



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: 20 October 2009
Original: English

BEFORE THE APPEALS CHAMBER

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

Registrar: Mr. John Hocking

Decision of: 20 October 2009

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

**DECISION ON LAHI BRAHIMAJ'S MOTION REQUESTING
PERMISSION TO CHANGE HIS RESIDENCE ADDRESS**

The Office of the Prosecutor:

Mr. Peter Kremer QC

Counsel for the Accused:

Mr. Ben Emmerson QC and Mr. Rodney Dixon for Mr. Ramush Haradinaj
Mr. Gregor Guy-Smith and Ms. Colleen Rohan for Idriz Balaj
Mr. Richard Harvey and Mr. Paul Troop for Lahi Brahimaj

1. The Appeals Chamber of the 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 (“Appeals Chamber” and “Tribunal”, respectively) is seized of the “Motion Requesting Permission of Appeal Chamber for Mr Lahi Brahimaj to Change His Residence Address”, filed publicly on 2 October 2009 (“Motion”) by Counsel for Lahi Brahimaj (“Brahimaj”).¹ On 5 October 2009, the Prosecution filed its response, taking no position on the Motion.² Brahimaj filed a reply on 5 October 2009.³

I. BACKGROUND

2. On 3 April 2008, Trial Chamber I (“Trial Chamber”) convicted Brahimaj for torture and cruel treatment as violations of the laws or customs of war, pursuant to Article 3 of the Tribunal’s Statute, and sentenced him to six years’ imprisonment.⁴ The Appeals Chamber is currently seized of appeals against the Trial Judgement filed by Brahimaj and the Prosecution.⁵

3. On 18 March 2009, Brahimaj filed a motion for provisional release⁶ to which the Prosecution responded on 25 March 2009.⁷ On 25 May 2009, the Appeals Chamber granted Brahimaj provisional release⁸ pursuant to Rule 65(I) of the Rules of Procedure and Evidence of the Tribunal (“Rules”). Among the terms and conditions for provisional release established in the Decision Granting Provisional Release, the Appeals Chamber ordered Brahimaj to provide the address at which he will be staying in Kosovo/Kosova to the authorities of the EULEX-Kosovo Mission and the Registrar of the Tribunal before leaving the United Nations Detention Unit (“UNDU”) in The Hague.⁹ The Appeals Chamber further required Brahimaj “to remain within the confines of the municipality of his residence” during the time of his provisional release.¹⁰ On 27 May 2009, Brahimaj filed a confidential notice identifying the address at which

¹ A confidential annex was appended to the Motion (“Confidential Annex”).

² Prosecution’s Response to Lahi Brahimaj’s Request for Permission to Change His Residence Address, 5 October 2009 (made confidential by “Notice on Designating a Public Filing as Confidential” filed on 6 October 2009) (“Response”).

³ Reply on Behalf of Mr Brahimaj Relating to Address Change Request, 5 October 2009 (“Reply”).

⁴ *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-T, Judgement, 3 April 2008 (“Trial Judgement”), paras 504-505.

⁵ Notice of Appeal on Behalf of Third Defendant Lahi Brahimaj, 5 May 2008; Prosecution’s Notice of Appeal, 2 May 2008.

⁶ Application for Provisional Release filed by the Accused Lahi Brahimaj, 18 March 2009 (“Motion for Provisional Release”).

⁷ Prosecution’s Response to Lahi Brahimaj’s Application for Provisional Release, 25 March 2009 (“Response to Motion for Provisional Release”).

⁸ Decision on Lahi Brahimaj’s Application for Provisional Release, 25 May 2009 (“Decision Granting Provisional Release”), para. 18.

⁹ Decision Granting Provisional Release, para. 18(d).

¹⁰ Decision Granting Provisional Release, para. 18(e)(i).

he will be staying during the time of his provisional release.¹¹ Brahimaj was provisionally released on 28 May 2009.¹² Since then, the Appeals Chamber has received weekly reports from the EULEX-Kosovo Mission confirming that Brahimaj has complied with the conditions of his provisional release.

4. On 31 July 2009, Brahimaj filed an application seeking to vary the conditions of his provisional release to be permitted to travel, at least one day per week, to the municipalities of Gjakove and Decan in order to visit members of his immediate family.¹³ On 2 September 2009, the Appeals Chamber denied his application recalling that, initially, “Brahimaj was given the opportunity to choose the municipality in which he would reside for provisional release”.¹⁴ Nevertheless, the Appeals Chamber allowed “Brahimaj to provide a new and different address, to which he would relocate in Kosovo/Kosova, to the authorities of the EULEX-Kosovo Mission and the Registrar of the Tribunal” and ordered him, should he wish to relocate, to provide this new address “within three days from the issuance of [its] Decision”.¹⁵ Brahimaj did not provide a new address within three days from the issuance of the Decision Denying Varying Conditions.

5. On 5 October 2009, the Appeals Chamber issued an order recalling Brahimaj to The Hague for the duration of the appeal hearing in his case, which will be held on Wednesday 28 October 2009.¹⁶ Accordingly, the Appeals Chamber ordered the Decision Granting Provisional Release “be stayed for the duration of the appeal hearing, and to resume after the appeal hearing”.¹⁷

II. APPLICABLE LAW

6. Pursuant to Rule 65(I) of the Rules, a convicted person may bring an application seeking provisional release for a fixed period. By virtue of Rule 107 of the Rules, Rule 65 applies

¹¹ Motion Providing Mr Brahimaj’s Address for Provisional Release Following Appeal Chamber Order [sic] of the 25 May 2009, 27 May 2009.

¹² Motion, para. 3.

¹³ Application on Behalf of Lahi Brahimaj to Vary Conditions of Provisional Release, 31 July 2009 (“Application to Vary Conditions”), paras 1, 15, 17. On 10 August 2009, the Prosecution filed its response, opposing the application. See Prosecution’s Response to Application on Behalf of Lahi Brahimaj to Vary Conditions of Provisional Release, 10 August 2009. On 17 August 2009, Brahimaj filed his reply. See Reply on Behalf of Lahi Brahimaj in Relation to Application [sic] to Vary Conditions of Provisional Release, 17 August 2009.

¹⁴ Decision on Lahi Brahimaj’s application to vary conditions of provisional release, 2 September 2009 (“Decision Denying Varying Conditions”), paras 11-12.

¹⁵ Decision Denying Varying Conditions, paras 11-12. Paragraph 11 of the Decision Denying Varying Conditions further states that “[s]hould Brahimaj elect a new place of residence, he shall travel there, accompanied by a representative of the EULEX-Kosovo Mission, within fourteen days from the issuance of the present Decision, and remain in his new place of residence *until the termination of his provisional release*. All the remaining terms and conditions identified in the Decision Granting Provisional Release shall remain unchanged” (emphasis added).

¹⁶ Order Recalling Lahi Brahimaj from Provisional Release (“Order Recalling Brahimaj”), 5 October 2009, p. 2.

mutatis mutandis to applications brought before the Appeals Chamber under this provision.¹⁸ Rule 65(I) of the Rules thus provides that the Appeals Chamber may grant provisional release to convicted persons pending an appeal or for a fixed period if it is satisfied that: (i) the appellant, if released, will either appear at the hearing of the appeal or will surrender into detention at the conclusion of the fixed period, as the case may be; (ii) the appellant, if released, will not pose a danger to any victim, witness or other person; and (iii) special circumstances exist warranting such release.¹⁹ These requirements must be considered cumulatively.²⁰ The Appeals Chamber recalls that “whether an applicant satisfies these requirements is to be determined on a balance of probabilities, and the fact that an individual has already been sentenced is a matter to be taken into account by the Appeals Chamber when balancing the probabilities”.²¹ Finally, the discretionary assessments of the requirements under Rule 65 of the Rules are made on a case-by-case basis.²²

III. DISCUSSION

A. Submissions of the parties

7. In his Motion, Brahimaj seeks to change his address of residence within the current municipality where he is residing for convenience and economics.²³ His proposed new address of residence is submitted in the Confidential Annex. Brahimaj states that EULEX-Kosovo Mission does not object to the proposal and offers to conduct a more detailed risk assessment of the new residence, if so required by the Tribunal.²⁴

¹⁷ Order Recalling Brahimaj, p. 3.

¹⁸ Decision Denying Varying Conditions, para. 4 and references cited therein. *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, Decision on Milan Lukić’s Motion for Provisional Release, 28 August 2009 (“*Lukić Decision*”), para. 3 and references cited therein; *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-A, Decision on Tarčulovski Motion for Provisional Release on Compassionate Grounds, 22 July 2009 (“*Tarčulovski Decision*”), para. 6; Decision Granting Provisional Release, para. 3 and references cited therein; *Prosecutor v. Rasim Delić*, Case No. IT-04-83-A, Decision on Motion of Rasim Delić for Provisional Release, 11 May 2009 (“*Delić Decision*”), para. 5 and references cited therein.

¹⁹ Decision Denying Varying Conditions, para. 4 and references cited therein; *Lukić Decision*, para. 3 and references cited therein; *Tarčulovski Decision*, para. 6 and references cited therein; Decision Granting Provisional Release, para. 3 and references cited therein; *Delić Decision*, para. 5 and references cited therein.

²⁰ Decision Denying Varying Conditions, para. 4 and references cited therein; *Lukić Decision*, para. 3 and references cited therein; *Tarčulovski Decision*, para. 6 and references cited therein; Decision Granting Provisional Release, para. 3 and references cited therein; *Prosecutor v. Sainović et al.*, Case No. IT-05-87-A, Public Redacted Version of the “Decision on Vladimir Lazarević’s Second Motion for Temporary Provisional Release on the Grounds of Compassion” Issued on 21 May 2009, 22 May 2009 (“*Lazarević Decision*”), para. 4 and references cited therein.

²¹ *Ibid.*

²² *Ibid.*

²³ Motion, paras 4, 6.

²⁴ Motion, para. 5.

8. The Prosecution does not take a position on this request. However, the Prosecution submits that, should the Appeals Chamber grant Brahimaj's request, it is necessary to request EULEX-Kosovo Mission to conduct a more detailed risk assessment of Brahimaj's proposed new residence.²⁵

9. Brahimaj replies that conducting a risk assessment of his new residence is unnecessary because EULEX-Kosovo Mission: (i) asserts that his proposed new residence would not significantly alter the current circumstance under the terms of his provisional release; (ii) was not required by the Appeals Chamber to conduct a risk assessment of his current residence and therefore there is no basis for such a request; and (iii) does not have access to the witness lists in the present case and is therefore unable to advise whether any witnesses live in the neighbourhood of the proposed new address.²⁶ Brahimaj further replies that the Prosecution only intends to call two witnesses to testify in appeal and that neither resides in Kosovo/Kosova.²⁷

B. Analysis

10. The Appeals Chambers recalls that, in its Decision Granting Provisional Release, Brahimaj was given the opportunity to choose the address and the municipality in which he would reside during the period of his provisional release.²⁸ However, the Appeals Chamber required, *inter alia*, that Brahimaj remains within the confines of the municipality of his residence during his provisional release.²⁹ Brahimaj elected to reside in the municipality of Priština.³⁰

11. The Appeals Chamber further recalls that, in its Decision Denying Varying Conditions and in light of the information provided in his Application to Vary Conditions, it allowed "Brahimaj to provide a new and different address, to which he would relocate in Kosovo/Kosova, to the authorities of the EULEX-Kosovo Mission and the Registrar of the Tribunal within three days" from the issuance of the Decision Denying Varying Conditions.³¹ Brahimaj did not take this opportunity to provide a new and different address within the time-limit imposed by the Decision Denying Varying Conditions. The Appeals Chamber underlines that Brahimaj should have taken this opportunity to elect a new place of residence, should he have wished to relocate. Nevertheless, the Appeals Chamber considers that: (i) Brahimaj has

²⁵ Response, paras 1-2.

²⁶ Reply, paras 3-7.

²⁷ Reply, para. 6.

²⁸ Decision Granting Provisional Release, para. 18(d)-(e).

²⁹ Decision Granting Provisional Release, para. 18(e)(i).

³⁰ Decision Denying Varying Conditions, para. 11.

been complying with his conditions for provisional release; (ii) EULEX-Kosovo Mission and the Prosecution do not oppose the Motion; and (iii) Brahimaj wishes to relocate within the same municipality in which he currently resides. Accordingly and in light of the information provided in Brahimaj's Motion, the Appeals Chamber considers it appropriate to allow Brahimaj to relocate to the proposed new address of residence submitted in the Confidential Annex.

12. The Appeals Chamber recalls that Brahimaj is required "to remain within the confines of the municipality of his residence" during the time of his provisional release³² and that he currently resides in the municipality of Priština.³³ Since his proposed move is entirely within Priština, the Appeals Chamber does not deem it necessary to request EULEX-Kosovo Mission to conduct a more detailed risk assessment of the new residence.

IV. DISPOSITION

13. For the foregoing reasons, the Appeals Chamber:

GRANTS the Motion;

ORDERS that Brahimaj relocate to the new address provided in the Confidential Annex;

REQUESTS that the EULEX-Kosovo Mission:

- i. accompany Brahimaj to his new place of residence within seven days of the issuance of the present Decision; and
- ii. send a report on the transfer of Brahimaj to his new place of residence to the Appeals Chamber within two days of the date of the transfer; and

ORDERS that all terms and conditions of Brahimaj's provisional release as identified in the Decision Granting Provisional Release be maintained.


Done in English and French, the English text being authoritative.

³¹ Decision Denying Varying Conditions, para. 11.

³² Decision Granting Provisional Release, para. 18(e)(i).

³³ Decision Denying Varying Conditions, para. 11.

Dated this 20th day of October 2009
At The Hague,
The Netherlands



Judge Patrick Robinson
Presiding

[Seal of the Tribunal]