



International Tribunal for the Prosecution of  
Persons Responsible for Serious Violations of  
International Humanitarian Law Committed in  
the Territory of Former Yugoslavia since 1991

Case No. IT-04-83-T

Date: 21 May 2008

Original: English

**IN TRIAL CHAMBER I**

**Before:** Judge Bakone Justice Moloto, Presiding  
Judge Frederik Harhoff  
Judge Flavia Lattanzi

**Registrar:** Mr. Hans Holthuis

**Decision of:** 21 May 2008

**PROSECUTOR**

v.

**RASIM DELIĆ**

***PUBLIC***

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**DECISION ON DEFENCE REQUEST FOR  
CERTIFICATION TO APPEAL TRIAL CHAMBER  
DECISION OF 9 MAY 2008**

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**The Office of the Prosecutor**

Mr. Daryl A. Mundis  
Ms. Laurie Sartorio  
Mr. Matthias Neuner  
Mr. Kyle Wood  
Mr. Aditya Menon

**Counsel for the Accused**

Ms. Vasvija Vidović  
Mr. Nicholas David Robson

**TRIAL CHAMBER I** (“Trial 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”);

**BEING SEISED** of the “Defence Request for Certification to Appeal Trial Chamber Decision of 9 May 2008”, filed publicly on 13 May 2008;

**NOTING** the “Decision on Prosecution Motion to Admit Documents in Evidence”, rendered on 9 May 2008 (“Impugned Decision”), whereby the Trial Chamber admitted into evidence eight items of correspondence between the Prosecution and the authorities of Bosnia and Herzegovina as well as Republika Srpska (“Correspondence”) as well as two memoranda tendered by the Defence in the Response to the Impugned Decision (“Memoranda”);

**NOTING** the Defence submission that the Impugned Decision would significantly affect the fairness of the trial as the admission of the Memoranda by the Impugned Decision was not a sufficient remedy to the situation in which the Correspondence was admitted into evidence after the close of the Defence case and that as a consequence, the “effective right of the Defence to have time to prepare the defence and call witnesses to counter the evidence has been fundamentally breached”;<sup>1</sup>

**NOTING** that on 14 May 2008 the Prosecution indicated to the Legal Officer in this case that it does not intend to file a response to the Motion;

**NOTING** that according to Rule 73(B) of the Rules of Procedure and Evidence (“Rules”) “[d]ecisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings”;<sup>2</sup>

**CONSIDERING** that the Defence in its Motion does not argue how an immediate resolution of the issue by the Appeals Chamber may materially advance the proceedings in the present case, and the Trial Chamber is not satisfied that this would in fact be the case, given the very advanced stage of the trial;

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<sup>1</sup> Motion, paras 3, 8, 10.

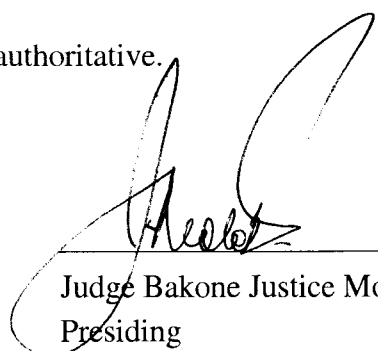
<sup>2</sup> See *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on the Accused’s Motion for Certification to Appeal the Oral Decision of 20 March 2008, p. 3, with further references to jurisprudence.

**FINDING** that the second of the cumulative conditions of Rule 73(B) is not fulfilled, and it is therefore unnecessary to address the question of the impact of the Impugned Decision on the fair conduct of the proceedings;

**PURSUANT TO** Rules 54 and 73(B) of the Rules,

**DENIES** the Motion.

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



Judge Bakone Justice Moloto  
Presiding

Dated this twenty-first day of May 2008

At The Hague

The Netherlands

**[Seal of the Tribunal]**