

UNITED  
NATIONS



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: 16 October 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:** 16 October 2008

**PROSECUTOR**

v.

**MOMČILO KRAJIŠNIK**

**PUBLIC**

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**DECISION ON APPELLANT MOMČILO KRAJIŠNIK'S  
MOTION TO CALL RADOVAN KARADŽIĆ PURSUANT TO  
RULE 115**

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**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  
Mr. Nathan Z. Dershowitz

**Amicus Curiae:**

Mr. Colin Nicholls, QC

1. 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 (“Appeals Chamber” and “Tribunal”, respectively) is seized of the “Motion to Call Radovan Karadžić Pursuant to Rule 115” (“Motion”), filed by Momčilo Krajišnik (“Appellant”) on 15 September 2008, and the “Motion by JCE Counsel to Join Momčilo Krajišnik’s Motion for Leave to Call Radovan Karadžić as a Witness Pursuant to Rule 115, and, if Said motion is Granted, for JCE Counsel to be Allowed to Participate in Such Proceeding” (“Motion by JCE Counsel”), filed by Counsel for the Appellant on the matter of Joint Criminal Enterprise (“JCE Counsel” and “JCE”, respectively) on the same day. On 23 September 2008, the Prosecution filed its “Prosecution Consolidated Response to ‘Krajišnik’s Motion to Call Radovan Karadžić Pursuant to Rule 115’ and Motion by JCE Counsel to Join Momčilo Krajišnik’s Motion” (“Response”), and *Amicus Curiae* filed his “Submission Relating to the Appellant’s Motion to Call Radovan Karadžić as a Witness” (“*Amicus Curiae*’s Submissions”) on 24 September 2008. The Appellant filed his “Reply to Prosecution Consolidated Response to Motion to Call Radovan Karadžić Pursuant to Rule 115” (“Reply”) on 1 October 2008.

#### A. Background

2. On 20 August 2008, the Appeals Chamber granted the Appellant’s motion to interview Mr. Karadžić<sup>1</sup> so that the Appellant could determine whether or not he wanted to request the Appeals Chamber to allow him to call Mr. Karadžić as a witness pursuant to Rule 115 of the Rules of Procedure and Evidence (“Rules”).<sup>2</sup> On 12 September 2008, the Appellant interviewed Mr. Karadžić and concluded that his evidence could affect the majority of the Trial Chamber’s findings.<sup>3</sup> Accordingly, he now requests permission to call Mr. Karadžić as a witness under Rule 115<sup>4</sup> and to hold further meetings with him.<sup>5</sup>

#### B. Applicable Law

3. A motion to present additional evidence before the Appeals Chamber must be filed not later than thirty days from the date for filing of the brief in reply, unless good cause or, after the appeal hearing, cogent reasons are shown for a delay.<sup>6</sup>

<sup>1</sup> Motion to Interview Radovan Karadžić with a View to then Calling him as a Witness Pursuant to Rule 115, 14 August 2008 (“Motion to Interview Radovan Karadžić”).

<sup>2</sup> Order on “Motion to Interview Radovan Karadžić with a View to Then Calling Him as a Witness Pursuant to Rule 115”, 20 August 2008 (“Order on Motion to Interview Radovan Karadžić”), p. 3.

<sup>3</sup> Motion, paras 5 and 13.

<sup>4</sup> Motion, para. 14.

<sup>5</sup> Motion, paras 13 and 15.

<sup>6</sup> Rule 115(A) of the Rules.

4. For additional evidence to be admissible under Rule 115 of the Rules it must satisfy the following requirements. The applicant must first demonstrate that the additional evidence tendered on appeal was not available to him at trial in any form, or discoverable through the exercise of due diligence.<sup>7</sup> The applicant's duty to act with reasonable diligence includes making "appropriate use of all mechanisms of protection and compulsion available under the Statute and the Rules of the International Tribunal to bring evidence on behalf of an accused before the Trial Chamber."<sup>8</sup>
5. The applicant must then show that the evidence is both relevant to a material issue and credible.<sup>9</sup> Evidence is relevant if it relates to findings material to the Trial Chamber's decision.<sup>10</sup> Evidence is credible if it appears to be reasonably capable of belief or reliance.<sup>11</sup> A finding that evidence is credible demonstrates nothing about the weight to be accorded to such evidence.<sup>12</sup>
6. Next, the applicant must demonstrate that the evidence *could* have had an impact on the verdict, in other words, the evidence must be such that, considered in the context of the evidence given at trial, it could demonstrate that the conviction was unsafe.<sup>13</sup> The potential impact of the additional evidence shall not be assessed in isolation, but in the context of the evidence given at trial.<sup>14</sup>
7. In addition, the applicant must "clearly identify with precision the specific finding of fact made by the Trial Chamber to which the additional evidence is directed".<sup>15</sup> Indeed, a party seeking to admit additional evidence bears the burden of specifying with clarity the impact the additional

<sup>7</sup> Rule 115(B) of the Rules; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR65.4, Decision on Prosecution Appeal of Decision on Provisional Release and Motions to Present Additional Evidence Pursuant to Rule 115, 26 June 2008 ("*Stanišić* Rule 115 Decision"), para. 6; *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Decision on Blagoje Simić's Motion for Admission of Additional Evidence, Alternatively for Taking of Judicial Notice, 1 June 2006 ("*Simić* Rule 115 Decision"), para. 12; *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Decision on Applications for Admission of Additional Evidence on Appeal, 5 August 2003 ("*Krstić* Rule 115 Decision"), p. 3; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Decision on Evidence, 31 October 2003 ("*Blaškić* Rule 115 Decision"), p. 2.

<sup>8</sup> *Simić* Rule 115 Decision, para. 12; *Krstić* Rule 115 Decision, p. 2; *Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001 ("*Kupreškić et al.* Appeal Judgement"), para. 50; *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Decision on Appellant's Motion for the Extension of the Time-Limit and Admission of Additional Evidence, 16 October 1998, para. 47.

<sup>9</sup> *Stanišić* Rule 115 Decision, para. 6; *Simić* Rule 115 Decision, para. 12; *Krstić* Rule 115 Decision, p. 2.

<sup>10</sup> *Stanišić* Rule 115 Decision, para. 7.

<sup>11</sup> *Stanišić* Rule 115 Decision, para. 7; *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-AR65.1, Confidential Decision on Prosecution's Application to Present Additional Evidence in Its Appeal Against the Re-Assessment Decision, 10 March 2006 ("*Haradinaj et al.* Rule 115 Decision"), para. 16. See *The Prosecutor v. Ntagerura et al.*, Case No. ICTR-99-46-A, Decision on Prosecution Motion for Admission of Additional Evidence, 10 December 2004 ("*Ntagerura et al.* Rule 115 Decision"), para. 22.

<sup>12</sup> *Stanišić* Rule 115 Decision, para. 7; *Haradinaj et al.* Rule 115 Decision, para. 16.

<sup>13</sup> *Stanišić* Rule 115 Decision, para. 7; *Simić* Rule 115 Decision, para. 12; *Krstić* Rule 115 Decision, p. 2.

<sup>14</sup> *Simić* Rule 115 Decision, para. 14; *Krstić* Rule 115 Decision, p. 3; *Kupreškić et al.* Appeal Judgement, paras 66, 75.

<sup>15</sup> Rule 115(A) of the Rules.

evidence could have on the Trial Chamber's decision.<sup>16</sup> A party that fails to do so runs the risk that the evidence will be rejected without detailed consideration.<sup>17</sup>

### C. Submissions

8. In support of his request the Appellant argues that Mr. Karadžić's evidence was unavailable at trial and that cogent reasons exist for making his request out of time. In this respect, he refers to the Appeals Chamber's statement in its Order on Motion to Interview Radovan Karadžić that "the Appellant has shown that the potential evidence of Radovan Karadžić was unavailable to him until the present moment".<sup>18</sup>

9. The Appellant further claims that Mr. Karadžić's possible evidence is relevant, credible and could have had an impact on the verdict.<sup>19</sup> He posits that Mr. Karadžić "was the most significant figure in the trial after the Appellant"<sup>20</sup> and that Mr. Karadžić's "alleged activities are described and detailed throughout the whole Trial Judgement".<sup>21</sup> As such, the Appellant argues, Mr. Karadžić's evidence would be directed to the findings in the "vast majority of Parts 2, 3 and 6 of the Trial Judgement",<sup>22</sup> in particular paragraphs 176-182, 188-189, 893, 987, 994, 1001-1005, 1013, 1078-1119, 1121, and 1123-1124.<sup>23</sup> Additionally, the Appellant contends that because the Trial Chamber heard evidence from other leading political figures in the Bosnian-Serb Republic, it would also have called Mr. Karadžić, had he been available.<sup>24</sup> For his part, JCE Counsel argues that Mr. Karadžić could provide relevant evidence on the issue of whether the Appellant was a member of a JCE, as the Trial Chamber found, or whether the Appellant's statements relied on by the Trial Chamber for that finding were merely statements by a politician seeking to find an acceptable political solution.<sup>25</sup> JCE Counsel further argues that Mr. Karadžić could also provide relevant information on the Appellant's relationship to the war presidency.<sup>26</sup>

10. In addition to the above arguments, the Appellant submits that the purpose of his meeting with Mr. Karadžić on 12 September 2008 was only to determine whether he wanted to call Mr. Karadžić as a witness under Rule 115 of the Rules. Having now decided to do so, he requests

<sup>16</sup> *Stanišić* Rule 115 Decision, para. 6; *Simić* Rule 115 Decision, para. 12; *Kupreškić et al.* Appeal Judgement, para. 69.

<sup>17</sup> *Stanišić* Rule 115 Decision, para. 6; *Kupreškić et al.* Appeal Judgement, para. 69.

<sup>18</sup> Motion, para. 8, with reference to Order on Motion to Interview Radovan Karadžić, p. 3.

<sup>19</sup> Motion, para. 9.

<sup>20</sup> Motion, para. 10.

<sup>21</sup> Motion, para. 7.

<sup>22</sup> Motion, para. 7.

<sup>23</sup> Motion, paras 7 and 10, fn. 8, referencing further Appeal by Momčilo Krajišnik to the ICTY Judgement of 27 September 2006, 29 October 2007, paras 130-131.

<sup>24</sup> Motion, para. 10.

<sup>25</sup> Motion by JCE Counsel, para. 4.

<sup>26</sup> Motion by JCE Counsel, para. 5.

further meetings with Mr. Karadžić in order to determine the precise scope of his evidence.<sup>27</sup> In this regard, JCE Counsel requests permission to interview Mr. Karadžić prior to his being called, and to be allowed, at any such proceeding, to question Mr. Karadžić on issues relating to JCE.<sup>28</sup>

11. The Prosecution responds that the Motion and the Motion by JCE Counsel must be dismissed for failing to comply with the requirements of Rule 115 of the Rules.<sup>29</sup> It contends that neither the Appellant nor JCE Counsel have filed any statement or proof indicating the scope of Mr. Karadžić's proposed evidence, rendering their arguments as to the evidence's impact on the verdict "mere speculations".<sup>30</sup> It notes in this respect that the Appellant is in possession of a statement of Mr. Karadžić, but that this statement is not before the Appeals Chamber.<sup>31</sup> Because there is no additional evidence for the Appeals Chamber to consider, the Prosecution argues that it is unable to respond in substance.<sup>32</sup> Furthermore, the Prosecution responds that neither the Appellant nor JCE Counsel adequately identify the specific findings to which Karadžić's proposed additional evidence is directed.<sup>33</sup>

12. The Appellant replies that he did not take a proof from Mr. Karadžić because the Appeals Chamber in its Order on Motion to Interview Radovan Karadžić ordered that it was not necessary for him to do so in order to exercise his right pursuant to Rule 115 of the Rules.<sup>34</sup> As for Mr. Karadžić's statement of 2001, the Appellant's position is that it is outdated.<sup>35</sup> The Appellant further replies that the Appeals Chamber's Order on Motion to Interview Radovan Karadžić recognised that he had sufficiently specified the parts of the Trial Judgement to which Mr. Karadžić's potential evidence would be directed.<sup>36</sup> In any event, the Appellant posits, given the extensive references to Mr. Karadžić in the Trial Judgement, it is impracticable to identify each and every paragraph to which his evidence would be directed.<sup>37</sup>

13. *Amicus Curiae* supports the Motion, arguing that the Appellant has established the unavailability of Mr. Karadžić's evidence and identified the factual findings to which it is relevant.<sup>38</sup> *Amicus Curiae* submits that it is manifest that Mr. Karadžić may provide evidence of fundamental relevance to the Appellant's responsibility, and therefore that his evidence could have

<sup>27</sup> Motion, para. 13; Reply, para. 13.

<sup>28</sup> Motion by JCE Counsel, paras 7-8.

<sup>29</sup> Response, paras 2, 9.

<sup>30</sup> Response, paras 3-4 and 7 (arguing that the Appeals Chamber dismissed a similar request in *Galić* because the applicant failed to provide a statement or documentation of the proposed testimony of the witness).

<sup>31</sup> Response, paras 5-6.

<sup>32</sup> Response, para. 3.

<sup>33</sup> Response, para. 7.

<sup>34</sup> Reply, paras 7-8.

<sup>35</sup> Reply, para. 9.

<sup>36</sup> Reply, para. 11.

<sup>37</sup> Reply, para. 12 (arguing that Mr. Karadžić's name is mentioned 243 times in the Trial Judgement).

been a decisive factor in reaching the decision at trial.<sup>39</sup> Relying on Article 21(4)(b) of the Statute, *Amicus Curiae* argues that the Appellant should be allowed to conduct as many further interviews with Mr. Karadžić as he, upon the advice of JCE Counsel, deems necessary.<sup>40</sup> As regards JCE Counsel's request to interview Mr. Karadžić and to question him before the Appeals Chamber, *Amicus Curiae* submits that Mr. Karadžić's evidence is clearly relevant to the issue of JCE and that the assistance of counsel will facilitate the fair and expeditious progress of this aspect of the appeal; he therefore does not object to JCE Counsel's request.<sup>41</sup>

#### D. Discussion

##### 1. Request to call Radovan Karadžić as a witness under Rule 115 of the Rules

14. The Appeals Chamber finds that the Motion was filed in a timely manner.<sup>42</sup> The Appeals Chamber has already recognised that Mr. Karadžić's potential evidence was unavailable to the Appellant at trial.<sup>43</sup> Therefore, the Motion will succeed if the Appellant can show that Mr. Karadžić's evidence is relevant, credible and *could* have had an impact on the verdict.

15. With respect to the Prosecution's argument that the Motion should be dismissed on the ground that the Appellant has failed to file any statement or proof indicating the scope of Mr. Karadžić's proposed evidence,<sup>44</sup> the Appeals Chamber recalls that in certain cases such material was found necessary to provide a basis on which the Appeals Chamber could evaluate whether additional evidence was admissible under Rule 115 of the Rules.<sup>45</sup> For reasons stated below, the Appeals Chamber considers that in the present case it can adjudicate the Motion without the written documentation referred to by the Prosecution.

16. First, while the Appellant's broad reference to the "vast majority of Parts 2, 3 and 6 of the Trial Judgement" is too vague for the purposes of Rule 115(A) of the Rules, he clearly identifies the

<sup>38</sup> *Amicus Curiae's* Submissions, para. 2.

<sup>39</sup> *Amicus Curiae's* Submissions, para. 3.

<sup>40</sup> *Amicus Curiae's* Submissions, paras 4-5.

<sup>41</sup> *Amicus Curiae's* Submissions, para. 6.

<sup>42</sup> The cogent reasons requirement for filing the Motion later than authorised by Rule 115(A) of the Rules is fulfilled, given that the potential evidence of Mr. Karadžić was unavailable to the Appellant until 20 August 2008, and he filed his Motion on 15 September 2008, which is within the time limit set out in the Order on Motion to Interview Radovan Karadžić: Order on Motion to Interview Radovan Karadžić, pp. 3 and 4.

<sup>43</sup> Order on Motion to Interview Radovan Karadžić, p. 3.

<sup>44</sup> See *supra*, para. 11.

<sup>45</sup> Cf. *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on the First and Third Rule 115 Defence Motions to Present Additional Evidence Before the Appeals Chamber, 30 June 2005, para. 87. See also *The Prosecutor v. Idelphonse Hategekimana*, Case No. ICTR-00-55B-R11bis, Decision on Request to Admit Additional Evidence, 2 October 2008, paras 7-8; *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-R11bis, Decision on Request to Admit Additional Evidence of 18 July 2008, 1 September 2008, para. 9; *Nahimana et al. v. The Prosecutor*, Case No. IT-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motion for Leave to Present Additional Evidence Pursuant to Rule 115, 5 May 2006, para. 20.

specific findings of fact made by the Trial Chamber to which Mr. Karadžić's proposed evidence is directed, namely paragraphs 176-182, 188-189, 893, 987, 994, 1001-1005, 1013, 1078-1119, 1121, and 1123-1124 of the Trial Judgement.<sup>46</sup> The Appeals Chamber accepts that Mr. Karadžić is in a position to give evidence relevant to the findings in these paragraphs. For instance, they include the Trial Chamber's conclusion that the Appellant and Mr. Karadžić were members of the JCE under which the Appellant was convicted.<sup>47</sup> Similarly, at paragraph 1085, the Trial Chamber described Mr. Karadžić as "number one" and the Appellant as "number two" in the Bosnian-Serb leadership, and at paragraph 987 it held that the two men "ran Republika Srpska as a personal fief". Likewise, it found that Mr. Karadžić was the Appellant's "closest associate",<sup>48</sup> and that "Mr. Karadžić considered Mr. Krajišnik to be his very own, private Prime Minister".<sup>49</sup>

17. Second, the Appeals Chamber notes that the Prosecution does not specifically dispute that Mr. Karadžić's potential evidence is credible. Furthermore, the Appeals Chamber will refuse to admit additional evidence that otherwise conforms to the criteria of Rule 115 of the Rules only if "it is devoid of *any* probative value", without prejudice to a determination of the weight to be afforded to it.<sup>50</sup> For the purposes of the present decision, the Appeals Chamber is satisfied that the *prima facie* credibility requirement for admissibility of evidence under Rule 115 of the Rules is met.

18. Turning to the potential impact of Mr. Karadžić's proposed evidence on the verdict, the Appeals Chamber notes that the Trial Chamber made extensive findings on his role in the present case,<sup>51</sup> including in particular that (i) the Appellant contributed to a JCE in which Mr. Karadžić was found to be a participant;<sup>52</sup> (ii) the Appellant and Mr. Karadžić were "closest associate[s]";<sup>53</sup> (iii) the Appellant and Mr. Karadžić "ran Republika Srpska as a personal fief";<sup>54</sup> and (iv) Mr. Karadžić was "absolute number one" and the Appellant "was number two".<sup>55</sup> According to the Appellant, Mr. Karadžić will provide evidence affecting these conclusions, notably with respect to the question

<sup>46</sup> Motion, paras 7 and 10, fn. 8, with reference to Appeal by Momčilo Krajišnik to the ICTY Judgement of 27 September 2006, 29 October 2007, paras 130-131. In this regard, the Appeals Chamber notes that JCE Counsel's allegation that Mr. Karadžić would testify on the issue of whether the Appellant gave purely political, non-incriminating statements and on his relationship to the war presidency fails to identify any findings of the Trial Chamber, and, as such, does not add to the Appellant's own identification of the relevant parts of the Trial Judgement: Motion by JCE Counsel, para. 4.

<sup>47</sup> Trial Judgement, para. 1087.

<sup>48</sup> Trial Judgement, para. 893.

<sup>49</sup> Trial Judgement, para. 1085.

<sup>50</sup> *Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Hassan Ngeze's Motion for Leave to Present Additional Evidence of Potential Witness, 15 January 2007 (confidential), para. 6; *Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Motions Relating to the Appellant Hassan Ngeze's and the Prosecution's Requests for Leave to Present Additional Evidence of Witnesses ABC1 and EB, 27 November 2006, para. 19.

<sup>51</sup> See references to the Trial Judgement, *supra* para. 16.

<sup>52</sup> Trial Judgement, para. 1121.

<sup>53</sup> Trial Judgement, para. 893.

<sup>54</sup> Trial Judgement, para. 987.

<sup>55</sup> Trial Judgement, para. 1085.

of whether the Appellant was a member of the said JCE, as well as whether his role in the war presidency was such as found by the Trial Chamber.<sup>56</sup> Therefore, and in the context of the entirety of the evidence given at trial, the Appeals Chamber is satisfied that the proffered evidence, had it been heard by the Trial Chamber, could have had an impact on the said findings underlying the ultimate conclusion of guilt.

19. In conclusion, the Appeals Chamber is satisfied that, had Mr. Karadžić's evidence, as described by the Appellant, been available at trial, it could have had an impact on the verdict and is otherwise admissible under Rule 115 of the Rules.

20. For these reasons, the Appeals Chamber allows the Appellant to call Radovan Karadžić as a witness pursuant to Rule 115 of the Rules to give evidence related to paragraphs 176-182, 188-189, 893, 987, 994, 1001-1005, 1013, 1078-1119, 1121, and 1123-1124 of the Trial Judgement. The hearing of Mr. Karadžić will take place in the course of an evidentiary hearing on 3 and 5 November 2008 ("Evidentiary Hearing").

21. The Appeals Chamber finds that the Prosecution must be given an adequate opportunity to prepare for its cross-examination of Mr. Karadžić during the Evidentiary Hearing. For that purpose, the Appellant is ordered to file, no later than 27 October 2008, a summary of the facts upon which Mr. Karadžić will testify.

### 2. Further meetings between the Appellant and Radovan Karadžić

22. The Appellant requests further meetings with Mr. Karadžić to determine the precise scope of his proposed evidence.<sup>57</sup> The Appeals Chamber grants this request, and notes that the Registry has communicated to the Appeals Chamber that it would continue to facilitate such meetings.<sup>58</sup>

### 3. Request by JCE Counsel to interview Radovan Karadžić and to question him during the Evidentiary Hearing

23. JCE Counsel requests permission to interview Mr. Karadžić prior to his being called, and to be allowed to question him on issues relating to JCE at the Evidentiary Hearing.<sup>59</sup> The Appeals Chamber recalls that it granted the Appellant the assistance of JCE Counsel in conducting his

<sup>56</sup> See *supra*, para. 9.

<sup>57</sup> Motion, para. 13; Reply, para. 13.

<sup>58</sup> Cf. Correspondence from Mr. Martin Petrov, Head, Office for Legal Aid and Detention Matters, to Mr. Nathan Z. Dershowitz, "RE: Your letter of 27 August 2008", 29 August 2008.

<sup>59</sup> Motion by JCE Counsel, paras 7-8.



interview on JCE related issues with Mr. Karadžić on 12 September 2008.<sup>60</sup> Similarly, the Appeals Chamber grants JCE Counsel's present request to interview Mr. Karadžić and to question him on issues relating to JCE during the Evidentiary Hearing.

#### **E. Disposition**

For these reasons, the Appeals Chamber

**GRANTS** the Motion;

**ORDERS** that the Evidentiary Hearing shall be held before the Appeals Chamber on 3 and 5 November 2008;

**ORDERS** the Appellant to contact Mr. Karadžić to appear before the Appeal Chamber during the Evidentiary Hearing at a time which will be specified in a scheduling order;

**ORDERS** the Appellant to file, no later than 27 October 2008, a summary of the facts upon which Mr. Karadžić will testify at the Evidentiary Hearing;

**ALLOWS** the Appellant, together with JCE Counsel, to file a single supplemental brief on the impact of Mr. Karadžić's testimony at the Evidentiary Hearing by 14 November 2008;

**ALLOWS** the Prosecution and *Amicus Curiae* to each file a supplemental brief on the impact of Mr. Karadžić's testimony at the Evidentiary Hearing by 14 November 2008;

**GRANTS** JCE Counsel's request to interview Mr. Karadžić and to question him on issues relating to JCE during the Evidentiary Hearing;

**DIRECTS** the Registry to provide the arrangements necessary for the Appellant to have further meetings with Mr. Karadžić in order to determine the precise scope of his evidence; and

**DIRECTS** the Registry to provide the arrangements necessary for JCE Counsel to interview Mr. Karadžić prior to the Evidentiary Hearing.

A scheduling order for the Evidentiary Hearing will be issued in due course.

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<sup>60</sup> Decision on Momčilo Krajišnik's Motion for Permission for Nathan Z. Dershowitz to Act as Counsel with Alan M. Dershowitz and for Extension of Time, 5 September 2008, para. 8.

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

Done this sixteenth day of October 2008,  
At The Hague,  
The Netherlands



Judge Fausto Pocar

Presiding

[Seal of the Tribunal]