



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: 23 October 2008
Original: English

IN THE APPEALS CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision of: 23 October 2008

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

PUBLIC

**DECISION ON URGENT PROSECUTION MOTION FOR
CLARIFICATION OF THE APPEALS CHAMBER DECISION
ON APPELLANT MOMČILO KRAJIŠNIK'S MOTION TO
CALL RADOVAN KARADŽIĆ PURSUANT TO RULE 115**

Counsel for the Prosecution:

Mr. Peter Kremer QC

The Appellant:

Mr. Momčilo Krajišnik

Amicus Curiae:

Mr. Colin Nicholls QC

Counsel for the Appellant on the matter of JCE:

Mr. Alan M. Dershowitz

Mr. Nathan Z. Dershowitz

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);

BEING SEIZED of the “Urgent Prosecution Motion for Clarification of the Appeals Chamber Decision on Appellant Momčilo Krajišnik’s Motion to Call Radovan Karadžić Pursuant to Rule 115” (“Motion”), filed on 21 October 2008, wherein the Prosecution seeks clarification of the meaning of the “summary of facts” upon which Radovan Karadžić will testify in the course of the evidentiary hearing on 5 November 2008 (“Evidentiary Hearing”), which the Appeals Chamber ordered the Appellant Momčilo Krajišnik (“Appellant”) to file by 27 October 2008 in its “Decision on Appellant Momčilo Krajišnik’s Motion to Call Radovan Karadžić Pursuant to Rule 115” (“Decision”);

RECALLING that, in the Decision, the Appeals Chamber ordered the Appellant to file a “summary of facts” upon which Radovan Karadžić will testify in order to give the Prosecution “an adequate opportunity to prepare for its cross-examination of Mr. Karadžić” during the Evidentiary Hearing;¹

CONSIDERING that the expeditiousness of these proceedings is advanced by a clarification of the meaning of the “summary of facts” referred to in the Decision;

CONSIDERING further that a decision by the Appeals Chamber on the Motion absent a response from the Appellant will not cause prejudice to the Appellant as the decision of the Appeals Chamber serves to clarify the Decision of the Appeals Chamber;

NOTING the Prosecution’s submission that only “a detailed summary of the specific facts and the content of [Radovan] Karadžić’s anticipated evidence”, as opposed to a mere “list of topics” on which he is to testify, will allow it to adequately prepare its cross-examination of Radovan Karadžić;²

CONSIDERING that the Decision allowed the Appellant to call Radovan Karadžić as a witness pursuant to Rule 115 of the Rules of Procedure and Evidence (“Rules”) to give evidence relating to paragraphs 176-182, 188-189, 893, 987, 994, 1001-1005, 1013, 1078-1119, 1121, and 1123-1124 of the Trial Judgement;³

¹ Decision, para. 21.

² Motion, paras 3, 5 and 9.

³ Decision, para. 20, with reference to *Prosecutor v. Momčilo Krajišnik*, IT-00-39-T, Judgement, 27 September 2006 (“Trial Judgement”).

CONSIDERING that, in order to provide the Prosecution with an adequate opportunity to prepare its cross-examination of Radovan Karadžić at the Evidentiary Hearing, while the Appellant is not required to set out in the summary of the facts each and every detail of Radovan Karadžić's anticipated testimony, the summary must precisely indicate the specific factual findings in the abovementioned paragraphs of the Trial Judgement on which Radovan Karadžić is expected to testify, and the main content of his anticipated testimony in relation to these factual findings;

HEREBY GRANTS the request for clarification in the Motion; and

ORDERS the Appellant to include the following information in his summary of the facts on which Radovan Karadžić will testify during the Evidentiary Hearing:

1. The specific factual findings in paragraphs 176-182, 188-189, 893, 987, 994, 1001-1005, 1013, 1078-1119, 1121, and 1123-1124 of the Trial Judgement on which Radovan Karadžić is expected to testify; and
2. The main content of Radovan Karadžić's anticipated testimony in relation to those factual findings, in particular indicating the new facts and additional evidence Radovan Karadžić is anticipated to give which could have an impact on the verdict.

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



Judge Fausto Pocar
Presiding Judge

Dated this twenty-third day of October 2008,
At The Hague,
The Netherlands.

[Seal of the Tribunal]