



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-04-74-AR73.10
Date: 5 September 2008
Original: English

IN THE APPEALS CHAMBER

Before: Judge Wolfgang Schomburg, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. Hans Holthuis

Decision of: 5 September 2008

PROSECUTOR
v.
JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
and **BERISLAV PUŠIĆ**

PUBLIC

**DECISION ON PROSECUTION'S APPEAL AGAINST TRIAL
CHAMBER'S ORDER ON CONTACT BETWEEN THE
ACCUSED AND COUNSEL DURING AN ACCUSED'S
TESTIMONY PURSUANT TO RULE 85(C)**

The Office of the Prosecutor:

Mr. Kenneth Scott
Mr. Douglas Stringer

Counsel for the Accused:

Mr. Michael Karnavas and Ms. Suzana Tomanović for Jadranko Prlić
Ms. Senka Nožica and Mr. Karim A. A. Khan for Bruno Stojić
Božidar Kovačić and Ms. Nika Pinter for Slobodan Praljak
Ms. Vesna Alaburić and Mr. Nicolas Stewart for Milivoj Petković
Ms. Dijana Tomašević-Tomić and Mr. Dražen Plavec for Valentin Ćorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Berislav Pušić

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 “International Tribunal”, respectively) is seized of an appeal (“Appeal”) by the Office of the Prosecutor (“Prosecution”)¹ against an order issued by Trial Chamber III (“Trial Chamber”) on 1 July 2008 (“Impugned Decision”)² in which it held that “an accused who wishes to appear as a witness in his own defence pursuant to Rule 85(C) of the Rules will not be deprived of the assistance of his counsel during his testimony.”³ The Trial Chamber certified the issue for appeal.⁴

I. PROCEDURAL BACKGROUND

2. In its Appeal, the Prosecution requests that the Appeals Chamber reverse the Impugned Decision and “follow the Tribunal jurisprudence and practice limiting contact between an accused and his counsel during sworn testimony [of the accused] to exceptional circumstances, based on particular application and good cause.”⁵ On 14 July 2008, Milivoj Petković (“Petković”) filed his response (“Petković Response”) opposing the Appeal.⁶ On the same date, Slobodan Praljak (“Praljak”) filed his response (“Praljak Response”), also opposing the Appeal.⁷ The Prosecution filed a consolidated reply (“Reply”) on 18 July 2008.⁸

II. SUBMISSIONS

3. The Trial Chamber held that “an accused appearing in his own defence must not be treated in the same way as a witness, since he continues to enjoy the rights granted by the Statute and the Rules to the Defence” and that “the fundamental right of an accused to be entitled to legal assistance of his own choosing provided by Article 21(4)(d) of the Statute applies

¹ Prosecution’s Appeal of the Trial Chamber’s 1 July 2008 Decision on Contact Between the Accused and Counsel During An Accused’s Testimony Pursuant to Rule 85(C), 8 July 2008.

² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Order on the Mode of Examining an Accused Pursuant to Rule 85(C) of the Rules, 1 July 2008.

³ Impugned Decision, p. 8.

⁴ Impugned Decision, p. 8.

⁵ Appeal, paras 17-18.

⁶ Response of Milivoj Petković to Prosecution’s Appeal filed 8 July 2008 of the Trial Chamber’s 1 July 2008 Decision on Contact Between the Accused and Counsel During an Accused’s Testimony Pursuant to Rule 85(C), 14 July 2008.

⁷ Slobodan Praljak’s Response to the Prosecution’s Appeal of 8 July 2008 on the Right of the Accused to Communicate With Counsel, 14 July 2008.

⁸ Prosecution’s Consolidated Reply to the Petković and Praljak Defence Responses to Prosecution’s Appeal of Trial Chamber’s 1 July 2008 Decision on Contact Between the Accused and Counsel During an Accused’s Testimony Pursuant to Rule 85(C), 18 July 2008.

throughout the testimony of an accused who chooses to appear pursuant to Rule 85(C) of the Rules.”⁹

4. The Prosecution submits that the Trial Chamber erred when it “reached the conclusion that *carte blanche* contact between the accused and his counsel is permissible during the accused’s sworn testimony.”¹⁰ According to the Prosecution, to allow an accused to communicate with his Defence counsel – absent prior notice and showing of good cause – is neither desirable nor acceptable in the framework of the International Tribunal.¹¹ Contact should be prohibited in order to prevent coaching or otherwise influencing any witness and his testimony.¹² The Prosecution claims that such an approach is supported by the practice of Trial Chambers at the International Tribunal¹³ as well as the International Criminal Tribunal for Rwanda,¹⁴ which “have interpreted Rule 90(F)(i), generally, to prohibit contact between counsel and witnesses, including the accused, during the time that the witness is giving sworn testimony.”¹⁵ The Prosecution submits that there is a distinction between a normal witness and the accused acting as a witness in his own defence. Referring to the *Galić* Appeal Judgement, it claims, however, that this does not mean that all the rules governing witness testimony are inapplicable to the testimony of the accused.¹⁶ In particular, the Prosecution claims that Trial Chambers must ensure that the evidence presented is both probative and reliable and that the mode and order of testimony is effective for the ascertainment of the truth.¹⁷ The Prosecution argues that the Trial Chamber will not be in a position to properly assess the testimony of an accused if it did not know “if contact had occurred, or why, or in what respect, or to what extent.”¹⁸ In this context, limiting or cutting off communications between counsel and accused during the latter’s testimony would not infringe on the accused’s fair trial rights pursuant to Article 21 of the Statute of the International Tribunal (“Statute”) as Trial Chambers retain their discretion to allow contact in exceptional circumstances.¹⁹

5. Petković responds that the Appeal is flawed as the Impugned Decision was a discretionary one, which by nature can differ from the conclusions reached by other Trial

⁹ Impugned Decision, p. 6.

¹⁰ Appeal, para. 6.

¹¹ Appeal, paras 6, 11 and 14-15.

¹² Appeal, para. 6.

¹³ Appeal, para. 8. The Prosecution also argues that conflicting decisions by Trial Chambers are in the minority and cannot be harmonized with the holdings in the *Galić* Appeal Judgement: Appeal, para. 16.

¹⁴ Appeal, paras 9-11.

¹⁵ Appeal, para. 8.

¹⁶ Appeal, paras 12-13; Reply, paras 6 and 12.

¹⁷ Appeal, para. 14.

¹⁸ Appeal, para. 6; Reply, para. 10.

¹⁹ Appeal, paras 14-15.

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Chambers.²⁰ While Petković stresses that limitations may be imposed under Rule 90(F) of the Rules of Procedure and Evidence (“Rules”) without violating Article 21 of the Statute and that the prevalent practice does not infringe on the accused’s fair trial rights, he asserts that the Prosecution must show that the Impugned Decision “was outside the bounds of a fair and reasonable exercise of the Trial Chamber’s discretion.”²¹ Petković notes that the Prosecution did not have any objection to an accused’s communication with his counsel in similar circumstances in a previous case,²² and argues that the practice of all Trial Chambers, *i.e.* to decide in each individual case whether to allow contact between an accused and his counsel or not, is consistent with the jurisprudence of the Appeals Chamber.²³ Petković finally stresses that the Trial Chamber considered that the probative value of an accused’s testimony will be assessed at the end of the case.²⁴

6. Praljak responds that the Appeal should be rejected as the question is not whether it is permissible to sever or curtail the contact between an accused and his counsel during the accused’s testimony but rather whether the Trial Chamber ruling is impermissible.²⁵ Praljak further argues that the *Galić* Appeal Judgement is silent on the issue of communication between counsel and accused and therefore of limited value to the question in this instance.²⁶ Praljak points to the difference between an accused as a witness²⁷ and refers to the wording of Article 21(4)(b) of the Statute, which in his view is unambiguous.²⁸ He stresses the discretionary character of the Trial Chamber’s decision pursuant to Rule 90(F) of the Rules.²⁹

7. The Prosecution replies that the Trial Chamber did not exercise its discretion based on the facts of the case but simply asserted a rule of law, which, in the Prosecution’s view was an erroneous one.³⁰ The Prosecution claims that if accepted as correct, the Impugned Decision invalidates the prior practice of other Trial Chambers and the Appeals Chamber.³¹

²⁰ Petković Response, para. 3.

²¹ Petković Response, para. 6.

²² Petković Response, para. 7.

²³ Petković Response, paras 8-11.

²⁴ Petković Response, para. 12.

²⁵ Praljak Response, para. 12.

²⁶ Praljak Response, para. 14.

²⁷ Praljak Response, para. 15.

²⁸ Praljak Response, para. 16.

²⁹ Praljak Response, para. 17.

³⁰ Reply, paras 5-7 and 11.

³¹ Reply, para. 8.

III. STANDARD OF REVIEW

8. It is well established in the jurisprudence of the Tribunal that Trial Chambers exercise discretion in relation to trial management.³² The Impugned Decision concerns the question of whether to allow contact between an accused and his counsel where the former testifies in his own defence. The Trial Chamber specifically referred to the Rule 65 *ter* lists submitted by the Accused Praljak and Petković, in which they indicated that they would testify pursuant to Rule 85(C) of the Rules.³³ Consequently, the Impugned Decision is directly related to the modalities of how these Accused will testify and thus concerns the management of the trial. The Appeals Chamber therefore accords deference to it, based on the Appeals Chamber's recognition of "the Trial Chamber's organic familiarity with the day-to-day conduct of the parties and practical demands of the case".³⁴ The Appeals Chamber's examination is therefore limited to establishing whether the Trial Chamber has abused its discretionary power by committing a discernible error.³⁵ The Appeals Chamber will only overturn a Trial Chamber's exercise of its discretion where it is found to be "(1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion".³⁶

³² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.8, Decision on Petković's And Praljak's Appeals Against the Trial Chamber's Decision Adopting Guidelines for the Presentation of Defence Evidence, 18 July 2008, para. 7; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.7, Decision on Defendant's Appeal against "Décision portant attribution du temps à la Défense pour la présentation des moyens à décharge, 1 July 2008 ("Prlić Decision on Allocation of Time for Defence Case-in-Chief"), para. 15; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.2, Decision on Joint Defence Interlocutory Appeal Against the Trial Chamber's Oral Decision of 8 May 2006 Relating to Cross-Examination By Defence and on Association of Defence Counsel's Request for Leave to File an *Amicus Curiae* Brief, 4 July 2006 ("Prlić Decision on Cross-Examination"), p. 3; *Prosecutor v. Zdravko Tolimir et al.*, Case No. IT-04-80-AR73.1, Decision on Radivoje Miletić's Interlocutory Appeal Against the Trial Chamber's Decision on Joinder of Accused, 27 January 2006 ("Decision on Radivoje Miletić's Interlocutory Appeal"), para. 4; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.7, Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defence Counsel, 1 November 2004 ("Milošević Decision on the Assignment of Defence Counsel"), para. 9; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73, Reasons for Refusal of Leave to Appeal from Decision to Impose Time Limit, 16 May 2002, para. 14.

³³ Impugned Decision, p. 3.

³⁴ Decision on Radivoje Miletić's Interlocutory Appeal, para. 4; *Milošević* Decision on the Assignment of Defence Counsel, para. 9.

³⁵ *Prlić* Decision on Cross-Examination, p. 3, citing *Prosecutor v. Milošević*, Case Nos. IT-99-37-AR73, IT-01-50-AR73, and IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002, para. 4: "Where an appeal is brought from a discretionary decision of a Trial Chamber, the issue in that appeal is not whether the decision was correct, in the sense that the Appeals Chamber agrees with that decision, but rather whether the Trial Chamber has correctly exercised its discretion in reaching that decision", see also paras 5-6; see also *Milošević* Decision on the Assignment of Defence Counsel, para. 10.

³⁶ *Prlić* Decision on Allocation of Time for Defence Case-in-Chief, para. 15; Decision on Radivoje Miletić's Interlocutory Appeal, para. 6.

IV. DISCUSSION

A. Whether the Trial Chamber was bound by the jurisprudence of the International Tribunal

9. The Appeals Chamber notes the Prosecution's argument that the Impugned Decision "invalidates the prior practice of trial and appeal chambers allowing limitations to be imposed upon the accused's Article 21 rights pursuant to Rule 90(F) and specifically with regard to the accused's contact with counsel during the time that he gives sworn testimony."³⁷ The Appeals Chamber notes that Trial Chambers have indeed ruled on this particular question,³⁸ but recalls that "decisions of Trial Chambers, which are bodies with coordinate jurisdiction, have no binding force on each other."³⁹ Rule 90(F) of the Rules leaves it to the Trial Chamber to control on a case-by-case basis "the mode and order of interrogating witnesses." Accordingly, if the Prosecution implies that this Trial Chamber abused its discretion by deciding differently from other Trial Chambers of the International Tribunal, then its argument must fail.

10. The Appeals Chamber also considers that it has not had an opportunity yet to clarify the law on whether an accused can continue to communicate with his counsel when giving sworn testimony. The Prosecution seems to suggest that the *Galić* Appeal Judgement is the pertinent authority in this regard. However, the *Galić* Appeal Judgement, while discussing the general framework of an accused testifying pursuant to Rule 85(C), did not address the issue in question here. Instead, it limited its discussion to the timing of an accused's testimony.⁴⁰ Thus, there was no precedent binding the Trial Chamber in this case.⁴¹ Accordingly, the Appeals Chamber will now turn to address the law governing communications between an accused and his counsel in the event the accused testifies as a witness pursuant to Rule 85(C) of the Rules.

³⁷ Reply, para. 8.

³⁸ See e.g. *Prosecutor v. Radoslav Krstić*, Case No. IT-98-33-T, Oral Ruling, T. 5956 (16 October 2000), allowing contact between the accused and his counsel during his sworn testimony; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Finalized Procedure on Chamber Witnesses; Decisions and Orders on Several Evidentiary and Procedural Matters, 24 April 2006, para. 31, prohibiting communication between the accused and his counsel for the duration of his testimony except for special matters not relating to the evidence and only upon seeking permission by the Trial Chamber.

³⁹ See *Prosecutor v. Zlatko Aleksovski*, Judgement, Case No. IT-95-14/1-A, 24 March 2000 ("*Aleksovski* Appeal Judgement"), para. 114.

⁴⁰ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006 ("*Galić* Appeal Judgement"), paras 19-20.

⁴¹ *Aleksovski* Appeal Judgement, para. 113.

B. Whether an accused who testifies in his own defence is entitled to have access to his counsel

11. Rule 85(C) of the Rules, headed "Presentation of Evidence", provides that "[i]f the accused so desires, the accused may appear as a witness in his or her own defence." The Appeals Chamber recalls that the use of the word "witness" does not imply that an accused who chooses to testify in his own defence is systematically subject to the same rules as any other witness before the International Tribunal.⁴² Indeed, the Appeals Chamber has held that there is a fundamental difference between an accused testifying on his own behalf and any other witness.⁴³ The Impugned Decision correctly makes reference to this distinction.⁴⁴ It follows that some of the rules concerning the testimony of witnesses are inapplicable to an accused who testifies as a witness in his case because they are incompatible with his rights.⁴⁵ In sum, the Appeals Chamber considers that the International Tribunal does not reflexively apply rules governing any other witness to an accused who decides to testify in his own case.

12. In the Impugned Decision, the Trial Chamber held that the general prohibition of contact between a witness and the parties⁴⁶ does not *per se* bar communications between an accused testifying in his own defence and his counsel.⁴⁷ The Appeals Chamber agrees.

13. Article 21(4)(d) of the Statute provides for the right to legal assistance. This norm has to be read together with Article 21(4)(b) of the Statute, which specifies that an accused has the right "to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing." Both rights are reflective of international human rights provisions, such as Articles 14(3)(b) and (d) of the International Covenant on Civil and Political

⁴² See *Galić* Appeal Judgement, para. 17.

⁴³ *Galić* Appeal Judgement, para. 17, *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, 28 February 2005 ("Kvočka Appeal Judgement"), para. 125, with further references.

⁴⁴ Impugned Decision, p. 5.

⁴⁵ *Kvočka* Appeal Judgement, para. 125. The Appeals Chamber has held, for example, that neither Rule 90(E) of the Rules, which seems to allow a Chamber to compel a witness to answer each question, even if it might incriminate the witness, nor Rule 77(A)(i) of the Rules, which deals with sanctions if the witness refuses to answer questions, apply to an accused because Article 21(4)(g) of the Statute enshrines his right "not to be compelled to testify against him or to confess guilt." (see *Galić* Appeal Judgement, para. 17). Likewise, as pointed out in page 5 of the Impugned Decision, Rule 90(C) of the Rules, which provides that a witness who has not yet testified is not allowed to be present when the testimony of another witness is given, is not applicable to an accused given that Article 21(4)(d) of the Statute entitles him to be "tried in his presence."

⁴⁶ See for example, *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, T. 30242 (7 July 2008); See also *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-PT, 19 March 1999, p. 5; *Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-T, Decision on Communication Between Parties and Their Witnesses, 21 September 1998, p. 4.

⁴⁷ Impugned Decision, p. 6.

Rights of 19 December 1966 (ICCPR),⁴⁸ and are provided as *minimum* guarantees, in full equality. The Appeals Chamber in this context recalls the report of the Secretary-General:

It is axiomatic that the International Tribunal must fully respect internationally recognized standards regarding the rights of the accused at all stages of its proceedings. In the view of the Secretary-General, such internationally recognized standards are, *in particular*, contained in article 14 of the International Covenant on Civil and Political Rights.⁴⁹

14. Thus, it is a fundamental right of an accused to have access to counsel at any stage of the proceedings. Praljak has pointed out that Article 21(4)(b) of the Statute grants “an explicit right, precisely defined, without any lists of caveats or compromises.”⁵⁰ Indeed, the formulation of the right to “communicate with defence counsel of [one’s] own choosing” reflects straightforwardly the guiding principle.

15. The remaining question is only whether this right is open to any interpretation limiting its scope.⁵¹ Although a decision on the extent of contact between an accused who chooses to testify and his counsel is vested in the Trial Chamber and is therefore discretionary, the Appeals Chamber finds that it is appropriate to articulate at least some legal standards on this issue to guide Trial Chambers’ exercise of their discretion.

16. When considering this, the Appeals Chamber has to take into account the magnitude, complexity and length of the trials before this International Tribunal. An accused must often consult with his counsel during the trial on the appropriate defence strategy or the significance of what is happening in the courtroom. To take away this right for an extended period of time could potentially undermine one of the most important basic rights of an accused and endanger the integrity and fairness of the proceedings as a whole. The Appeals Chamber in this context notes that in the present case the accused Praljak and Petković are scheduled to testify for 36 hours⁵² and 12 hours⁵³ respectively, *i.e.* over the course of several days. However, the Appeals Chamber also considers that pursuant to Rule 90(F) of the Rules, the Trial Chamber controls “the mode and order of interrogating witnesses” in order to make the interrogation “effective for the ascertainment of truth.” Therefore, on balance, it is the Trial Chamber, which is generally

⁴⁸ 999 U.N.T.S. 171.

⁴⁹ The Secretary General, *Report of the Secretary-General pursuant to Paragraph 2 of the Security Council Resolution 808 (1993)*, U.N. Doc S/25704 (3 May 1993), para. 106 (italics added for emphasis).

⁵⁰ Praljak Response, para. 16.

⁵¹ Cf. for the interpretation of Article 21(4)(d) of the Statute: *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.7, Decision on Interlocutory Appeal of the Trial Chamber’s Decision on the Assignment of Defense Counsel, 1 November 2004, paras 11-12.

⁵² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Slobodan Praljak’s Submission Pursuant to Rule 65 *ter*, Confidential Annex A, 31 March 2008, p. 22.

⁵³ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Petković Defence Submission Pursuant to Rule 65 *ter*, Confidential Annex A, p. 9.

responsible for the management of the trial, that has discretion to take account of various exigencies that may arise during the trial. In doing this, the Trial Chamber must bear in mind that there is a presumption in favour of the right to consult with counsel.⁵⁴

17. Furthermore, the Appeals Chamber is not persuaded that the reliability of an accused's testimony can only be preserved by prohibiting contact between counsel and the accused during the latter's testimony.⁵⁵ If the Prosecution fears that counsel will subsequently coach the accused in order to tailor his testimony, then it is reminded that under the system in place before this International Tribunal it has the opportunity to carefully cross-examine the accused. Accordingly, the Prosecution might well establish that the accused's reliability and/or credibility is in doubt or even destroyed because it appears from his testimony that during the course of his examination he was improperly coached by counsel on how to respond to certain questions.⁵⁶ The final assessment of the probative value of testimony given under these specific circumstances lies as usual with the Chamber, having heard the witness. Indeed, the Trial Chamber in the Impugned Decision correctly took these concerns into account when holding that "the weight to be assigned to evidence is determined when deliberating the overall first instance case-file" and that "consequently, the probative value of a testimony may not be determined in advance according to the mode by which it is presented."⁵⁷

18. Moreover, a Trial Chamber should generally presume, absent evidence to the contrary, that conversations between an accused and his counsel will be appropriate. In this context, the Appeals Chamber refers to the ICTR Appeals Chamber's holding in a similar context that "intentionally seeking to interfere with a witness's testimony is prohibited, and if evidence of this comes to light, a Trial Chamber can take appropriate action by initiating contempt proceedings under Rule 77 of the Rules and by excluding the evidence pursuant to Rule 95 of the Rules."⁵⁸ These actions need not be necessarily cumulative.

⁵⁴ Cf. for an approach on the domestic level: *Geders v. U.S.*, 425 U.S. 183, holding that an order preventing an accused from consulting his counsel about anything during a 17-hour overnight recess between his direct- and cross-examination impinged on his right to the assistance of counsel; *Perry v. Leeke*, 488 U.S. 270, permitting a trial judge to bar an accused from conferring with his counsel during a brief recess of a few minutes; Cf. Germany: Strafprozeßordnung (Code of Criminal Procedure), Section 137(1)(1): "The accused is entitled to have assistance of defense counsel at any stage of the proceedings."

⁵⁵ Appeal, para. 9.

⁵⁶ See also *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.8, Decision on Interlocutory Appeal Regarding Witness Proofing, 11 May 2007 ("*Karemera* Decision on Witness Proofing"), para. 13.

⁵⁷ Impugned Decision, p. 6.

⁵⁸ *Karemera* Decision on Witness Proofing, para. 13. Rule 95 of the ICTR Rules of Procedure and Evidence is identical to Rule 95 of the ICTY Rules. Rule 77 of the ICTR Rules is identical to Rule 77 of the ICTY Rules in its salient parts.

19. In sum, the Appeals Chamber finds that the Trial Chamber has not committed an error when ruling that an accused who testifies as a witness continues to enjoy his rights as an accused guaranteed to him under the Statute, in particular his right to communicate with counsel at any stage of the proceedings.

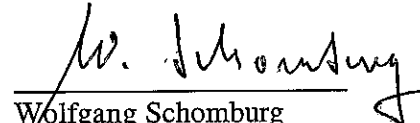
V. DISPOSITION

On the basis of the foregoing, the Appeals Chamber **DISMISSES** the Prosecution Appeal in its entirety.

Judge Shahabuddeen and Judge Vaz append a Joint Declaration.

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

Done this 5th day of September 2008,
At The Hague,
The Netherlands



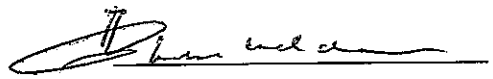
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Presiding

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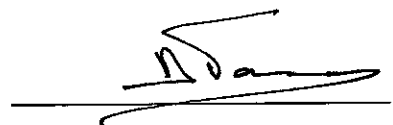
JOINT DECLARATION OF JUDGE SHAHABUDDEEN AND JUDGE VAZ

We support today's decision but consider it prudent to indicate that we understand the word 'appropriate' in paragraph 18 of the decision to mean that counsel is not permitted to advise an accused, testifying on the witness stand, how he should reply to a question or line of questioning.

Done in English and French, the English text being authoritative.
Dated this 5th day of September 2008,
At The Hague, The Netherlands



Mohamed Shahabuddeen



Andréia Vaz

[Seal of the International Tribunal]