



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-03-67-AR73.8
Date: 16 September 2008
Original: English

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Shahabuddeen
Judge Güney
Judge Vaz
Judge Meron

Registrar: Mr. Hans Holthuis

Decision: 16 September 2008

PROSECUTOR

v.

Vojislav ŠEŠELJ

PUBLIC

**DECISION ON PROSECUTION'S APPEAL AGAINST THE
TRIAL CHAMBER'S ORDER REGARDING THE
RESUMPTION OF PROCEEDINGS**

The Office of the Prosecutor:

Mr. Daryl Mundis
Ms. Christine Dahl

The Accused:

Mr. Vojislav Šešelj

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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 an Appeal by the Office of the Prosecutor ("Prosecution")¹ against Trial Chamber III's ("Trial Chamber") Order Regarding the Resumption of Proceedings, dated 15 August 2008 ("Impugned Order"), in which the Trial Chamber denied the Prosecution's request for an adjournment pending the Trial Chamber's resolution of the Prosecution's Motion to Terminate the Accused's Self-Representation ("Motion").²

I. BACKGROUND

2. On 29 July 2008, the Prosecution filed its Motion requesting that the Trial Chamber terminate the self-representation of Vojislav Šešelj ("the Accused"), alleging substantial and persistent obstruction by the Accused during his trial both in and out of court.³ The Prosecution further requested that the Trial Chamber adjourn the proceedings pending its ruling on the Motion.⁴ On 15 August 2008, the Trial Chamber rendered the Impugned Order, denying the Prosecution's request to adjourn the proceedings pending its ruling on the Motion.⁵ On 26 August 2008, the Trial Chamber certified the Impugned Order for appeal and adjourned the proceedings pending the Appeals Chamber's resolution of the Appeal.⁶ Due to the urgency of this matter, the Appeals Chamber issues this decision without waiting to receive the response from the Accused.⁷ In so doing, the Appeals Chamber is satisfied that no prejudice is suffered by the Accused.

II. STANDARD OF REVIEW

3. It is well established in the jurisprudence of the Tribunal that Trial Chambers exercise discretion in relation to trial management.⁸ The Trial Chamber's decision to refuse the

¹ Prosecution's Appeal Brief, 2 September 2008 ("Appeal").

² *Prosecutor v. Šešelj*, Case No. IT-03-67-T, Prosecution's Motion to Terminate the Accused's Self-Representation, 29 July 2008 (*Ex Parte* and Confidential).

³ Appeal, para. 5; Motion, para. 2.

⁴ Appeal, para. 5.

⁵ Impugned Order, p. 5.

⁶ *Prosecutor v. Šešelj*, Case No. IT-03-67-T, Transcript ("T.") 26 August 2008, p. 9817.

⁷ The Appeals Chamber notes that the Accused received the B/C/S translation of the Appeal on 9 September 2008 (see *Procès-Verbal*, 15 September 2008). The Appeals Chamber further notes that the Accused objected to the Prosecution's request of certification to appeal the Impugned Order (see *Prosecutor v. Šešelj*, Case No. IT-03-67-T, T. 26 August 2008, p. 9814).

⁸ *Prosecutor v. 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. 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*

Prosecution's request for an adjournment pending the resolution of its Motion was a discretionary decision to which the Appeals Chamber accords deference. Such deference is based on the recognition by the Appeals Chamber of "the Trial Chamber's organic familiarity with the day-to-day conduct of the parties and practical demands of the case".⁹ The Appeals Chamber's examination is therefore limited to establishing whether the Trial Chamber has abused its discretionary power by committing a discernible error.¹⁰ 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".¹¹ The Appeals Chamber will also consider whether the Trial Chamber has given weight to extraneous or irrelevant considerations or has failed to give weight or sufficient weight to relevant considerations in reaching its decision.¹²

III. DISCUSSION

4. In its Appeal, the Prosecution submits that in denying its request for an adjournment of the proceedings pending the Trial Chamber's resolution of its Motion, the Trial Chamber applied an incorrect legal standard and erred in the exercise of its discretion.¹³ The Prosecution claims that the Trial Chamber failed to consider the totality of its submissions regarding the obstructionist behaviour and misconduct of the Accused and his associates and thus failed to appreciate the seriousness of the situation and the need to protect the integrity of the proceedings through an adjournment.¹⁴ The Prosecution asserts that the misconduct of the Accused and his associates has resulted in witness intimidation and loss of evidence.¹⁵ Accordingly, the Prosecution contends that

Brief, 4 July 2006 ("*Prlić* Decision on Cross-Examination"), p. 3; *Prosecutor v. 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. 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. 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.

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

¹⁰ *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.

¹¹ *Prlić* Decision on Allocation of Time for Defence Case-in-Chief, para. 15; Decision on Radivoje Miletić's Interlocutory Appeal, para. 6.

¹² *Prlić* Decision on Allocation of Time for Defence Case-in-Chief, para. 15.

¹³ Appeal, para. 1.

¹⁴ *Ibid.*, paras 1 and 8.

¹⁵ *Ibid.*, para. 12.

the proceedings must “be adjourned to preserve the object of the [M]otion, which is the assignment of counsel to stop the obstruction and interference with Prosecution witnesses”.¹⁶ The Prosecution further contends that failure to grant an adjournment of the proceedings while the Motion is pending “would allow the Accused to continue to reap the benefits of his misconduct and would be fundamentally unfair to the Prosecution and the international community”.¹⁷

5. Specifically, the Prosecution submits that in denying its request to adjourn the proceedings, the Trial Chamber erred on three grounds, namely: (1) the Trial Chamber erred as a matter of law by applying the wrong legal standard;¹⁸ (2) the Trial Chamber erred in concluding that it was necessary to rule on the merits of certain allegations in order for such allegations to be relevant to the decision to adjourn the proceedings;¹⁹ and (3) the Trial Chamber’s initial legal error led to errors in the exercise of its discretion.²⁰ The Appeals Chamber will address each alleged error in turn.

A. Ground 1: Legal Standard

6. The Prosecution claims that the Trial Chamber erred by applying the wrong legal standard in determining whether to grant the adjournment requested.²¹ Specifically, the Prosecution submits that the Trial Chamber based its decision on “whether the adjournment *itself* would be successful in *remedying* or *resolving* the alleged witness interference and obstruction”.²² The Prosecution argues that instead, the Trial Chamber should have considered “whether, in light of clear and convincing evidence (even more than a *prima facie* case) of ongoing obstruction and interference, the continuation of the proceedings could have an impact on its fairness and integrity of the trial”.²³ The Prosecution asserts that if continuation could have such an impact, then an adjournment is warranted to protect against further damage to the proceedings.²⁴

7. The Appeals Chamber notes that the Trial Chamber did not explicitly identify the standard it applied in the Impugned Order. However, an analysis of the Trial Chamber’s reasoning in the Impugned Order reveals that the Trial Chamber aimed to verify whether an adjournment was necessary to ensure the orderly conduct of the proceedings while the Motion was pending. In making this assessment, the Trial Chamber considered the Prosecution’s allegations that the Accused’s self-representation obstructed the course of the trial, particularly through the intimidation

¹⁶ *Ibid.*, para. 13.

¹⁷ *Ibid.*, para. 7.

¹⁸ *Ibid.*, para. 22.

¹⁹ *Ibid.*, para. 23.

²⁰ *Ibid.*, paras 24-43.

²¹ *Ibid.*, para. 22.

²² *Ibid.* (emphasis added).

²³ *Ibid.*

and harassment of witnesses, and that to allow the proceedings to continue under such circumstances would undermine the integrity of the trial.²⁵ The Trial Chamber concluded that the Motion failed to “explicitly offer grounds as to why an adjournment of the proceedings would be necessary for the orderly conduct of the proceedings, in respect of the obstructions alleged both inside and outside the courtroom”.²⁶ The Trial Chamber found that, contrary to the Prosecution’s submissions, an adjournment of the trial until the Trial Chamber’s decision on the merits of the Motion would not remedy the Accused’s alleged conduct.²⁷ In this regard, the Trial Chamber emphasized that the Prosecution recognized that the conduct of the Accused’s associates would continue despite an adjournment.²⁸ The Trial Chamber also found that to continue the trial pending the Trial Chamber’s ruling on the Motion, with respect to witnesses “not concerned by the allegations of intimidation,” would “not adversely affect the smooth running of the proceedings and the conduct of a fair and expeditious trial” as guaranteed under Articles 20(1) and 21(4)(c) of the Statute of the Tribunal (“Statute”).²⁹ Additionally, the Trial Chamber found that ordering an adjournment at this stage of the proceedings would not resolve the Accused’s alleged interference with the expeditiousness of the trial.³⁰

8. The Appeals Chamber finds that the Trial Chamber premised its findings on the same legal standard identified by the Prosecution as the correct one, namely, whether the Prosecution’s evidence established ongoing obstruction and interference such that continuation of the proceedings while the Motion is pending could impact the fairness and integrity of the trial. As noted above, the Trial Chamber concluded, after evaluating the Prosecution’s arguments, that continuation would not have such an impact. The Appeals Chamber does not accept the Prosecution’s argument that the Trial Chamber premised its decision on whether the adjournment itself would be successful in remedying or resolving the alleged witness interference and obstruction. In this regard, the Appeals Chamber notes that the Trial Chamber did not consider it necessary to rule on the merits of the Motion when deciding whether adjournment was appropriate.³¹ The Appeals Chamber accordingly dismisses the Prosecution’s first ground of appeal.

²⁴ *Ibid.*

²⁵ Impugned Order, p. 2.

²⁶ *Ibid.*, p. 3.

²⁷ *Ibid.*, p. 4.

²⁸ *Ibid.* See also Impugned Order, p. 4, fn 16, whereby the Trial Chamber recalled the measures it took to protect the integrity of the proceedings.

²⁹ Impugned Order, p. 4.

³⁰ *Ibid.*

³¹ *Ibid.*

B. Ground 2: Trial Chamber's Alleged Disregard of Prosecution's Allegations

9. Under its second ground of Appeal, the Prosecution claims that the Trial Chamber erred in concluding that it must rule on the merits of certain Prosecution allegations in order for those allegations to be relevant to the decision to grant an adjournment.³² Specifically, in the Impugned Order, the Trial Chamber noted the Prosecution's allegations that, *inter alia*, the Accused "uses a variety of obstructionist tactics to thwart the fair and expeditious conduct of the trial and uses the trial as a political forum" and "is not able to represent himself".³³ The Trial Chamber considered that these two allegations "are fundamental issues of the Motion for Assignment of Counsel on which the Chamber must deliberate" and that "it is not for the Chamber to rule on them in a decision on the adjournment of the proceedings, but rather in the decision that will be reached on the merits of the Motion".³⁴ The Prosecution claims that in adopting this approach "the Trial Chamber misses the point".³⁵ It argues that the Trial Chamber should have instead addressed whether, "accepting that there is evidence which could lead the Trial Chamber to determine that such obstructions exist [...] the continuation of the proceedings could have an impact on the fairness and integrity of the proceedings".³⁶ According to the Prosecution, the Trial Chamber's failure to adopt this legal approach caused it to erroneously dismiss factors relevant to determining whether an adjournment was warranted.³⁷

10. The Appeals Chamber is not satisfied that the Prosecution has identified any discernable error in the approach adopted by the Trial Chamber. The Appeals Chamber observes that in the Impugned Order, the Trial Chamber recalled its responsibility under Articles 20(1) and 21(4)(c) of the Statute for the fairness and expeditiousness of the trial.³⁸ This responsibility includes monitoring whether a self-represented accused continues to fulfill the requirements for maintaining self-representation during the course of the proceedings. The issues of whether the Accused is able to represent himself or obstructs the fair and expeditious conduct of the proceedings by using the trial as a political forum, therefore, are continually monitored by the Trial Chamber. As the Prosecution insists, the Trial Chamber was required to decide in the Impugned Order whether a *prima facie* consideration of the allegations submitted by the Prosecution necessitated an adjournment of the proceedings to preserve the object of the Motion pending a decision on it. Considering that the two Prosecution allegations mentioned above were grounded on evidence of

³² Appeal, para. 23.

³³ Impugned Order, p. 4.

³⁴ *Ibid.*

³⁵ Appeal, para. 23.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Impugned Order, p. 4. See also Appeal, para. 38.

the Accused's conduct *in court*,³⁹ the Appeals Chamber considers that the Trial Chamber acted within its discretion when it declined to make a renewed *prima facie* evaluation of such allegations. As correctly pointed out by the Trial Chamber, this determination is without prejudice to the Trial Chamber's decision on the merits of the Motion, following a thorough examination of the Prosecution's arguments underlying it. In light of the foregoing, the Appeals Chamber dismisses the Prosecution's second ground of Appeal.

C. Ground 3: Alleged Errors in the Trial Chamber's Exercise of Discretion

11. Under its third ground of appeal, the Prosecution argues that the Trial Chamber erred in its "entire approach" to the issue of whether an adjournment was required pending its resolution of the Motion.⁴⁰ The Prosecution claims that this error of law resulted in additional errors in the Trial Chamber's exercise of its discretion.⁴¹ Specifically, the Prosecution asserts that the Trial Chamber erred by: "disregarding the evidence that establishes a *prima facie* campaign of obstructionism that is continuing both inside and outside the courtroom"; "disregarding the evidence that demonstrates that the Accused and his associates are manipulating witnesses and interfering with their evidence"; "disregarding the intentional and wrongful disclosure of confidential information"; "disregarding the Accused's continued use of the proceedings for a political, non-judicial purpose"; and "breaching its obligation to uphold the integrity of the proceedings and the reputation of the International Tribunal in the face of the Accused's misconduct".⁴²

1. Inadequate consideration of the Accused's in-court misconduct

12. The Prosecution submits that its Motion provided "clear and convincing evidence of a pattern of obstruction and witness interference that threaten the conduct of the proceedings and the integrity and ability to accomplish the mandate of the International Tribunal".⁴³ The Prosecution argues that the Trial Chamber erred by failing to take into account the allegations and supporting evidence contained in the Motion.⁴⁴ The Prosecution claims that a central issue in the Motion was "whether the Accused's witness interference and in-court behaviour will undermine the integrity of the trial proceedings to such an extent that the Trial Chamber would be unable to reach a judgment on the merits".⁴⁵ The Prosecution submits that while the Trial Chamber was correct to find that it need not decide the merits of the Motion to determine whether an adjournment was warranted, it

³⁹ Motion, paras 30-44.

⁴⁰ Appeal, para. 24.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*, para. 28.

⁴⁴ *Ibid.*, paras 28-31.

erred by failing to consider the allegations relevant to determining whether or not an adjournment was justified, pending the Motion.⁴⁶ The Prosecution reasons that the question as to whether an adjournment was necessary “cannot be determined in isolation from the evidence supporting the allegations of obstruction and witness interference”.⁴⁷

13. In the Impugned Order, the Trial Chamber considered that the Prosecution’s allegation concerning obstruction outside of Court was not directed at all witnesses that the Prosecution intended to call and as such it was possible for the Prosecution to provide a schedule of witnesses and continue with the presentation of its case. The Trial Chamber further noted the Prosecution’s allegations that inside the Court, the Accused: “(i) disrespects the Rules of Procedure and Evidence of the Tribunal (“Rules”) and misuses confidential information; (ii) refuses to follow the Chamber’s orders; (iii) intimidates and slanders witnesses; (iv) insults and makes baseless attacks on the integrity of the Tribunal and its organs; (v) injects false and fanciful allegations into the trial; (vi) uses a variety of obstructionist tactics to thwart the fair and expeditious conduct of the trial and uses the trial as a political forum, and (vii) is not able to represent himself”.⁴⁸ The Trial Chamber nevertheless considered that “while not ruling on the merits of the Motion for Assignment of Counsel, or examining allegations (i) to (v) above of obstruction by the Accused and the possible remedies [...] the adjournment of the proceedings would in no way remedy the Accused’s alleged conduct”.⁴⁹ The Trial Chamber further considered with regard to items (vi) and (vii) above, “which are fundamental issues of the Motion for Assignment of Counsel on which the Chamber must deliberate”, that “it is not for the Chamber to rule on them in a decision on the adjournment of the proceedings, but rather in the decision that will be reached on the merits of the Motion”.⁵⁰ The Trial Chamber then considered that the Prosecution had “failed to provide a valid reason requiring at this stage, the adjournment of the proceedings” and accordingly denied its request.⁵¹

14. The Appeals Chamber is not satisfied that the Trial Chamber erred by failing to take into account the nature of the Prosecution’s allegations. As discussed above, the Trial Chamber clearly took those allegations into account, without considering their merits, and found that the Prosecution had failed to establish that an adjournment was a necessary measure pending a decision by the Trial Chamber on the merits of the Motion. Underpinning the Impugned Order was the fact that the Prosecution’s Motion did not pertain to all of its witnesses, and therefore, it could call those not

⁴⁵ *Ibid.*, para. 30.

⁴⁶ *Ibid.*, para. 31.

⁴⁷ *Ibid.*

⁴⁸ Impugned Order, p. 4.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

affected.⁵² The Trial Chamber considered that the Prosecution had not shown that an adjournment would remedy the conduct of the Accused, and in this respect the Trial Chamber relied upon Prosecution's submission that despite an adjournment, the efforts of the Accused's associates to obstruct the proceedings would continue.⁵³ The Trial Chamber further considered that it had the authority to control the conduct of the Accused in court, and upon that basis, an adjournment was not necessary. It observed that the continuation of the trial by calling those witnesses not alleged to have been the subject of intimidation would "not adversely affect the smooth running of the proceedings and the conduct of a fair and expeditious trial for which the Chamber is responsible under Articles 29(1) and 21(4)(c) of the Statute of the Tribunal".⁵⁴ In light of the foregoing, the Appeals Chamber is satisfied that the Trial Chamber thoroughly considered the impact that continuation of the proceedings would have on the integrity of those proceedings.⁵⁵ Accordingly, the Appeals Chamber is not satisfied that the Trial Chamber erred in the exercise of its discretion by failing to accord due weight to relevant considerations concerning the Accused's alleged misconduct in court and its effect on the integrity of the proceedings.

2. Inadequate consideration of the obstructionist behaviour of the Accused's Associates

15. The Prosecution claims that the Trial Chamber erred by concluding that the proceedings could be continued pending its resolution of the Motion by calling Prosecution witnesses that had not been identified by the Prosecution in its Motion.⁵⁶ The Prosecution argues that this conclusion was in error "because it overlooked the breadth of the campaign to obstruct the proceedings, which extends beyond the individual witnesses identified in the motion to endanger the integrity of the proceedings as a whole".⁵⁷ Accordingly, the Prosecution argues that the Trial Chamber should have considered the proceedings as a whole and not assumed that some Prosecution witnesses could be called.⁵⁸

16. The Appeals Chamber is not satisfied that the Trial Chamber erred by concluding that the proceedings could be continued by calling Prosecution witnesses who the Prosecution had not identified as having been subject to the alleged campaign of obstruction and witness intimidation. Neither is the Appeals Chamber satisfied that the Trial Chamber failed to consider the proceedings as a whole in reaching this conclusion. The Appeals Chamber notes that for the Trial Chamber to

⁵¹ *Ibid.*, pp. 4-5.

⁵² *Ibid.*, p. 3.

⁵³ *Ibid.*, p. 4.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, pp. 3-4.

⁵⁶ Appeal, para. 32.

⁵⁷ *Ibid.*

have granted an adjournment of the proceedings, that course must have been balanced against the right of an accused to expeditious proceedings. In this case, the submissions of the Prosecution were not such as to suggest that an adjournment pending resolution of the Motion was the only option open to the Trial Chamber. The Appeals Chamber further notes that, in its Appeal, the Prosecution does not challenge the finding of the Trial Chamber that its Motion does not pertain to all of the Prosecution’s witnesses. Accordingly, the Appeals Chamber finds that it was reasonable for the Trial Chamber to conclude that the Prosecution could continue the presentation of its case by calling witnesses who the Prosecution had not identified as having been subject to the alleged campaign of intimidation.

3. Erroneous evaluation of the impact of an adjournment on the Accused’s in-court conduct

17. In the Impugned Order the Trial Chamber considered “that the adjournment of the proceedings would in no way remedy the Accused’s alleged conduct, especially since the Prosecution itself submits that the efforts of the associates of the Accused would continue despite an adjournment of the trial”.⁵⁹ The Trial Chamber further considered “that an adjournment of the proceedings at this stage would in no way resolve the Accused’s alleged interference with the expeditiousness of the trial”.⁶⁰ The Prosecution claims that this last finding “is a patently incorrect conclusion: an adjournment would necessarily halt the Accused’s in-court obstruction and misbehaviour by depriving him of the forum”.⁶¹

18. The Appeals Chamber finds that the Trial Chamber did not provide sufficient reasoning in support of the above finding. However, having regard to the totality of the Trial Chamber’s findings in the Impugned Order, and in light of the Appeals Chamber’s findings in the present decision, the Appeals Chamber considers that the failure of the Trial Chamber to provide sufficient reasoning does not constitute a reversible error in terms of the established jurisprudence.⁶²

4. Erroneous evaluation of the impact of an adjournment on the Accused’s out of court actions

19. The Prosecution submits that if the obstructionist efforts by the associates of the Accused would continue regardless of an adjournment, then there were grounds for the Trial Chamber to

⁵⁸ *Ibid.*

⁵⁹ Impugned Order, p. 4.

⁶⁰ *Ibid.*

⁶¹ Appeal, para. 33. The Appeals Chamber notes that the Prosecution misquoted the Impugned Order when it challenged the Trial Chamber’s alleged holding that an adjournment “would not remedy the Accused’s behaviour in court” (Appeal, para. 33). There is no such a statement in the Impugned Order.

⁶² *Supra*, para. 3.

take additional interim action against those associates to prevent further harm.⁶³ The Prosecution further argues that the Trial Chamber failed to consider that an adjournment “disrupts that pattern of conduct by the Defence associates of increasing the pressure on witnesses as their court date approaches”.⁶⁴

20. The Appeals Chamber is not satisfied that the Prosecution has established that the Trial Chamber erred in concluding that an adjournment would not impact the Accused’s out of court actions. The Appeals Chamber observes that the Prosecution specifically requested the Trial Chamber to rule upon its Motion expeditiously, claiming that “(e)ven if the proceedings are adjourned pending a determination of this motion, the efforts of the associates are ongoing”.⁶⁵ The Appeals Chamber also notes the Prosecution’s allegation in its Motion that the Accused had been involved in a persistent campaign of obstruction which “started even before the start of this trial”.⁶⁶ Additionally, the Appeals Chamber notes that the Prosecution at no time requested the Trial Chamber to consider taking additional measures against the Accused’s associates. In light of the foregoing, the Appeals Chamber finds no error in the determination of the Trial Chamber that an adjournment would not impact the out of court behaviour of the Accused.

5. The Trial Chamber’s erroneous evaluation of its authority over the proceedings and failure to consider evidence of obstruction

21. The Prosecution claims that the conclusion of the Trial Chamber that “continuation of the trial with witnesses not concerned by the allegations of intimidation, does not adversely affect the smooth running of the proceedings and the continuation of a fair and expeditious trial for which the Trial Chamber is responsible under Articles 20(1) and 21(4)(c)”⁶⁷ may be interpreted as meaning that the Trial Chamber has the authority under the cited Articles to control the conduct of the Accused.⁶⁸ The Prosecution argues that by considering its authority under these Articles of the Statute “in the abstract”, the Trial Chamber failed to give weight or sufficient weight to existing evidence that, despite the efforts of the Trial Chamber to control the behaviour of the Accused, the Accused has succeeded in undermining the integrity of the court.⁶⁹

⁶³ Appeal, para. 36

⁶⁴ *Ibid.*, para. 37.

⁶⁵ Motion, para. 135.

⁶⁶ *Ibid.*, para. 14.

⁶⁷ Appeal, para. 38.

⁶⁸ *Ibid.*, paras 38-39.

⁶⁹ *Ibid.*, paras 39-40.

22. The Appeals Chamber is not satisfied that the Trial Chamber erred in the exercise of its discretion by giving undue weight to its authority to control the conduct of its proceedings in a fair and expeditious manner pursuant to Articles 21(1) and 21 (4)(c). For the reasons discussed earlier in the present decision,⁷⁰ the Appeals Chamber finds that the Trial Chamber acted appropriately when it declined to rule on the merits of the Prosecution's allegations in its Motion and that it was within the Trial Chamber's discretion to decide at this stage of the proceedings that to continue the trial with witnesses not concerned with allegations of intimidation would not adversely impact the proceedings.

6. Excessive weight given to the harm of an adjournment

23. The Prosecution submits that the Trial Chamber gave undue weight to its consideration that an adjournment would not remedy the alleged interference with the Accused in the expeditious conduct of the trial, particularly in light of his long term detention. The Prosecution argues that the delay caused in the conduct of the trial is only one factor and that the Trial Chamber should have balanced this factor against other factors, which militated in favour of granting the adjournment, including in particular the need to protect witnesses from future intimidation and to preserve key evidence.⁷¹

24. The Appeals Chamber is not satisfied that the Prosecution has established that the Trial Chamber placed undue weight on the delay that would be caused by granting an adjournment. As discussed above,⁷² the Trial Chamber appropriately considered a variety of factors when determining whether to exercise its discretion in favour of adjournment. Among others, the Trial Chamber considered there was an alternative solution to the adjournment of the proceedings, namely, to call Prosecution witnesses not identified by the Prosecution as being subject to the alleged campaign of witness harassment. The Appeals Chamber finds no error on the part of the Trial Chamber in adopting this approach.

⁷⁰ *Supra*, paras 9-10.

⁷¹ Appeal, paras 41-43.

⁷² *Supra*, paras 7-22.

IV. DISPOSITION

25. On the basis of the foregoing, the Appeals Chamber **DISMISSES** the Appeal.

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

Done this 16th day of September 2008,
At The Hague,
The Netherlands.



Judge Fausto Pocar
Presiding