



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: 14 May 2008
Original: English

IN THE APPEALS CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision of: 14 May 2008

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

PUBLIC

**DECISION ON DEFENCE MOTION FOR LEAVE TO FILE A
LETTER SUBMISSION**

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

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 Defence’s “Motion for Leave to File Letter Submission Correcting Erroneous Assertions in the Prosecution’s Response to Brief on Joint Criminal Enterprise and the Letter Submission for Which Leave to File is Sought”, filed on 2 May 2008 (“Motion”);

NOTING the “Prosecution’s Response to Motion for Leave to File Letter Submission”, filed on 7 May 2008 (“Response”);

RECALLING that the Appeals Chamber permitted Alan Dershowitz (“Mr. Dershowitz”) to submit a supplementary brief on behalf of the Appellant, Momčilo Krajišnik (“Mr. Krajišnik”), regarding the issue of Joint Criminal Enterprise (“JCE”),¹ and that such a brief was filed on 7 April 2008;²

RECALLING that in its Decision of 28 February 2008, the Appeals Chamber imposed an expedited briefing schedule that allowed a submission by Mr. Dershowitz of no more than 8000 words and a response by the Prosecution of no more than 4000 words but explicitly stated, Judge Shahabuddeen disagreeing, that “[t]here will be no opportunity for a reply”;³

NOTING that Mr. Dershowitz seeks leave to correct what he alleges are erroneous, misleading, unsupported, and meritless arguments in the “Response to Brief on Joint Criminal Enterprise on Behalf of Momčilo Krajišnik”, filed on 25 April 2008;⁴

NOTING that in its Response, the Prosecution argues that the Motion does not address the Appeals Chamber’s explicit refusal to grant a right of reply in this matter, that the Appeals Chamber should not permit a further submission by Mr. Dershowitz unless the interests of justice so require, and that the Motion does not meet such a standard;⁵

CONSIDERING that the Appeals Chamber has already made clear that there shall be no right of reply in this matter and that the Motion effectively seeks leave to file such a reply;

¹ Decision on Momčilo Krajišnik’s Motion to Reschedule Status Conference and Permit Alan Dershowitz to Appear, 28 February 2008 (“Decision of 28 February 2008”), paras 11-12, 14.

² Brief on Joint Criminal Enterprise on Behalf of Momčilo Krajišnik, 7 April 2008 (“Supplementary Brief”).

³ Decision of 28 February 2008, para. 12; *See also* Declaration of Judge Shahabuddeen.

⁴ Motion, para. 2.

⁵ Response, para. 3.

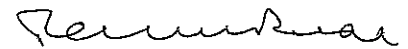
CONSIDERING that the Appeals Chamber will not permit written submissions outside the purview of the briefing schedule that it imposed in the Decision of 28 February 2008 unless a party can demonstrate that the interests of justice so require;⁶

CONSIDERING that the Defence, which has had more than adequate opportunity to develop in writing any challenges to the JCE conviction, has not met the stringent “interests of justice standard” and that, furthermore, it will still have an opportunity to clarify his position on the JCE issue at the oral hearing in this case;

HEREBY DISMISSES the Motion.

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

Dated this 14th day of May 2008,
At The Hague, The Netherlands.



Fausto Pocar
Presiding Judge

[Seal of the Tribunal]

⁶ See e.g., *Prosecutor v. Radić*, Decision on Prosecution Motion for Leave to File Sur-Reply to Defence Reply in Request for Review by Mlado Radić, Case No. IT-98-30/1-R.1, 9 May 2006, pp. 2-3 (noting that the presentation of new material might necessitate a further submission but that the “interests of justice standard” is not met simply because an earlier submission “calls” for a response).