



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 August 2008
Original: English

BEFORE THE DUTY JUDGE

Before: Judge Tsvetana Kamenova, Duty Judge
Registrar: Mr. Hans Holthuis
Decision of: 11 August 2008

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

PUBLIC

**DECISION ON DEFENCE MOTION FOR PROVISION OF
REFERENCES**

The Office of the Prosecutor:

Mr. Peter Kremer QC

The Appellant:

Mr. Momčilo Krajišnik

Counsel for the Appellant on the Matter of JCE:

Mr. Alan M. Dershowitz

Amicus Curiae:

Mr. Colin Nicholls QC

I. Tsvetana Kamenova, 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 (“International Tribunal”), acting in my current capacity as Duty Judge;

NOTING the Judgement rendered by Trial Chamber I in the present case on 27 September 2006 (“Trial Judgement”);¹

NOTING the “Scheduling Order for Appeals Hearing” issued by the Appeals Chamber of the International Tribunal on 18 July 2008 (“Scheduling Order”);²

BEING SEIZED OF the “Motion for an Order Directing the Prosecution to Identify Specific References in the Record and to Provide the References, and Copies thereof, to Mr. Krajišnik and his Counsel” filed on 6 August 2008 (“Motion”), which requests an order that relevant references be provided to Momčilo Krajišnik (“Applicant”), his counsel on the matter of JCE, and the *amicus curiae* one week in advance of the appeals hearing, and the “Prosecution Response to Counsel Motion on Behalf of Momčilo Krajišnik dated 6 August 2008” filed on 8 August 2008 (“Prosecution Response”), which opposes such an order;

NOTING that, pursuant to Rule 114 of the Rules of Procedure and Evidence of the International Tribunal (“Rules”), the Appeals Chamber set down the hearing date for 21 August 2008;³

CONSIDERING that this case has been assigned to a bench of the Appeals Chamber but that the International Tribunal is currently in court recess and the Appeals Chamber remains unavailable until the end thereof;

CONSIDERING that the Motion requests that the relevant references be provided by 14 August 2008, *i.e.* before the end of the court recess, and that the matter is therefore one of urgency;

FINDING therefore that I am competent to decide on the Motion;

NOTING that in the Motion, the Applicant requests that the Prosecution provide himself, his counsel, and the *amicus curiae* with references to findings in the Trial Judgement and the supporting evidence in the trial record relevant to the issue of the Applicant’s links to the principal perpetrators of the crimes, and photocopies of these referenced pages, one week in

¹ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Judgement, 27 September 2006.

² *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Scheduling Order for Appeals Hearing, 18 July 2008.

³ Scheduling Order, p. 2.

advance of the appeals hearing, in order to enable them to better assist the Chamber in dealing with this issue at the appeals hearing;⁴

NOTING that the Prosecution Response indicates that although it opposes the Motion, it is prepared to provide the Applicant and his counsel with the requested references no less than 48 hours prior to the appeals hearing, without prejudice to its making last minute alterations in its submissions at the hearing;⁵

NOTING that the Prosecution opposes any order requiring the provision of photocopies or electronic transfers of parts of the record to the Applicant or his counsel, on the basis that those parties already have access to these materials;⁶

NOTING that the Prosecution invites the Applicant and his counsel to provide the relevant references for any specific challenges by the Defence additional to those currently indicated, which are intended to be made at the hearing;⁷

CONSIDERING that the offer made by the Prosecution to provide the requested references at least 48 hours prior to the appeals hearing, and without prejudice to their subsequent alteration at the appeals hearing, adequately deals the issue;

FOR THE FOREGOING REASONS

HEREBY DENY the Motion,

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



Judge Tsvetana Kamenova
Duty Judge

Dated this eleventh day of August 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

⁴ Motion, paras. 1–3.

⁵ Prosecution Response, para. 2.

⁶ Prosecution Response, para. 4.

⁷ Prosecution Response, para. 3.