

 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-T
		Date:	3 April 2008
		Original:	English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
 Judge Frank Höpfel
 Judge Ole Bjørn Støle

Registrar: Mr Hans Holthuis

Judgement of: 3 April 2008

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

JUDGEMENT

Office of the Prosecutor

Mr David Re
 Mr Gramsci di Fazio
 Mr Gilles Dutertre
 Mr Philip Kearney

Counsel for Ramush Haradinaj

Mr Ben Emmerson, QC
 Mr Rodney Dixon
 Ms Susan L. Park

Counsel for Idriz Balaj

Mr Gregor Guy-Smith
 Ms Colleen Rohan

Counsel for Lahi Brahimaj

Mr Richard Harvey
 Mr Paul Troop

naked. Witness 38 also testified that the soldier forced her to eat a bank book, tore off half of her father's moustache, and tied both their hands with barbed wire. Witness 38 testified that a vehicle with at least two men arrived at the location where she was held and that she saw the men when she was sitting on the ground some 20-30 metres away. There were, according to Witness 38, bushes between herself and the men. Witness 38 heard the word "commander", but was not sure to whom it was addressed. Three to four months later, the witness recognized one of the men as Ramush Haradinaj when she saw him on television. The broadcast referred to Ramush Haradinaj as a commander.

169. Although the Trial Chamber is convinced that Witness 38 and Witness 58 were taken from their home, it considers that the testimonies of Witness 38 and 58 lack coherence and specificity with regard to important details. In a statement Witness 38 gave to the Serbian MUP in 2002, she stated that she was allowed to dress after half an hour, whereas in Court she testified that she was naked for about two days. Witness 58 confirmed that Witness 38 and her father were mistreated by the KLA soldier, but did not provide any details as to how they were ill-treated. Moreover, although Witness 58 was with Witness 38 for most of the time, she testified that she did not notice that Witness 38 was naked. Witness 58 also did not corroborate Witness 38's testimony on the arrival of a vehicle with two men. The Trial Chamber further considers that, absent any corroborating evidence, it is possible that Witness 38's delayed identification of Ramush Haradinaj was influenced by the suggestion of the television broadcast.

170. Due to the significant inconsistencies and lack of corroboration on important details, the Trial Chamber is not convinced, beyond a reasonable doubt that Witness 38 or her family were subjected to serious mental or physical suffering, or injury or to an act constituting a serious attack on human dignity. Likewise, the Trial Chamber cannot conclude that Witness 38 or her family were subjected to acts causing severe humiliation or degradation. The Trial Chamber further finds that the evidence before it is insufficient to conclude that Ramush Haradinaj was at the location where the alleged mistreatment of Witness 38 and her father took place. That a witness appeared to have difficulties in giving an adequate account of what he or she has experienced does not immediately lead the Trial Chamber to find the witness's testimony unreliable. Although the Trial Chamber gained the impression that both Witness 38 and Witness 58 had such difficulties, it considers their testimonies unreliable primarily on the basis of the objective incoherence, inconsistency, and lack of specificity on important details.

For these reasons, the Trial Chamber finds that all three Accused should be acquitted of this count.

6.3 Cruel treatment and torture of Dragoslav Stojanović and others (Count 4)

171. All three Accused are charged, as participants in a joint criminal enterprise, with the cruel treatment and torture of Dragoslav Stojanović and others in violation of the laws or customs of war. In the alternative, Ramush Haradinaj is charged with the commission of, or aiding and abetting the commission of, the crimes. The Trial Chamber has heard relevant evidence from Dragoslav Stojanović, Mijat Stojanović, and Veselin Stijović.

172. Dragoslav Stojanović, a Serb from the village of Dubrava/Dubravë, in Dečani/Deçan municipality,⁶⁸⁸ testified that his house was about 150 metres from the family house of Ramush Haradinaj and that he knew Ramush Haradinaj from childhood.⁶⁸⁹ Dragoslav Stojanović had not seen Ramush Haradinaj for about ten years prior to April 1998.⁶⁹⁰ In the morning of 18 April 1998 the witness, along with his brother Mijat Stojanović and cousin Veselin Stijović went to check on the witness's house and cattle.⁶⁹¹ The Trial Chamber received evidence that Serbian police had taken positions on or adjacent to the yard of the Stojanović's house on 24 March during the attack on the Haradinaj family compound that was launched after the policeman Otović had been killed. At the time, the brothers were living as refugees in Dečani/Deçan.⁶⁹² At a certain point shots were fired at them from the Haradinaj house and armed men began to approach the house from all sides.⁶⁹³ The men shouted in Albanian at the men inside to leave the house and surrender.⁶⁹⁴ Grenades were thrown on the roof and a shot came through the window.⁶⁹⁵ When the witness opened the door, Zecir Nimonaj, Daut Haradinaj, and 20 to 30 others, most dressed in camouflage, came in and began searching the house, kicking and beating the three men with rifle-butts.⁶⁹⁶ The mistreatment of the witness resulted in the rupturing of his pancreas in two places and a

⁶⁸⁸ Dragoslav Stojanović, T. 1844-1845, 1940.

⁶⁸⁹ Dragoslav Stojanović, T. 1846-1847, 1853, 1915.

⁶⁹⁰ Dragoslav Stojanović, T. 1915.

⁶⁹¹ Dragoslav Stojanović, T. 1846, 1863-1864.

⁶⁹² Dragoslav Stojanović, T. 1858-1861, 1865.

⁶⁹³ Dragoslav Stojanović, T. 1864.

⁶⁹⁴ Dragoslav Stojanović, T. 1865, 1868.

⁶⁹⁵ Dragoslav Stojanović, T. 1865.

⁶⁹⁶ Dragoslav Stojanović, T. 1865-1867.