



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 April 2008
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

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

Registrar: Mr. Hans Holthuis

Decision of: 11 April 2008

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

PUBLIC

**DECISION ON PROSECUTION'S MOTION TO STRIKE
GROUND 1 OF THE DERSHOWITZ BRIEF AND ORDER
COUNSEL TO COMPLY WITH THE DECISION OF
11 MARCH 2008**

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 “Prosecution’s Motion to Strike Ground 1 From Brief on Joint Criminal Enterprise and to Order Counsel to Comply With the Appeals Chamber’s Order”, filed on 9 April 2008 (“Motion”);

CONSIDERING that, while the deadline for filing a response to the Motion has not yet lapsed, the urgency of the matter demands that the Appeals Chamber decide this Motion immediately and neither Momčilo Krajišnik, nor Alan Dershowitz will suffer any prejudice by being deprived of the opportunity to respond to the Motion;

NOTING that pursuant to the Decision of 28 February 2008,¹ Mr. Dershowitz submitted a brief regarding the issue of Joint Criminal Enterprise on behalf of Mr. Krajišnik;²

NOTING that in the Motion the Prosecution argues that the Appeals Chamber should (1) strike Ground 1 from the Dershowitz Brief because Mr. Krajišnik did not raise the issue in his Notice of Appeal; and (2) order that Mr. Dershowitz comply with the Decision of 11 March 2008³ in which the Appeals Chamber required Mr. Dershowitz to reconcile his submission with Mr. Krajišnik’s appeal brief;⁴

RECALLING that in the Decision of 11 March 2008, the Appeals Chamber ordered that “Mr. Dershowitz must be clear as to which of the arguments [in the Dershowitz Brief] are new and the extent to which they complement or supersede those arguments made by Mr. Krajišnik”;⁵

CONSIDERING that while the Appeals Chamber notes the Prosecution’s contention that Mr. Krajišnik’s Notice of Appeal did not properly raise the issue upon which Ground 1 of the Dershowitz Brief is based, the Appeals Chamber deems that the prudent course is to preserve all possible remedies to the alleged problem and does not find it apposite, at this juncture, to strike a portion of the Dershowitz Brief;

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”).

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

³ Decision on Prosecution’s Motion for Clarification and Reconsideration of the Decision of 28 February 2008, 11 March 2008 (“Decision of 11 March 2008”).

⁴ Motion, paras 3-6.

⁵ Decision of 11 March 2008, para. 9.

CONSIDERING further, that the Dershowitz Brief does not comply fully with the directive in the Decision of 11 March 2008;

HEREBY REJECTS the Prosecution's request that the Appeals Chamber strike Ground 1 in the Dershowitz Brief; **GRANTS IN PART** the Motion by ordering Mr. Dershowitz to comply with paragraph 9 of the Decision of 11 March 2008 in an addendum of no more than 1000 words that must be submitted within three working days; and **ORDERS** that the Prosecution be granted an extension of three working days to file a response to the Dershowitz Brief.

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

Dated this 11th day of April 2008,
At The Hague, The Netherlands.



Fausto Pocar
Presiding Judge

[Seal of the Tribunal]