpetrators of the beatings intended to cause such suffering and injury, and therefore that KLA soldiers were responsible for the cruel treatment of Witness 6.³¹¹ The Trial Chamber also found that KLA soldiers mistreated Witness 6 in order to punish him for his perceived collaboration with Serbs and to discriminate against him on political grounds.³¹² Accordingly, the Trial Chamber concluded that KLA soldiers tortured Witness 6.³¹³

132. The Trial Chamber found that Lahi Brahimaj participated in this mistreatment and torture of Witness 6. In drawing this conclusion, it considered the testimony of Witness 6 that, *inter alia*, Lahi Brahimaj was often present at some of the beatings, was among those who accused Witness 6 of associating with the Serbs and heard others address him as “Lahi” or “Maxup”, and heard from Gani Brahimaj that “Maxup” was Lahi Brahimaj’s nickname. Furthermore, the Trial Chamber considered that throughout the approximately four weeks during which he was beaten, Witness 6 had ample opportunity to observe Lahi Brahimaj and noted that he had subsequently recognised Lahi Brahimaj on a photo board. In light of these factors, the Trial Chamber found that it was “convinced beyond a reasonable doubt that Lahi Brahimaj personally participated in the cruel treatment and torture of Witness 6, and that he should be convicted for committing these crimes.”³¹⁴

133. Besides the evidence of Witness 6, the Trial Chamber also took into account the evidence of Pekka Haverinen,³¹⁵ Witness 23,³¹⁶ Witness 16,³¹⁷ and Witness 7.³¹⁸ The evidence of these witnesses confirmed that Witness 6 was detained by the KLA, that he sustained injuries as a consequence of beatings, and that he recognised Lahi Brahimaj from photo boards shown to him during an interview by a Prosecution investigator. However, none of these witnesses corroborated Witness 6’s identification of Lahi Brahimaj as one of the persons who beat him and accused him of spying for the Serbs. Thus, the Trial Chamber relied solely on the identification evidence of Witness 6 to convict Lahi Brahimaj under Count 28 of the Indictment.

134. The Appeals Chamber notes that the Trial Chamber concluded that Witness 6 was a credible witness without providing any reasons for this finding or addressing any of the alleged

³¹⁰ Trial Judgement, para. 391; *see also* Trial Judgement, paras 381-384, 392, 395.

³¹¹ Trial Judgement, para. 391.

³¹² Trial Judgement, para. 392.

³¹³ Trial Judgement, para. 392.

³¹⁴ Trial Judgement, para. 395.

³¹⁵ Trial Judgement, para. 386.

³¹⁶ Trial Judgement, para. 387.

³¹⁷ Trial Judgement, para. 388.

³¹⁸ Trial Judgement, paras 389-390.

inconsistencies within his testimony. The Appeals Chamber recognises that a Trial Chamber is not obliged to address every minor inconsistency in a witness's statement; however, neither can a Trial Chamber fail to address alleged inconsistencies in cases such as the instant one, when the evidence of the witness at issue is the principal evidence relied upon to convict an accused. The Appeals Chamber finds that this failure contravened Lahi Brahimaj's right to a reasoned opinion, constituting an error of law. Accordingly, the Appeals Chamber will evaluate Lahi Brahimaj's arguments under this sub-ground of appeal to determine whether a reasonable Trial Chamber could have concluded that Witness 6 was credible despite the alleged inconsistencies in his testimony.³¹⁹

135. With regard to Lahi Brahimaj's claim that Witness 6's injuries are inconsistent with his mistreatment,³²⁰ as the only injury detected in the medical report from Dr. Shkëlzen Zajmi was a fractured left wrist,³²¹ the Appeals Chamber notes that the only medical report on record issued by Dr. Shkëlzen Zajmi is Exhibit P336. This report bears the words "X-Ray Service" and states, "[r]eferred for examination [...] X-Ray of the urinary tract and left forearm", which indicates that only Witness 6's left forearm and urinary tract were examined. This report does not reflect the results of a comprehensive medical examination of Witness 6, and thus has no impact upon the probative value of Witness 6's evidence in relation to his other injuries, as well as in relation to the beatings that caused these injuries. Consequently, the Appeals Chamber does not consider the medical report to be inconsistent with Witness 6's account of his beatings and his injuries and finds that it does not impact upon his credibility.

136. As for Witness 6's response when asked the meaning of the phrase, "[h]is release is conditional. If the mistake is repeated the accused will face criminal charges", which appeared in the document given to him upon his release, the Appeals Chamber notes Witness 6 responded that the document told him that he must not go to Đakovica/Gjakovë for personal reasons.³²² The Appeals Chamber considers Lahi Brahimaj's assertion that this statement is improbable to be speculative. Lahi Brahimaj does not point to any inconsistency between this statement and any other statement made during Witness 6's testimony. Accordingly, the Appeals Chamber finds that it has no impact upon Witness 6's credibility.

137. As regards the claim that Witness 6 initially stated that he had seen pictures of Nazmi Brahimaj and Lahi Brahimaj and found out their names but later denied seeing pictures of them,³²³ the Appeals Chamber notes that Witness 6 testified that, during his four-week imprisonment, he did

³¹⁹ See *Kordić and Čerkez* Appeal Judgement, paras 385-388.

³²⁰ Brahimaj's Appeal Brief, paras 48-50.

³²¹ Brahimaj's Appeal Brief, para. 49.

³²² Witness 6, T. 5255 (1 June 2007) (Private Session).

³²³ Brahimaj's Appeal Brief, para. 57.