



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-00-39-A  
Date: 28 June 2007  
Original: English

**BEFORE THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL**

**Before: Judge Fausto Pocar**

**Registrar: Mr. Hans Holthuis**

**Decision of: 28 June 2007**

**PROSECUTOR**

v.

**MOMČILO KRAJIŠNIK**

**Public**

**DECISION ON PROSECUTION REQUEST FOR  
CLARIFICATION OF PRESIDENT'S ORDER OF 16 MAY 2007**

**The Office of the Prosecutor**

Mr. Peter Kremer  
Ms. Christine Dahl

**The Appellant**

Mr. Momčilo Krajišnik

**Amicus Curiae**

Mr. Colin Nicholls, QC

1. On 15 June 2007, the Prosecution filed a request before the Appeals Chamber seized of the case in this matter seeking clarification of an order made by me on 16 May 2007.<sup>1</sup> The order of which clarification is requested is an order reconstituting the bench of the Appeals Chamber assigned to this case due to the “appeal management needs of the International Tribunal”.<sup>2</sup> On 22 June 2007, the Appeals Chamber determined that it had no jurisdiction to clarify an order issued by me as President of the International Tribunal pursuant to my powers under the Statute of the International Tribunal and Rules of Procedure and Evidence (“Rules”)<sup>3</sup> and referred the Prosecution Request to me for consideration and determination.<sup>4</sup>

2. At the outset, I note that the Prosecution has no right under the Statute or Rules of the International Tribunal as a party to a case to seek clarification of an administrative order constituting a bench of a Chamber issued by me in my capacity as President of the International Tribunal. The Statute and the Rules clearly confer on the President the sole authority for coordinating the work of the Chambers and determining the composition of the Appeal and Trial Chambers, and an order issued by the President pursuant to that authority speaks for itself. The President’s authority to make such determinations and to issue such orders falls squarely within the executive powers of the President of the International Tribunal, and the exercise of such powers is non-justiciable by the parties.

3. Having so determined, I nevertheless consider it appropriate to further note that, in the circumstances of this case, there is in fact no need for the Prosecution Request. That is, the Prosecution is well aware of the events that led to the issuance of the Order. As the Prosecution Request points out, my Order replacing Judge Schomburg was issued following Judge Schomburg’s dissenting opinion on the issue of the Appellant’s right to self-representation in his appeal.<sup>5</sup> In that dissenting opinion, Judge Schomburg unequivocally stated his view that proceedings in this appeal would not be fair due to the upholding of the Appellant’s right to self-representation by the majority of the Appeals Chamber.<sup>6</sup> Following that statement, Judge Schomburg sought to file on the record in this case, in his personal capacity, a declaration repeating his view. In that Declaration, which was served on the Prosecution, he stated the following:

It is obvious from my “Fundamentally Dissenting Opinion on the Right to Self-Representation” appended to the Appeals Chamber’s decision of 11 May 2007 that I regard the continuation of the

<sup>1</sup> Prosecution Request for Clarification of President’s Order of 16 May 2007, 15 June 2007 (“Prosecution Request”).

<sup>2</sup> Order Replacing a Judge in a Case Before the Appeals Chamber and Re-Assigning a Pre-Appeal Judge, 16 May 2007 (“Order”).

<sup>3</sup> See Articles 12(3), 14(2) and (3) of the Statute and Rule 19(A) of the Rules.

<sup>4</sup> Order on Prosecution Request for Clarification of President’s Order of 16 May 2007, 22 June 2007.

<sup>5</sup> Decision on Momčilo Krajišnik’s Request to Self Represent, on Counsel’s Motions in Relation to Appointment of *Amicus Curie*, and on the Prosecution Motion of 16 February 2007, 11 May 2007.

proceedings, as ordered in the decision's disposition, without assigned counsel assisting the Appellant as not feasible. More significantly, as expressed in my opinion, the proceedings have now become unfair.

Under these circumstances it is no longer possible for me to be part of the Appeals Chamber's bench in this case. Consequently, I recuse myself from the bench with immediate effect.<sup>7</sup>

5. While that declaration was eventually removed from the appeal record, on the basis that it was erroneously received by the Registry as no Judge has a right under the Statute or Rules to make a filing in his personal capacity on the record of a case, I considered it was a conclusive indication from Judge Schomburg of his inability to discharge his judicial functions in this case. I therefore determined that the proper management of this appeal required, as he himself had requested, that he be replaced as a member of the bench. Accordingly, pursuant to my authority to manage the work of the Appeals Chamber, I issued my Order replacing Judge Schomburg.

6. As stated above, the Prosecution has no right to question the decisions I take with respect to the distribution of work amongst the Judges of Chambers and there is clearly no need for the Prosecution Request since the reasons for my Order were abundantly clear to the Prosecution. Furthermore, the allegation made in the Prosecution Request of a lack of transparency in this matter appears to be nothing more than a frivolous attempt to sensationalise a Presidential management decision.

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

Dated this 28th day of June 2007,  
At The Hague, The Netherlands.



Fausto Pocar,  
Presiding Judge

[Seal of the International Tribunal]

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<sup>6</sup> *Ibid*, para. 75.

<sup>7</sup> Declaration of Judge Schomburg, 14 May 2007.