



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: 11 April 2008  
Original: English

**THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Andrésia Vaz  
Judge Theodor Meron

**Registrar:** Mr. Hans Holthuis

**Decision of:** 11 April 2008

**PROSECUTOR**

**v.**

**MOMČILO KRAJIŠNIK**

**PUBLIC**

**DECISION ON PROSECUTION'S MOTION TO STRIKE  
GROUND 1 OF THE DERSHOWITZ BRIEF AND ORDER  
COUNSEL TO COMPLY WITH THE DECISION OF  
11 MARCH 2008**

**The Office of the Prosecutor**

Mr. Peter Kremer QC

**The Accused**

Mr. Momčilo Krajišnik

**Counsel for the Appellant on the Matter of JCE**

Mr. Alan M. Dershowitz

**Amicus Curiae**

Mr. Colin Nicholls QC

24

**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 (“Tribunal” and “Appeals Chamber”, respectively),

**BEING SEIZED** of the “Prosecution’s Motion to Strike Ground 1 From Brief on Joint Criminal Enterprise and to Order Counsel to Comply With the Appeals Chamber’s Order”, filed on 9 April 2008 (“Motion”);

**CONSIDERING** that, while the deadline for filing a response to the Motion has not yet lapsed, the urgency of the matter demands that the Appeals Chamber decide this Motion immediately and neither Momčilo Krajišnik, nor Alan Dershowitz will suffer any prejudice by being deprived of the opportunity to respond to the Motion;

**NOTING** that pursuant to the Decision of 28 February 2008,<sup>1</sup> Mr. Dershowitz submitted a brief regarding the issue of Joint Criminal Enterprise on behalf of Mr. Krajišnik;<sup>2</sup>

**NOTING** that in the Motion the Prosecution argues that the Appeals Chamber should (1) strike Ground 1 from the Dershowitz Brief because Mr. Krajišnik did not raise the issue in his Notice of Appeal; and (2) order that Mr. Dershowitz comply with the Decision of 11 March 2008<sup>3</sup> in which the Appeals Chamber required Mr. Dershowitz to reconcile his submission with Mr. Krajišnik’s appeal brief;<sup>4</sup>

**RECALLING** that in the Decision of 11 March 2008, the Appeals Chamber ordered that “Mr. Dershowitz must be clear as to which of the arguments [in the Dershowitz Brief] are new and the extent to which they complement or supersede those arguments made by Mr. Krajišnik”;<sup>5</sup>

**CONSIDERING** that while the Appeals Chamber notes the Prosecution’s contention that Mr. Krajišnik’s Notice of Appeal did not properly raise the issue upon which Ground 1 of the Dershowitz Brief is based, the Appeals Chamber deems that the prudent course is to preserve all possible remedies to the alleged problem and does not find it apposite, at this juncture, to strike a portion of the Dershowitz Brief;

<sup>1</sup> Decision on Momčilo Krajišnik’s Motion to Reschedule Status Conference and Permit Alan Dershowitz to Appear, 28 February 2008 (“Decision of 28 February 2008”).

<sup>2</sup> Brief on Joint Criminal Enterprise on Behalf of Momčilo Krajišnik, 7 April 2008 (“Dershowitz Brief”).

<sup>3</sup> Decision on Prosecution’s Motion for Clarification and Reconsideration of the Decision of 28 February 2008, 11 March 2008 (“Decision of 11 March 2008”).

<sup>4</sup> Motion, paras 3-6.

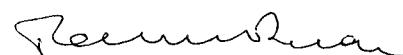
<sup>5</sup> Decision of 11 March 2008, para. 9.

**CONSIDERING** further, that the Dershowitz Brief does not comply fully with the directive in the Decision of 11 March 2008;

**HEREBY REJECTS** the Prosecution's request that the Appeals Chamber strike Ground 1 in the Dershowitz Brief; **GRANTS IN PART** the Motion by ordering Mr. Dershowitz to comply with paragraph 9 of the Decision of 11 March 2008 in an addendum of no more than 1000 words that must be submitted within three working days; and **ORDERS** that the Prosecution be granted an extension of three working days to file a response to the Dershowitz Brief.

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

Dated this 11th day of April 2008,  
At The Hague, The Netherlands.



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Fausto Pocar  
Presiding Judge

[Seal of the Tribunal]