



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-95-4-I

15 April 1998

English

Original: French

**IN THE TRIAL CHAMBER**

**Before:** Judge Almiro Simões Rodrigues  
**Registrar:** Mrs. Dorothee de Sampayo Garrido-Nijgh  
**Decision of:** 15 April 1998

**THE PROSECUTOR**

v.

**MIROSLAV KVOČKA  
MLADEN RADIĆ a/k/a "KRKAN"**

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**ORDER ON REPRESENTATION BY COUNSEL**

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**The Office of the Prosecutor:**

Mr. Michael Keegan  
Mr. James Cowles  
Mr. Kapila Waidyaratne

**Defence Counsel:**

Mr. Michael Greaves  
Mr. Thomas Moran

I, Judge Almiro Simões Rodrigues, Judge of Trial Chamber I of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991,

**CONSIDERING** the initial appearance of the accused Miroslav Kvočka and Mladen Radić which was held before me on 14 April 1998,

**CONSIDERING** the oral request submitted by the Defence at the hearing on behalf of the two accused that they not be questioned by the Prosecutor without counsel being present,

**CONSIDERING** the letter addressed by the Defence to the Prosecution in this respect,

**PURSUANT** to Rules 15, 54 and 73 of the Rules of Procedure and Evidence (hereinafter “the Rules”),

**NOTING** that the Defence counsel present clearly indicated that they were representing the accused at the initial appearance only,

**NOTING** that, according to a Defence assertion which the Prosecutor did not contest, the Prosecutor allegedly attempted to question the accused even though neither of them had counsel,

**NOTING** that Sub-rule 63(A) of the Rules expressly provides that “questioning by the Prosecutor of an accused after the initial appearance shall not proceed without the presence of counsel unless the accused has voluntarily and expressly agreed to proceed without counsel present” and that “if the accused subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the accused’s counsel is present”,

**NOTING** that grounds exist for considering the request as unambiguously demonstrating the accused’s current refusal to be questioned by the Prosecutor without counsel being present,

**NOTING** lastly that the choice or the designation of counsel shall be made in the coming days,

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**FOR THE FOREGOING REASONS,**

**STATES** that the questioning of either of the accused by the Prosecutor may not proceed before he has received the permanent assistance of counsel.

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

Done this fifteenth day of April 1998  
At The Hague  
The Netherlands

(signed)

Judge Almiro Simões Rodrigues

**DSEAL OF THE TRIBUNAL**