



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: 18 July 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

Order of: 18 July 2008

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

PUBLIC

SCHEDULING ORDER FOR APPEALS HEARING

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 (“Appeals Chamber” and “Tribunal”, respectively);

BEING SEIZED OF the appeals lodged by the Office of the Prosecutor (“Prosecution”) and by Momčilo Krajišnik (“Appellant”) against the Judgement rendered in this case by Trial Chamber I on 27 September 2006;¹

RECALLING that the Appeals Chamber invited *Amicus Curiae* to assist the Tribunal by putting forth arguments in the interests of the Appellant Momčilo Krajišnik;²

CONSIDERING that the briefing on appeal in this case is complete;

PURSUANT to Rule 114 of the Rules of Procedure and Evidence of the Tribunal, which provides that “[a]fter the expiry of the time-limits for filing the briefs provided for in Rules 111, 112 and 113, the Appeals Chamber shall set the date for the hearing and the Registrar shall notify the parties”;

HEREBY ORDERS that the hearing in the present appeals shall take place on Thursday, 21 August 2008, in Courtroom I, and **INFORMS** the parties that the timetable for the hearing shall be as follows:

¹ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Judgement, 27 September 2006; **Prosecution’s Appeal**: Prosecution’s Notice of Appeal, 26 October 2006; The Prosecution’s Appeal Brief, 27 November 2006; Counsel’s Response to the Prosecution’s Appeal Brief, 12 February 2007 [*Amicus Curiae*’s Response]; Response to Prosecution’s Appeal Brief against the Judgement of the ICTY in the Case of Momčilo Krajišnik, dated 12 February 2007, the English translation having been filed on 20 February 2007 [Krajišnik’s Response]; The Prosecution’s Reply Brief, 22 February 2007 [Reply to *Amicus Curiae*]; The Prosecution’s Second Reply Brief, 27 February 2007 [Reply to Krajišnik]; **Mr. Krajišnik’s Appeal**: Krajišnik’s Notice of Appeal, dated 12 February 2007, the English translation having been filed on 20 February 2007; Appeal by Momčilo Krajišnik to the ICTY Judgement of 27 September 2006, dated 15 January 2008 (Confidential), a final public redacted version having been filed in English on 28 February 2008 (“Krajišnik’s Appeal Brief”); Prosecution Response to Appeal by Momčilo Krajišnik to the ICTY Judgement of 27 September 2006, filed confidentially on 12 March 2008, a public version having been filed in English on 18 March 2008 (“Prosecution’s Response to Krajišnik”); Reply to Prosecution Response to Appeal by Momčilo Krajišnik to the ICTY Judgement of 27 September 2006, dated 14 May 2008, the English translation having been filed on 26 May 2008 (“Krajišnik’s Reply”); **Supplementary Brief of Mr. Dershowitz**: Brief on Joint Criminal Enterprise on behalf of Momčilo Krajišnik, dated 4 April 2008 but filed on 7 April 2008 (“Dershowitz Brief”); Addendum to the Brief on Joint Criminal Enterprise of Alan M. Dershowitz, Submitted Pursuant to the Decision and Order Dated 11 April 2008, 16 April 2008; Response to Brief on Joint Criminal Enterprise on behalf of Momčilo Krajišnik, 25 April 2008 (“Prosecution’s Response to Dershowitz”).

² Decision on Momčilo Krajišnik’s Request to Self-Represent, on Counsel’s Motions in Relation to Appointment of *Amicus Curiae*, and on the Prosecution Motion of 16 February 2007, 11 May 2007, para. 19. *Amicus Curiae*’s Notice of Appeal, 8 June 2007; *Amicus Curiae*’s Appellate Brief, 3 August 2007 (Confidential (corrected on 14 January 2008); public and redacted version filed on 31 August 2007) (“*Amicus Curiae*’s Appeal Brief”); Prosecution’s Response to *Amicus Curiae*’s Appellate Brief, 12 September 2007 (Confidential; public redacted version filed on 14 September 2007) (“Prosecution’s Response to *Amicus Curiae*”); *Amicus Curiae*’s Reply to Prosecution’s Response to *Amicus Curiae*’s Appellate Brief, 26 September 2007 (Confidential; public and redacted version filed on 24 June 2008).

08:30 – 08:45 Introductory Statement by the Presiding Judge (15 minutes)

Mr. Krajišnik's Appeal:

08:45 – 10:15 Submissions of the Appellant (1 hour and 30 minutes)

10:15 – 10:30 Pause (15 minutes)

10:30 – 11:00 Continued submissions of the Appellant (30 minutes)

11:00 – 12:00 Response of the Prosecution (1 hour)

12:00 – 12:15 Pause (15 minutes)

12:15 – 13:15 Continued response of the Prosecution (1 hour)

13:15 – 13:45 Reply of the Appellant (30 minutes)

13:45 – 15:15 Pause (1 hour and 30 minutes)

Amicus Curiae's Appeal:

15:15 – 15:45 Submissions of *Amicus Curiae* (30 minutes)

15:45 – 16:15 Response of the Prosecution (30 minutes)

16:15 – 16:30 Reply of *Amicus Curiae* (15 minutes)

16:30 – 16:45 Pause (15 minutes)

Prosecution's Appeal:

16:45 – 17:05 Submissions of the Prosecution (20 minutes)

17:05 – 17:25 Response of Mr. Krajišnik (20 minutes)

17:25 – 17:30 Reply of the Prosecution (5 minutes)

Personal Statement of Mr. Krajišnik (10 minutes - Optional)

INFORMS the Appellant that, should he wish Mr. Dershowitz to present oral submissions on his behalf with regard to the specific issue of Joint Criminal Enterprise, these submissions are to be made within the time allotted for his appeal;

CONSIDERING the need to ensure that the time allocated for the appeal hearing is used as efficiently as possible;

EMPHASISING that the present order in no way expresses the Appeals Chamber's view on the merits of the appeals, which will be determined in the Appeal Judgement;

HEREBY INFORMS the Parties that during the course of the appeal hearing, and without prejudice to any other matter which the Parties or the Appeals Chamber may wish to address, the Prosecution is invited to develop its submissions with regard to Mr. Krajišnik's link to the principal perpetrators of the crimes as follows:

The Appellant and *Amicus Curiae* submit that the Trial Chamber erred in imputing crimes to Mr. Krajišnik without establishing a link between him and the principal perpetrators of the crimes charged (see, for example, Krajišnik's Appeal Brief, paras 21-24; Krajišnik's Reply, paras 12-15; Dershowitz Brief, paras 62-64; *Amicus Curiae*'s Appeal Brief, paras 173-183). In particular, *Amicus Curiae* argues that the Trial Chamber failed to make crucial findings on imputation of crimes committed by non-JCE members as it "failed to go through the required process of applying the law to the evidence and satisfying itself that each of the crimes of which the Appellant was convicted could be 'imputed to at least one member of the JCE'".³ The Prosecution responds to this that the Trial Chamber's linkage of crimes to the Appellant was sufficient and that "in Part 3 – Administration of Bosnian-Serb Republic –, and subsections 6.4 to 6.16 of Part 6 – The Accused Responsibility –, the Chamber dealt extensively with the structures linking the JCE members to the principal perpetrators".⁴

If the Prosecution considers that the Trial Chamber was required to establish a specific link between each of the crimes and the Appellant, the Prosecution is invited to identify this link, *i.e.* identify the relevant findings in the Trial Judgement and/or supporting evidence in the record showing that each of the crimes for which the Appellant has been found liable was committed by a JCE member or could be imputed to a JCE member.

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

Dated this 18th day of July 2008,
At The Hague, The Netherlands.



Judge Fausto Pocar
Presiding Judge

[Seal of the Tribunal]

³ *Amicus Curiae*'s Appeal Brief, para. 181. See also *Amicus Curiae*'s Reply to the Prosecution's Response to *Amicus Curiae*'s Appellate Brief (Confidential), 26 September 2007, para. 62.

⁴ Prosecution's Response to *Amicus Curiae*, para. 115. See also *ibid.*, para. 118; Prosecution's Response to Krajišnik, paras 82-89; Prosecution's Response to Dershowitz, paras 38-40.