



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: 1 December 2009
Original: English

BEFORE THE DUTY JUDGE

Before: Judge Stefan Trechsel

Registrar: Mr. John Hocking

Decision of: 1 December 2009

PROSECUTOR

v.

**RAMUSH HARADINAJ
IDRIZ BALAJ
LAHI BRAHIMAJ**

PUBLIC

**DECISION ON URGENT MOTION REQUESTING
TEMPORARY VARIATION OF CONDITIONS OF
PROVISIONAL RELEASE**

The Office of the Prosecutor

Mr. Serge Brammertz
Mr. Peter Kremer

Counsel for the Accused

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

I, Stefan Trechsel, acting in my capacity as Duty Judge 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 (“Tribunal”);

BEING SEISED OF the “Urgent Motion Requesting Permission of Appeal Chamber for Mr. Lahi Brahimaj to Attend a Funeral with Confidential Annex”, filed on 30 November 2009 (“Motion”);

NOTING the “EULEX Opinion re: Request of Lahi Brahimaj to Attend a Funeral”, filed confidentially by the Head of Mission of the European Union Rule of Law Mission in Kosovo (“EULEX”) on 30 November 2009 (“EULEX Opinion”);

NOTING the “Prosecution’s Response to Lahi Brahimaj’s Request to Attend a Funeral”, also filed on 30 November 2009 (“Response”);

NOTING that, pursuant to Rule 28(D)(ii) of the Rules of Procedure and Evidence (“Rules”) in pertinent part, where a case has already been assigned to a Trial Chamber and where the application is made within the normal Registry hours and the Trial Chamber is unavailable, it shall be dealt with by the Duty Judge if satisfied as to its urgency;

NOTING that, pursuant to Rule 28(F), the above provision applies *mutatis mutandis* to applications before the Appeals Chamber;

CONSIDERING that the Motion was made within normal Registry hours, that the assigned Appeals Chamber is unavailable and that the matter is so urgent as to render it infructuous if not addressed by the Duty Judge;

CONSIDERING that the Applicant seeks permission to attend the funeral of a close relative for which he needs to travel outside the municipality where he currently resides;¹

RECALLING that in accordance with the conditions of his provisional release, as imposed by the Appeals Chamber in its Decision of May 2009, the Applicant was to, *inter alia*, remain within his municipality of residence;²

RECALLING the Decision of September 2009 and the Decision of October 2009 whereby the Appeals Chamber approved the Applicant’s request to reside within the municipality of Priština;³

¹ Motion, pp 2 – 3 and Confidential Annex.

² Decision on Lahi Brahimaj’s Application for Provisional Release, 25 May 2009 (“Decision of May 2009”).

CONSIDERING that the deceased passed away in a sudden unfortunate accident in another country and arrangements for transportation to the location of the funeral in Kosovo are still underway, wherefore the Applicant indicates that the funeral is tentatively scheduled for 1 December 2009 but that this is subject to change owing to “necessary formalities”;⁴

CONSIDERING, therefore, that the Applicant’s request for a temporary variation of the conditions of his provisional release is not fixed for 1 December 2009, but is predicated on the actual date of the funeral, which is yet to be confirmed;

CONSIDERING the Applicant’s submission that his attendance at the funeral is not only important to him personally, but having served more than two-thirds of his sentence, it is also important to facilitate his reintegration into the community when he is finally released;⁵

CONSIDERING that the EULEX has no objection to the request by the Applicant and “stands ready to provide an appropriate escort to facilitate Mr. Brahimaj’s trip”;⁶

CONSIDERING that the Prosecution also does not object to the Motion of the Applicant, subject to the funeral taking place on 1 December 2009 and to Brahimaj being “appropriately escorted by EULEX officials during his travel from Priština to the funeral, at the funeral, and while returning to Priština that day”;⁷

CONSIDERING that although the family of the deceased intend for the funeral services to be conducted on 1 December 2009, the necessary formalities attending the transfer of the deceased from the country of his demise to Kosovo could entail unforeseen delays;

CONSIDERING that, in view of the exigencies of the given circumstances, the request of the Applicant to attend the funeral ought to be viewed amenably, allowing him the opportunity to inform the Registry and EULEX of the date of the funeral once confirmed;

PURSUANT TO Rules 28, 54 and 65 of the Rules;

HEREBY GRANT the Motion;

³ Decision on Lahi Brahimaj’s Application to Vary Conditions of Provisional Release, 2 Sep 2009 (“Decision of September 2009”), pp 6 – 7; Decision on Lahi Brahimaj’s Motion Requesting Permission to Change his Residence Address, 20 Oct 2009 (“Decision of October 2009”), para. 12.

⁴ Motion, para. 7.

⁵ Motion, para. 6. See also, Decision of May 2009, para. 2, referring to *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-T, Judgment, 3 April 2008, paras 504 - 505.

⁶ EULEX Opinion.

⁷ Response, p. 1.

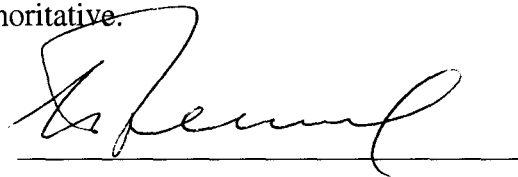
ORDER the Counsel for the Applicant to notify the Registry and EULEX of the final date of the funeral as soon as possible upon confirmation;

REQUEST the EULEX authorities to:

- (i) on the date of the funeral notified by the Counsel for the Applicant, escort Brahimaj to, from and at the location of the funeral as provided in the Confidential Annex to the Motion;
- (ii) ensure the return of Brahimaj to his current place of residence in the municipality of Priština within 24 hours of his departure therefrom;
- (iii) send a report to the Appeals Chamber upon the return of Brahimaj to his current place of residence; and

ORDER that all terms and conditions of Brahimaj's provisional release as identified in the Decision of May 2009 and Decision of September 2009 be maintained.

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



Judge Stefan Trechsel

Dated this first day of December 2009
At The Hague
The Netherlands

[Seal of the Tribunal]