



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-04-83-A  
Date: 29 June 2010  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Andréia Vaz, Presiding  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Liu Daqun  
Judge Theodor Meron

**Registrar:** John Hocking

**Decision:** 29 June 2010

**PROSECUTOR**

v.

**RASIM DELIĆ**

***PUBLIC***

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**DECISION ON THE OUTCOME OF THE PROCEEDINGS**

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**The Office of the Prosecutor:**

Mr. Peter Kremer QC

**Counsel for Rasim Delić:**

Ms. Vasvija Vidović  
Mr. John Jones

## I. BACKGROUND

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 seised of the appeal filed by Counsel for Rasim Delić ("Delić")<sup>1</sup> from the Judgement rendered by Trial Chamber I ("Trial Chamber") on 15 September 2008 in the case of *Prosecutor v. Rasim Delić*, Case No. IT-04-83-T ("Trial Judgement"). In its earlier decision of 29 June 2010, the Appeals Chamber accepted the withdrawal of the appeal filed by the Office of the Prosecutor.<sup>2</sup> The briefing of the appeal was completed on 24 February 2009.<sup>3</sup> The parties' oral submissions were heard on 19 January 2010.<sup>4</sup>

2. The events giving rise to the appeal took place in July and August 1995 and concern the mistreatment of soldiers of the Army of the Serbian Republic of Bosnia and Herzegovina ("VRS"), captured and imprisoned by the *El Mujahed* Detachment ("EMD") of the 3<sup>rd</sup> Corps of the Army of Bosnia and Herzegovina at Livade and Kamenica Camp (Count 2 of the Amended Indictment).<sup>5</sup> The Trial Chamber, Judge Moloto dissenting,<sup>6</sup> found that

(i) in 1995, Rasim Delić and the EMD perpetrators of the crimes committed in Livade, Kesten and the Kamenica Camp were in a superior-subordinate relationship; (ii) Rasim Delić had reason to know that members of the EMD were about to commit or had committed the crime of cruel treatment against VRS detainees in Livade and the Kamenica Camp in July and August 1995, but not in relation to the crimes committed in Kesten and the Kamenica Camp in September 1995; and (iii) Rasim Delić failed to take the necessary and reasonable measures to prevent and punish the perpetrators thereof.<sup>7</sup>

Consequently, the Trial Chamber convicted Delić of the said crimes pursuant to Articles 3 and 7(3) of the Statute of the Tribunal ("Statute") and sentenced him to a single sentence of three years' imprisonment.<sup>8</sup>

3. Delić's Appeal is comprised of three grounds of appeal against the conviction entered against him under Count 2 of the Indictment in relation to the events in Livade and the Kamenica

<sup>1</sup> Defence Notice of Appeal, 14 October 2008 ("Delić's Notice of Appeal").

<sup>2</sup> Decision on Motion for Continuation of the Appellate Proceedings, 29 June 2010 ("Decision of 29 June 2010"), p. 1.

<sup>3</sup> Defence Appellant's Brief, 29 December 2008 (confidential; public redacted version filed on 7 January 2009) ("Delić's Appeal Brief"); Prosecution Response Brief, 9 February 2009 (confidential; public redacted version filed on 17 February 2009) ("Prosecution's Response Brief"); Appellant's Reply Brief, 24 February 2009 (confidential, public redacted version filed on 27 February 2009) ("Delić's Reply Brief") (collectively, "Delić's Appeal").

<sup>4</sup> AT. 6 *et seq.*

<sup>5</sup> Trial Judgement, paras 11-13. Delić was acquitted of Counts 1, 2 (in part) and 4 (Trial Judgement, para. 596). See also *Prosecutor v. Rasim Delić*, Case No. IT-04-83-PT, Amended Indictment, 14 July 2006.

<sup>6</sup> See Dissenting Opinion of Judge Moloto appended to the Trial Judgement.

<sup>7</sup> Trial Judgement, para. 557.

<sup>8</sup> Trial Judgement, paras 596-597.

Camp in July and August 1995.<sup>9</sup> In particular, Delić raised challenges to the Trial Chamber's finding that (i) he had effective control over the EMD;<sup>10</sup> (ii) at the relevant time he had reason to know that crimes had been or were about to be committed in Livade and the Kamenica Camp;<sup>11</sup> and (iii) he failed to take the necessary and reasonable measures to prevent their commission and to punish the perpetrators thereof.<sup>12</sup> Delić requested that the Appeals Chamber quash his conviction.<sup>13</sup>

4. Delić passed away on 16 April 2010, at his home, while on provisional release pending the resolution of the appeals in this case.<sup>14</sup> The motion requesting the continuation of the appellate proceedings submitted on behalf of his son was dismissed by the Appeals Chamber on 29 June 2010, for want of standing.<sup>15</sup>

## II. OUTCOME OF THE PROCEEDINGS

### A. Termination of the appellate proceedings

5. This is the first time in the history of both this Tribunal and the International Criminal Tribunal for Rwanda ("ICTR") where an appellant has died before the rendering of the appeal judgement. The orders previously issued to terminate the proceedings following the death of an accused have so far only been rendered prior to the delivery of the trial judgement.<sup>16</sup> That said, the Appeals Chamber notes that while neither the Statute nor the Tribunal's Rules of Procedure and Evidence ("Rules") explicitly provide for the course of action to be taken following the death of an appellant, a number of their provisions clearly exclude the possibility of the continuation of the appellate proceedings in such circumstances.

<sup>9</sup> Delić's Notice of Appeal, para. 2.

<sup>10</sup> Delić's Notice of Appeal, paras 5-26; Delić's Appeal Brief, paras 5-224.

<sup>11</sup> Delić's Notice of Appeal, paras 27-39; Delić's Appeal Brief, paras 225-299.

<sup>12</sup> Delić's Notice of Appeal, paras 40-45; Delić's Appeal Brief, paras 300-406.

<sup>13</sup> Delić's Notice of Appeal, paras 4, 46; Delić's Appeal Brief, para. 407.

<sup>14</sup> See Letter from the Office of the Bosniak Liaison Officer to the ICTY, "Information on Implementation of the Decisions Made by the Government of the Federation of Bosnia and Herzegovina and the Trial Chamber [*sic*], ICTY, in Respect of Provisional Release of Mr. Rasim Delić", 19 April 2010; Letter from the Office of the Bosniak Liaison Officer to the ICTY, 4 May 2010, accompanied by the International Death Certificate.

<sup>15</sup> Decision of 29 June 2010, p. 2.

<sup>16</sup> *E.g.*, *Prosecutor v. Djordje Djukić*, Case No. IT-96-20-A, Order Terminating the Appeal Proceedings, 29 May 1996 (in which the Appeals Chamber terminated all proceedings, given that at the time of death, it was seized of the Prosecution's appeal against the Trial Chamber's decision rejecting the parties' requests to withdraw the Indictment on humanitarian grounds); *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13a-T, Order Terminating Proceedings Against Slavko Dokmanović, 15 July 1998; *Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-PT, Order Terminating Proceedings Against Mehmed Alagić, 21 March 2003; *Prosecutor v. Momir Talić*, Case No. IT-99-36/1-T, Order Terminating Proceedings Against Momir Talić, 12 June 2003; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Order Terminating the Proceedings, 14 March 2006; see also *The Prosecutor v. Samuel Musabyimana*, Case No. ICTR-2001-62-I, Order Terminating the Proceedings Against Samuel Musabyimana, 20 February 2003.

6. First, the personal jurisdiction of the Tribunal is limited to “natural persons”,<sup>17</sup> which, read in the context and in light of the Statute’s object and purpose, should be understood in its ordinary meaning, *i.e.*, the living. Second, Article 25 of the Statute clearly states that “[t]he Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor”, thus leaving no room for other persons interested in the outcome of the appeal.<sup>18</sup> Third, neither the Statute nor the Rules allow for Tribunal’s jurisdiction in relation to any procedures initiated by the convicted person’s heirs or victims. The Appeals Chamber is of the view that this clearly demonstrates that the Tribunal’s jurisdiction *ratione personae* is limited to living accused or convicted persons.<sup>19</sup>

7. Although in other international criminal jurisdictions termination of the proceedings following the death of the suspect or accused has also only occurred prior to the rendering of a trial judgement,<sup>20</sup> the Appeals Chamber notes that certain considerations expressed on those occasions are of relevance to the case at hand. In particular, at the International Criminal Court, Pre-Trial Chamber II issued a decision terminating the proceedings against Raska Lukwiya,<sup>21</sup> holding that “the purpose of criminal proceedings is to determine individual criminal responsibility and that the Chamber cannot exercise jurisdiction over a person who has deceased”.<sup>22</sup> It further added that “the

<sup>17</sup> Article 6 of the Statute.

<sup>18</sup> See also, Decision of 29 June 2010, p. 2.

<sup>19</sup> In addition, trials and appeals before this Tribunal, as such, are not conducted *in absentia*, unless a *living* accused or the appellant waives his right to be present in the courtroom (see *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, paras 97-99 and references therein). The Appeals Chamber further notes that Rule 118(B) of the Rules provides for the possibility of the appeal judgement being rendered in the absence of the accused. However and in light of the above, the Appeals Chamber considers that this provision only deals with the issue of a *living* accused who is not physically present in the courtroom and therefore does not apply to the present situation.

<sup>20</sup> For example, during the criminal proceedings at Nuremberg, several accused died subsequent to the filing of the indictments and prior to the commencement of their trials. See *The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Herman Wilhelm Göring et al.*, Judgment, 1 October 1946, 1 Trial of the Major War Criminals Before the International Military Tribunal, pp. 171-172 (concerning the death of Robert Ley); *The United States of America against Josef Altstoetter et al.*, Hearing of 17 February 1947, 3 Trials of War Criminals Before the Nuernberg Military Tribunals under Control Council Law No. 10, Nuernberg, October 1946 – April 1949, (“Trials of War Criminals”), p. 27; see also Opinion and Judgment, 3-4 December 1947 (*ibid.*, p. 954) (concerning the death of Carl Westphal); *The United States of America against Otto Ohlendorf et al.*, Hearing of 15 September 1947, 4 Trials of War Criminals, p. 24, where the Military Tribunal II held that “all proceedings arising out of [the] indictment will cease as of the date of [Emil Haussmann’s] death”; *The United States of America against Wilhelm List et al.*, Judgment, 19 February 1948, 11 Trials of War Criminals, p. 1234, where the Military Tribunal V ordered Franz Boehme’s name to be “stricken from the list of defendants contained in the indictment”. Two other accused died in the course of their trial before the International Military Tribunal for the Far East and were “discharged from the Indictment” (*The United States of America, the Republic of China, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, the Commonwealth of Australia, Canada, the Republic of France, the Kingdom of the Netherlands, New Zealand, India, and the Commonwealth of the Philippines against Sadao Araki et al.*, Judgment, *The Tokyo Judgement: The International Military Tribunal for the Far East (I.M.T.F.E.) 29 April 1946 – 12 November 1948* (B.V.A. Röling and C.F. Rüter eds., 1977), p. 22.

<sup>21</sup> On 8 July 2005 Pre-Trial Chamber II issued an arrest warrant against Raska Lukwiya (*Situation in Uganda*, ICC-02/04, Warrant of Arrest for Raska Lukwiya, 8 July 2005). The suspect died before his arrest and transfer to the Court.

<sup>22</sup> *The Prosecutor v. Joseph Kony et al.*, Case No. ICC-02/04-01/05, Decision to Terminate the Proceedings against Raska Lukwiya, 12 July 2007, p. 4.

death of a person requires that proceedings against that person be terminated, further to which all relevant documents are rendered without effect".<sup>23</sup> In the Special Court for Sierra Leone ("SCSL"),<sup>24</sup> the Trial Chamber decided that "from the moment of [the accused's] death, the Chamber lost its jurisdiction *ratione personae* against [him]",<sup>25</sup> emphasising that the criminal responsibility is "individual and personalised".<sup>26</sup> The *Norman* Decision particularly emphasized that unlike civil proceedings, "a judgement in criminal proceedings does not, and cannot constitute, nor can it confer a successional or testamentary right because it is indeed the exclusive legal privilege and prerogative attached to the persona or the individual who was the subject matter of the Prosecution that stands abated following his death".<sup>27</sup>

8. In light of the foregoing, the Appeals Chamber finds that, as a matter of principle, the appellate proceedings before this Tribunal should be terminated following the death of the appellant for lack of jurisdiction. The Appeals Chamber will now turn to the question regarding the effect of such termination on the finality of the Trial Judgement.

#### **B. Finality of the Trial Judgement**

9. The Appeals Chamber notes that neither the Statute nor the Rules indicate whether the termination of the appellate proceedings has any impact on the finality of the trial judgement following the death of an appellant and prior to the issuance of an appeal judgement. The Appeals Chamber is further mindful of the fact that pursuant to Rule 102(A) of the Rules, the enforcement of the trial judgement shall be stayed as soon as notice of appeal is given and "until the decision on the appeal has been delivered".<sup>28</sup> However, the Appeals Chamber has found that the death of the appellant results in the termination of the appeal proceedings; consequently, this provision is not applicable to the situation at hand.

10. As explained above,<sup>29</sup> there is no jurisprudence in this Tribunal which would be directly relevant to the instant matter. Given these circumstances and in view of the novelty of the issue, the

<sup>23</sup> *Ibid.*

<sup>24</sup> Three accused died during the proceedings, two of whom died after the approval of the Indictment but before the commencement of the trial (*Prosecutor v. Foday Saybana Sankoh*, Case No. SCSL-2003-02-PT, Withdrawal of Indictment, 8 December 2003; *Prosecutor v. Sam Bockarie*, Case No. SCSL-2003-04-PT, Withdrawal of Indictment, 8 December 2003); and the third accused died after his case was closed, but before the Trial Judgement was rendered (*Prosecutor v. Samuel Hinga Norman et al.*, Case No. SCSL-04-14-T, Decision on Registrar's Submission of Evidence of Death of Accused Samuel Hinga Norman and Consequential Issues, 21 May 2007 ("*Norman* Decision")).

<sup>25</sup> *Norman* Decision, para. 13.

<sup>26</sup> *Norman* Decision, paras 13-14.

<sup>27</sup> *Norman* Decision, para. 16.

<sup>28</sup> See also *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-04-84-R77.4-A, Decision on Motion of Astrit Haraqija for Provisional Release, 8 April 2009, para. 4.

<sup>29</sup> See *supra*, para. 5.

Appeals Chamber finds it instructive to provide a brief overview of the relevant provisions and legal precedents in other jurisdictions.<sup>30</sup>

11. Some civil law jurisdictions provide for the continuation of the proceedings notwithstanding the death of the appellant, and the issue of the finality of the judgement does not arise if the proceedings are indeed continued.<sup>31</sup> In other civil law jurisdictions, where criminal proceedings involving the guilt of the deceased appellant are generally terminated, the issue of the finality of the trial judgement is often addressed in connection with the presumption of innocence which, in some of these jurisdictions, continues to apply until a final judgement enters into force.<sup>32</sup>

12. Common law jurisdictions also offer different approaches. Some of these jurisdictions allow for the continuation of the appellate proceedings notwithstanding the death of the appellant.<sup>33</sup> However, should the appellate proceedings be terminated for lack of grounds for their continuation, the judgement rendered by the court of first instance remains intact.<sup>34</sup> Other common law

<sup>30</sup> Cf. *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Judgement, 17 July 2008, para. 44, referring to Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), UN Doc. S/25704, 3 May 1993, para. 58.

<sup>31</sup> E.g., in Azerbaijan the criminal proceedings shall be discontinued with the death of the perpetrator, unless they would lead to acquittal (Code of Criminal Procedure of the Azerbaijan Republic, Article 39.1.5). In Sweden, the Code of Judicial Procedure allows the surviving spouse, direct heir, parents or siblings of a deceased accused to appeal a judgement of conviction (Swedish Code of Judicial Procedure, Ds 1998:000, Chapter 21, Section 1).

<sup>32</sup> See, e.g., for Austria, Criminal Procedure Code, Article 8; for France, cf. *Cour de cassation, Arrêt* of 25 February 2003, N° de pourvoi 02-81638, *Bull. crim.* 2003, n° 51; for Germany, Criminal Procedure Code, Sections 316 (1), 343 (1). See also European Court of Human Rights ("ECtHR"), *Nölkenbockhoff v. Germany*, 25 August 1987, Series A no. 123 ("Nölkenbockhoff case") involving a situation where the appellant died while the appeal proceedings were still pending before the German Federal Court of Justice. In those circumstances, the ECtHR recognized the capacity of the appellant's widow as a "victim" given that she had shown a legitimate material interest in her capacity as a deceased's heir and a moral interest, on behalf of herself and of the family (*ibid.*, para. 33, disposition). Furthermore, the ECtHR appears to have ruled that the presumption of innocence was applicable in that case given that no definitive resolution of the appeal existed at the time of the appellant's death. In particular, the ECtHR found that as long as the national court's decision refusing the compensation referred to a "state of suspicion", rather than a definitive "finding of guilt" in relation to the proceedings which had been terminated before any final decision on the merits was rendered, there was no violation of the presumption of innocence (*ibid.*, paras 17, 37, 39; see also Dissenting Opinion of Judge Cremona, para. 3). In the Appeals Chamber's view, this shows that the ECtHR was minded that, under the applicable German law, the first instance court's judgement convicting the deceased appellant had not become final following the termination of the proceeding in connection with his death.

<sup>33</sup> In those cases the right of another individual to pursue the appeal of a deceased appellant is either statutorily regulated or decided on a case-by-case basis upon showing that specific circumstances militate in favour of the continuation of the proceedings. See, e.g., in Canada, the Supreme Court found that where an appeal has been properly constituted by a Notice of Appeal filed before the appellant's death, the Court has the discretion to hear the appeal despite it being rendered moot by the death of the appellant (*R. v. Smith* [2004] 1 S.C.R. 385, 2004 SCC 14, para. 50). In the United Kingdom, before section 7(1) of the Criminal Appeal Act 1995 came into force inserting section 44A into the Criminal Appeal Act 1968, there was no statutory provision whereby, following the death of a convicted person another person could pursue the appeal (see *R. v. Jefferies* [1969] 1 Q.B. 120). The amendment to the Criminal Appeal Act 1968 allows an "approved person" to begin or continue the appeal. (Criminal Appeal Act 1968, section 44A(3)) See also, *R. v. Whelan* [1997] Crim. L. R. 659; Criminal Procedure (Scotland) Act 1995 (c. 46), Article 303A.

For New Zealand, see *The Queen v. Morgan David Saxton*, CA 144/2008, [2009] NZCA 61, para. 15.

<sup>34</sup> In the United Kingdom, prior to the above-mentioned amendment of the Criminal Appeal Act 1968, the only outcome following the death of an appellant was abatement of the criminal appeal, leaving the conviction and sentence intact (see *R. v. Kearley* (No. 2) [1994] 2 AC 414; *R. v. Jefferies* [1969] 1 Q.B. 120). Likewise, in Canada the conviction remains in effect should the Court find that no specific circumstances require the continuation of the appellate proceedings (see *R. v. Smith* [2004] 1 S.C.R. 385, 2004 SCC 14, para. 16).

jurisdictions do not envisage the opportunity for continuation of the appellate proceedings following the death of an appellant. The approach in those jurisdictions varies between leaving the appealed conviction intact or abating the proceedings *ab initio*.<sup>35</sup>

13. The above overview shows that there is no general principle that is consistently followed in the majority of jurisdictions as to the finality of the trial judgement in the event that the proceedings are terminated following the death of an appellant. For this reason, as well as bearing in mind the specific realities of, and the particular procedures before, this Tribunal, the Appeals Chamber cannot discern any prevalent approach, let alone identify any rules of customary international law, that would be directly applicable to the situation at hand.

14. The Appeals Chamber considers that the approach followed in certain national jurisdictions, where convictions entered by a court of first instance are vacated following the death of an appellant, is not compatible with the essence of the appellate proceedings before this Tribunal. In this regard, the Appeals Chamber has clarified, although not directly in relation to the matter at hand, that the presumption of innocence does not apply to persons convicted by Trial Chambers pending the resolution of their appeals.<sup>36</sup> This interpretation of the Appeals Chamber's jurisprudence is further consistent with the standard of review applicable in appellate proceedings whereby the appealing party has the burden of showing an error of law or of fact that invalidates the trial judgement, or leads to a miscarriage of justice, rather than attempting to initiate a trial *de novo*.<sup>37</sup> This burden is clearly different from the one operative at trial, where the presumption of innocence does apply and the Prosecution has to prove its case beyond reasonable doubt.

<sup>35</sup> E.g., in Australia the death of the appellant abates the appellate proceedings leaving the conviction intact (*R. v. Rimon* [2003] 142 A Crim R 226; see also Criminal Procedure Act 2009, sections 254, 274; *Quartermaine v. The Queen* [2002] WASCA 345; *Sen v. The Queen* [1991] 55 A Crim R 349).

In the United States of America, the Federal Courts of Appeal have generally adopted the approach that in such cases, the proceedings terminate *ab initio*, resulting in the judgment of conviction being vacated and the indictment being dismissed. See *United States v. Rice*, 303 Fed. Appx. 581 (10th Cir. 2008) quoting *United States v. Davis*, 953 F.2d 1482, 1486 (10th Cir. 1992) (quoting *Durham v. United States*, 401 U.S. 481, 483, 91 S. Ct. 858, 28 L. Ed. 2d 200 (1971) (*per curiam*) overruled on other grounds, *Dove v. United States*, 423 U.S. 325, 96 S. Ct. 579, 46 L. Ed. 2d 531 (1976) (*per curiam*)); see also *United States v. DeMichael*, 461 F.3d 414, 416 (3d Cir. 2006); *United States v. Wright*, 160 F.3d 905, 908 (2d Cir. 1998); *United States v. Oberlin* 718 F.2d 894, 895 (9th Cir. 1983); *United States v. Pauline*, 625 F.2d 684, 685 (5th Cir. 1980); *United States v. Littlefield*, 594 F.2d 682, 683 (8th Cir. 1979); *United States v. Moehlenkamp*, 557 F.2d 126, 127-128 (7th Cir. 1977); *United States v. Toney*, 527 F.2d 716, 720 (6th Cir. 1975).

<sup>36</sup> See e.g., *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Public Redacted Version of the "Decision on Vladimir Lazarević's Second Motion for Temporary Provisional Release on the Grounds of Compassion" Issued on 21 May 2009, 22 May 2009, para. 9; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR65.8, Decision on Prosecution's Appeal against Decision on Gvero's Motion for Provisional Release, 20 July 2009 (public redacted version), para. 11.

<sup>37</sup> Article 25 of the Statute; see also, e.g., *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-A, Judgement, 19 May 2010, paras 9 *et seq.*; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Judgement, 12 November 2009, paras 12 *et seq.*; *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1, Judgement, 5 May 2009, paras 10 *et seq.*; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Judgement, paras 11 *et seq.*; *Prosecutor v. Milan Martić*, Case No. IT-95-11-A, Judgement, 8 October 2008, paras 8 *et seq.*; *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgement, 2 February 2009, paras 7 *et seq.*; *Athanase Seromba v. The*

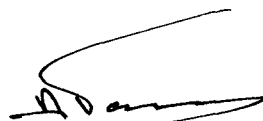
15. Having found that the death of an appellant results in the termination of proceedings and given that no appeal judgement can be rendered in this case, nothing can undermine the finality of the Trial Judgement. As a consequence, the Trial Judgement shall be considered final.

### III. DISPOSITION

16. For the foregoing reasons, the Appeals Chamber **HEREBY TERMINATES** the appellate proceedings with respect to Delić. The Trial Judgement shall be considered final.<sup>38</sup> All protective measures ordered in this case during the pre-trial, trial and appeal stages shall remain in force, unless ruled to the contrary by the competent Chamber.

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

Dated this 29<sup>th</sup> day of June 2010,  
At The Hague, The Netherlands.

  
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Judge Andrézia Vaz,  
Presiding

[Seal of the Tribunal]

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*Prosecutor*, Case No. ICTR-2001-66-A, Judgement, 12 March 2008, paras 9 *et seq.*, all affirming, *inter alia*, the standard of reasonableness and deference to factual findings made in a trial judgement.

<sup>38</sup> Naturally, the record of the case remains intact, reflecting, *inter alia*, the entirety of Delić's Appeal and the fact that the appellate proceedings were terminated prior to its resolution.