

(6395 - 6414)

THE SPECIAL COURT FOR SIERRA LEONE Case No. SCSL-2004-16-PT

BEFORE:

Judge Teresa Doherty, Presiding
 Judge Julia Sebutinde
 Judge Richard Lissack

Registrar: Mr Robin Vincent

Date Filed: 21st February 2005

The Prosecutor

-v-

ALEX TAMBA BRIMA also known as TAMBA ALEX BRIMA also known as GULLIT

BRIMA BAZZY KAMARA also known as IBRAHIM BAZZY KAMARA
 also known as ALHAJI IBRAHIM KAMARA

And

SANTIGIE BORBOR KANU ALSO KNOWN AS 55 also known as FIVE - FIVE also known
 as SANTIGIE KHANU also known as SANTIGIE BOBSON KANU also known as BORBOR
 SANTIGIE KANU

CASE NO. SCSL-2004-16-PT

BRIMA – REPLY TO PROSECUTION COMBINED RESPONSE TO DEFENCE REQUEST
 FOR AN ORDER NOT TO DISCLOSE PHOTOGRAPHY, VIDEO AND AUDIO
 RECORDING OF THE TRIAL TO THE PUBLIC AND/OR THIRD PARTIES

Office of the Prosecutor

Luc Coté
 Robert Petit

SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT MANAGEMENT	
21 FEB 2005	
NAME	NEIL GIBSON
SIGN	<i>Neil Gibson</i>
TIME	16:48

Defence Counsel

Kevin Metzger
 Glenna Thompson
 Kojo Graham

I. BACKGROUND

1. On 17th February 2005, the Prosecution filed a combined response to the Several Requests by the 3 accused for an Order not to Disclose Photography, Video and Audio Recording of the Trial to the Public and/or Third Parties. The chronology in respect of this matter is contained in Paragraph I(1)¹ of the said response.
2. The Defence, on behalf of Tamba Brima, hereby files this reply to the said Prosecution Combined Response.

II. ARGUMENT

- A The prosecution will suffer no prejudice whatsoever from an order preventing the taking and disclosure of images or audio recordings of the Accused.
3. The Prosecution's reliance on the decision in *The Prosecutor Against Augustine Gbao, SCSL-2003-09-I*, Order on the Urgent Request for Direction on the Time to Respond to and/or an Extension on Time for the filing of a Response to the Prosecution Motion² is, respectfully misconceived. The said Order deals, as it states, with an urgent request relating to time as regards filing of documents and suspension of any ruling on the issue of Protective Measures and not with the issue that is at the foundation of the Defence Application.
 4. The Prosecution further proposes to rely on transcripts pertaining to the trial of *The Prosecutor Against Sesay, Kallon and Gbao, SCSL-2004-15-T*³. The passages from the transcript referred to relate to complaint about the Prosecution opening in the said case and the Chamber's assurance that it will not be affected by “..emotionalism and hyperbolic statements..” The Defence respectfully

¹ Prosecution Combined Response to Defence Request for an Order not to Disclose photography, Video and Audio Recording of the Trial to the Public and/or Third Parties.

² 16th May 2003, page 2.

³ 5th July 2004, page 32, lines 28-31; page 35, lines 21-26

submits that none of the said references undermine its Application, indeed the same transcript, at page 33, lines 3-6, His Honour Judge Thompson reminds the Prosecution that “in the interests of justice, it is whether the Prosecution have proved the counts that they allege and have brought evidence in support of these counts beyond a reasonable doubt”. Furthermore, we submit, a careful perusal of the said transcript and proper understanding of the matters debated and aired tends to suggest that the Chamber will be looking for evidence provided by the Prosecution to support its case and not be swayed by fanciful statements.

5. It is respectfully submitted that the case of *Tadic*⁴, referred to in paragraph II(A)(7) does not simply state that little weight is given to mere dock identification. Respectfully that case discussed the issue of identification in a case that was already ongoing and the identification procedure used by the Prosecution prior to witnesses attending the tribunal to give their evidence.
 - i Here, it is the very considerable potential impact referred to in paragraph 544⁵ that the Defence is seeking to avoid by requesting an order in the terms of our application of 11th February.
 - ii Here, the Chamber has the opportunity of limiting exposure of the Accused’s image before and during the trial in order to prevent tainted evidence which it would be impossible to assess from the witness box.
 - iii It is submitted that, in the light of the Prosecution’s failure, despite investigating this case for several years to date, to utilise any approved identification procedure, the Accused should not now be unduly prejudiced by allowing the witnesses to come into the witness box and simply point out a person whom the

⁴ The Prosecutor Against Tadic, IT-94-1, Judgement, 7 May 1997, paragraphs 542- 552, with particular reference to paragraphs 544 onwards

⁵ Tadic op.cit

said witness has not hitherto been given an opportunity to identify nor, in most instances, has he/she described in any detail.

- iv Paragraph 547 of the *Tadic* decision deals with identification generally and in particular the procedure that was being considered. It is respectfully submitted that the whole point of such a procedure is to “*afford witnesses a wholly unbiased opportunity to identify the accused..*”, thus preserving the right to a fair trial. Respectfully, if anything, this authority actually underlines the burden which rests on the Prosecution of proving the Accused’s guilt even as regards identification.
 - v The Defence further relies on the fact that in the *Tadic* case, the ruling, encapsulated in paragraph 552, dealt with the identification procedure itself, as opposed to a request to prevent the Prosecutor from seeking a dock identification, or the prohibition on publication of images.
6. As regards Paragraph 8 and 9 of the prosecutions Response, the Defence for Tamba Brima cannot understand the point being made. The Order we seek relates to images and sound being broadcast on a general basis and does not prevent reporting of the trial. It is respectfully submitted that cross-examination of a purportedly identifying witness is not helpful if the witness has been exposed to images of the Accused or the sound of his voice, without any attempt at utilising proper identification procedure.
 7. It is further respectfully submitted that the case of *Mejakic*⁶ does not deal with the matter before this Chamber. The Defence seeks to prevent prejudice by preventing the publication of images and sound to the public at large, with a view to securing a fair trial for the accused as regards the issue of identification. Were the Chamber inclined to accede to the Defence Requests, it would have the

⁶ The Prosecutor v. Mejakic, IT-02-65-PT, Decision on Dusko Knevic’s Request Pursuant to Rule 81(D), 28 July 2004.

effect of reducing, as opposed to increasing the potential for pre-trial, and intra-trial prejudice to the Accused. The order will have the effect of preventing the Accused's image from being seen inadvertently, without adequate control or procedure by potential and putative witnesses. Indeed, it is because the impact of pre-trial media coverage is a factor that is to be taken into account at trial that the Accused seeks this order as his trial is about to start.

B The Defence request does not infringe the right to a fair trial

8. It is respectfully submitted that the Defence request allows for the principle of a fair and public trial. It will be the case, from time to time, that the rights of the accused to a fair trial will compete with the right of the public to be informed of the proceedings, but, respectfully the public can be informed without the provision of images of the Accused being broadcast to all and sundry. Indeed, Rule 90 of the governing Rules of Procedure provides that a witness who has not yet testified may not be present without leave of the Trial Chamber when the testimony of another witness is given⁷. It is submitted that this the prosecution's opposition to the Defence request is analogous to asking the Chamber to allow witnesses who have not yet given evidence to view images and hear recordings of the Accused in breach of the said Rule 90(E).
9. Respectfully the Prosecution's submission in relation to Rule 81(D) is misconceived. The said rule provides for the Trial Chamber to authorise Photography, video-recording or audio-recording, otherwise than by the Registry at its discretion. Hence it is submitted that this is a provision to deal with an extra-ordinary event to be considered at the time of any such request, not a blanket provision. Therefore, any order requested by the Defence would not prevent the application by a third party to the Chamber for permission

⁷ Rule 90 (E), amended 7th March 2003

pursuant to Rule 81(D), at which stage the Trial Chamber, will be entitled to apply its discretion at the relevant stage whilst fully aware of the prevailing circumstances.

C The Defence request is not broad

10. Paragraph 15 of the Prosecution's response amounts to illogical construction or wilful misinterpretation of the Defence request. It is submitted that the relief sought is clearly formulated in Paragraph 4 of the Brima Request and clearly relates to third parties, other than the Registry. In so far as the Registry is concerned it is accepted that there is a duty under Rule 81(A) to record the proceedings and preserve evidence obtained during the proceedings. Respectfully, paragraph 4(ii) of the Brima Request, it is submitted, makes it clear that it is the dissemination to third parties outside the trial process that is being address with a particular emphasis on preventing the unwitting, or otherwise, disclosure of images to potential or putative witness that might impinge on the fairness of the trial by raising the sceptre of staged identifications.
11. It is respectfully submitted that all the prosecution fears can adequately be dealt with through the use of transcripts, whether or not these are created through the registry using video or audio equipment. There is no need however, for the same images and sounds to be broadcasted outside the ambit of the proceedings itself.

III. CONCLUSION

12. The Honourable Trial Chamber is therefore respectfully urged to GRANT the Defence request and to make an order in the terms sought in paragraph 4 of the Defence request.

Respectfully submitted.

Settled on this 18th Day of February 2005

P.P. Earls-Hamides

Kevin A. Metzger
Lead Counsel

List of Authorities

1. Prosecutor v Augustine Gbao - SCSL – 2003 – 09 – 1 - 16th May 2003.
2. Prosecutor v Tadic – IT – 94 – 1- - 7th May 1997.
3. Prosecutor v Mejakic – IT – 02 – 65 – PT - 28th July 2004.

1. The Prosecutor v. Augustine Gbao - 2003- 1-16th May 2003.

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SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995
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Before: Judge Bankole Thompson
Registry: Mr. Robin Vincent
Decision of: 16th May 2003

THE PROSECUTOR

Against

AUGUSTINE GBAO also known as AUGUSTINE BAO

CASE NO. SCSL-2003-09-I

Order on the Urgent Request for Direction on the Time to Respond to and/ or an Extension on Time for the Filing of a Response to the Prosecution Motions

And

The Suspension of any Ruling on the Issue of Protective Measures that may be Pending before other Proceedings before the Special Court as a Result of Similar Motions Filed to those that have been Filed by the Prosecution in this Case

The Office of the Prosecutor:
Mrs. Brenda Hollis

The Counsel for the Accused:
Mr. Andreas G. O'Shea
Mr. Ben Olden

SPECIAL COURT FOR SIERRA LEONE
COURT RECORDS
RECEIVED
NAME: ELMIRA UOELHE
SIGNATURE: [Signature]

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THE SPECIAL COURT FOR SIERRA LEONE ("the Special Court"),

SITTING AS Judge Bankole Thompson, designated by the President of the Special Court according to Rule 28 of the Rules of Procedure and Evidence ("the Rules");

HAVING RECEIVED the Urgent Request for Direction on the Time to Respond to and/or an Extension on Time for the Filing of a Response to the Prosecution Motions and the Suspension of any Ruling on the Issue of Protective Measures that may be Pending before other Proceedings before the Special Court as a Result of Similar Motions Filed to those that have been Filed by the Prosecution in this Case of the 12th May 2003 ("the Defence Request");

NOTING the Prosecution's Response to the Urgent Request for Direction on the Time to Respond to and/or an Extension on Time for the Filing of a Response to the Prosecution Motions and the Suspension of any Ruling on the Issue of Protective Measures that may be Pending before other Proceedings before the Special Court as a Result of Similar Motions Filed to those that have been Filed by the Prosecution in this Case of the 14th May 2003;

CONSIDERING that the Defence Request avers, *inter alia*, that the Counsel for the Accused has not been served with both the Urgent Prosecution Motion to allow Disclosure to the Registry and to Keep Disclosed Material under Seal until Appropriate Protective Measures are in Place of the 7th May 2003 and the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure of the 7th May 2003 ("the Prosecution Motions");

CONSIDERING FURTHER that the Defence Request seeks that the Accused be granted 14 days from the date of receipt of the Prosecution Motions for the filing of a response to such motions and, moreover, that no rulings on protective measures be made at this time in other proceedings before the Special Court;

NOTING, nevertheless, that the Proof of Service of the Court Management clearly indicates that the Team of the Counsel of the Accused has been served with the above mentioned Prosecution Motions through the Assistant of the Counsel for the Accused, Mr. Ben Holden, on the 7th May 2003;

NOTING that pursuant to Rule 7 of the Rules the time-limits for filing a response to the Prosecution Motions has expired;

CONSIDERING that the subject of the Prosecution Motions, and with particular reference to the protective measures for witnesses and victims, albeit of extreme importance, is a common and accepted procedure in international criminal law;

DUE to the materiality of this subject of the Motions to future trial proceedings, the Special Court pursuant to its authority under Rule 7 (A) of the Rules may order an extension of a time limit;

CAUTIONING that the Special Court will not allow any further delays in the future and

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that, in particular, an extension of a time limit remains exceptional;

CONSIDERING FURTHER that at this stage of the proceeding against the Accused a joinder with other cases before the Special Court is deemed to be purely hypothetical and without factual basis;

CONSIDERING that issues before the Special Court are conducted before professional judges, who by virtue of their education and experience are able to ponder independently without prejudice to each and every case which will be brought before them;

CONSIDERING that a request that no rulings on protective measures will be made on other proceedings would halt the continuance of the pre-trial stage for the other Accused and that the Trial Chamber has an obligation to all Accused to be tried within a reasonable time;

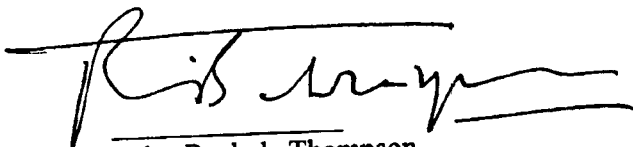
NOW HEREBY, pursuant to Rule 7 and 54 of the Rules,

REJECTS the request of the Counsel for the Accused to be granted a period of 14 days for filing a submission in response to the Motions;

ORDERS that the Counsel for the Accused be granted a period of 7 days from the moment of receipt of this Order for filing his submissions in response to the Motions;

REJECTS the request of the Counsel for the Accused that no rulings on the issue of protective measures be made in other proceedings before the Special Court until Counsel has been given the opportunity to be heard on this matter.

Done in Freetown, Sierra Leone this 16th day of May 2003



Judge Bankole Thompson
Delegated Judge



2. The Prosecutor V. Tadic- 94-1-7th May 1997.

IN THE TRIAL CHAMBER

Before:
Judge Gabrielle Kirk McDonald, Presiding
Judge Ninian Stephen
Judge Lal Chand Vohrah

Registrar:
Mrs. Dorothee de Sampayo Garrido-Nijgh

Opinion and Judgment of: 7 May 1997

PROSECUTOR

v.

DUSKO TADIC a/k/a/ "DULE"

OPINION AND JUDGMENT

The Office of the Prosecutor:

Mr. Grant Niemann
Ms. Brenda Hollis
Mr. Alan Tieger
Mr. William Fenrick
Mr. Michael Keegan

Counsel for the Accused:

Mr. Michail Wladimiroff
Mr. Steven Kay
Mr. Milan Vujin
Mr. Alphons Orié
Ms. Sylvia de Bertodano
Mr. Nikola Kostic

I. INTRODUCTION

A. The International Tribunal

1. This Opinion and Judgment is rendered by Trial Chamber II 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 ("International Tribunal") following

E. Pre-trial Media Coverage and the Infection of Testimonial Evidence

542. Attention was drawn during the course of the trial to the impact of pre-trial media reporting of events in opstina Prijedor and of the indictment and arrest of the accused. In particular, the Defence directed the attention of the Trial Chamber to media coverage in areas to which many refugees from the former Yugoslavia have fled since the events in question. To some extent, this issue related to the reliability of identification witnesses who had not known the accused prior to the conflict. For example, of the 20 television programmes about this case which were considered in a survey of which evidence was given, 15 carried the picture of the accused for at least a part of the report. This is an issue which will be addressed below.

543. Beyond issues of identification, it was the submission of the Defence that this coverage potentially affected the trustworthiness or reliability of testimony given by Prosecution witnesses generally. By contrast, a number of Prosecution witnesses denied having seen reports; many said that they were not interested in seeing reports of events in the former Yugoslavia as they did not wish to relive their experiences. Some of the print media reports noted in another survey of which evidence was given on behalf of the Defence did not contain any reference to the accused. In that survey a large number of newspaper articles and reports in some way relating to the accused were reported on but, of the 83 articles cited, only 12 carried photographs and some articles proved not to be specifically about the accused in another survey of which evidence was given on behalf of the Defence (Defence Exhibit 101). Further, none of the reports published or television programmes shown were the native language of the witnesses.

544. In all trials, the potential impact of pre-trial media coverage is a factor that must be taken into account in considering the reliability of witnesses, and where this aspect was raised in cross-examination of witnesses, it has been taken into account in the evaluation of their testimony.

F. Identification Evidence

545. Where, as here, an accused's defence, arguments of law apart, consists of an alibi, evidence of visual identification of the accused assumes great significance. This Trial Chamber heard much such evidence from witnesses, many of whom had either known the accused since childhood or from long acquaintance with the accused in the Kozarac area, together hereafter referred to as recognition witnesses. In the case of four witnesses, to whom the accused was previously unknown by sight, they had identified him from a collection of 13 photographs in a photospread, shown to them by the Prosecution before giving evidence (Prosecution Exhibits 242, 243, 255, 294); they are hereafter referred to as identification witnesses. Both classes of witnesses identified the witness in court by way of dock identification.

546. The Defence challenged the identifications made by all these witnesses. The Trial Chamber places little weight upon mere dock identification; the circumstances attendant upon such identification, with the accused seated between two guards in the courtroom, require the Trial Chamber to assess the credibility of each witness independently of that identification. The credibility accorded to the testimony of each such witness as to recognition or identification has been considered in the course of this Opinion and Judgment. This portion of the Opinion and Judgment is concerned, however, with the evidence of the four identification witnesses who were involved in the photospread procedure. In fact the photospread procedure was, also undertaken, quite unnecessarily, by Draguna Jaskic who had known the accused for very many years and was, therefore a recognition witness. What follows accordingly does not apply to her evidence regarding the accused.

547. The expert Defence witness, Dr. Willem A. Wagenaar, gave evidence regarding identification generally and, in particular, concerning photospread procedure. He was acknowledged by both parties as expert in the field. The Trial Chamber accepts his very substantial approval of the format of the photospread itself which, he said, in his opinion would afford witnesses a wholly unbiased opportunity to identify the accused, his only qualification being that the 12 men other than the accused, the "foils", should prove to be of the same ethnic background as the accused. It emerged in evidence that with three exceptions this was the case; nine of the foils were from or were born in former Yugoslavia. The Trial Chamber accepts the suitability of the foils and accordingly of the photospread itself.

548. There remains the procedure employed in showing the photospread to the four witnesses. No written directions were given to the officer who conducted the procedure in the case of three of the four witnesses; written guidelines were supplied to the other officer, who attended to the fourth witness, Senad Muslimovic. These guidelines were not produced in evidence and neither of the two officers was called as a witness on this issue.

549. What is known of the procedure adopted by these two officers comes from the evidence of the Prosecution chief investigator, Robert Reid, who was not present at any of the procedures but described what he had been told by those officers as to the procedure they had adopted. That procedure, if accurately described to the chief investigator and then accurately recounted by him in evidence, was generally, although not in every detail, in accordance with what Dr. Wagenaar regarded as satisfactory. Dr. Wagenaar stated in evidence that it was a fair conclusion to say that more would have to be known about the procedure in fact adopted in order to determine the value to be given to the four photospread identifications and yet stated that only if there were gross violations of his suggested procedure would the identification be invalid.

550. In the absence of evidence from the officers who conducted the photospread procedure the Trial Chamber has had recourse to the evidence of the four witnesses themselves as to that procedure, a less satisfactory course in view of the relative brevity of that evidence. However, having examined that evidence, in each case it does not suggest any gross violation of what are said to be proper procedures nor any such impropriety in the procedure as would of itself cause the witness to select the photograph of the accused in preference to any of the other 12 photographs shown to him or her. In the outcome, and despite the absence of evidence of that degree of perfection of procedure which might have been established had the officers who conducted the photospread procedure given evidence, the Trial Chamber is satisfied that the four witnesses utilized an unbiased identification procedure to select the photograph of the accused as the person they described as committing the acts to which they testified.

551. The Defence contended that, since the photospread procedures were all conducted after the much-publicized commencement of this trial, some four years after the witnesses had last seen the accused, and following the widespread display of his photograph in newspapers and on television, which each of them denied having seen, and also in view of the testimony of Dr. Wagenaar, reliance should not be placed on their identification.

552. The Trial Chamber rejects this submission in view of the convincing testimony of these witnesses that they had not seen any such media pictures of the accused before being shown the photospread. It is true that each of them knew very well that it was for the purpose of this trial that they were looking through the photospread, and that for this and other reasons, all that Dr. Wagenaar would wish by way of procedure was not complied with; for instance, the witnesses were apparently not asked in advance to give their own description of the accused so that it might be compared with the particular photograph which they selected from the photospread. However, despite what has been said to be these defects in procedure, the Trial Chamber accepts the four witnesses' identification of the accused.

3. Prosecutor V. Međakic-IT-02-65-PT-28th July 2004.

IN THE TRIAL CHAMBER

Before:

Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Bert Swart

Registrar:

Mr. Hans Holthuis

Decision of:

28 July 2004

PROSECUTOR

v.

ZELJKO MEJAKIC
MOMCILO GRUBAN
DUSAN FUSTAR
DUSKO KNEZEVIC

DECISION ON DUSKO KNEZEVIC'S REQUEST PURSUANT TO RULE 81 (D)

The Office of the Prosecutor:

Ms. Ann Sutherland

Counsel for the Accused:

Mr. Jovan Simic, for Zeljko Mejakic
Mr. Branko Lukic, for Momcilo Gruban
Mr. Theodore Scudder and Mr. Dragan Ivetic, for Dusan Fustar
Ms. Slobodanka Nedic, for Dusko Knezevic

THIS TRIAL 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 ("the International Tribunal"),

BEING SEISED of "Dusko Knezevic's Request Pursuant to Rule 81 (D)" filed confidentially on 14 April 2004 filed by the defence for the accused Dusko Knezevic ("Defence") seeking orders: (1) to prohibit photography, video and audio recording of the accused Dusko Knezevic by third persons: (2)

directing the Registry not to publish or disclose photographs, video and audio records of the accused Dusko Knezevic to the media; and (3) addressed to the authorities of Republika Srpska to remove billboards and posters with the photograph of the accused and to prohibit posting such billboards and posters while the case is pending, as amended by a filing of 4 May 2004 and addendum filed 11 May 2004 (together "the Motion"), in which the Defence amends its request under order (3) to seek an order directing the Office of the Prosecutor ("Prosecution") and Registry "to cease advertising of indictments in the form wic [sic] contains the photograph of accused Knezevic and to prohibit any advertisement containing Knezevic's photograph or video and audio record while this case is pending", asserting that such billboards, posters and related television broadcasts are "published at the request of the Prosecutor of ICTY and sent by the Registry to the authorities in Republika Srpska according to Rule 60 of the Rules",

NOTING the responses of the Prosecution filed on 28 April and 25 May 2004, objecting to the relief sought, denying any involvement of the Prosecution with the billboards or television broadcasts and stating that, in relation to the posters, once an accused has been arrested, his picture does not appear on subsequent posters, and that it is beyond the powers and duties of the Prosecution to retrieve all previously issued posters whenever an accused is taken into custody,

CONSIDERING the arguments put forward by the Defence in support of the Motion, namely, as regards the first and second requests, that the various Orders issued by the Trial Chamber in this case permitting release of audio- and video-recordings of the proceedings of the International Tribunal were issued before the surrender of this accused and that therefore his counsel had no opportunity to object to the issue of such Orders, SREDACTEDC and as regards the third request (as amended), that "the publication of the advertisement in such form as it was done by Prosecution breaks the right of accused established by the Article 21 of the Statute of the Tribunal: the right to fair trial SsicC and the right to be presumed innocent until proved guilty", and constitutes a misuse of the principle of public proceedings,

CONSIDERING that, with regard to the timing of the objection to the Orders of the Trial Chamber authorising release of the audio- and video-recording, those Orders form part of the public record of the case and that defence counsel are expected to review the existing record of a case when an accused is surrendered to the International Tribunal, that defence counsel for this accused was assigned in September 2002 and only raised this complaint more than one year later,

CONSIDERING that, as stated in its Decision of 20 April 2004¹, the potential impact of pre-trial media coverage is a factor to be taken into account at trial² and not a matter for determination at this stage of the proceedings,

CONSIDERING therefore that, although the Trial Chamber has discretion pursuant to Rule 5 (B) of the Rules to grant relief when an objection is raised other than at the first opportunity where the non-compliance is proved and the Trial Chamber is satisfied that the objecting party has suffered material prejudice, the Trial Chamber is not satisfied as to the issue of prejudice sufficient to warrant the relief sought by orders (1) and (2),

CONSIDERING further that, with respect to the relief sought by order (3), the Prosecution has asserted that it "has no involvement with the billboards or television broadcast" and the Defence has not provided any evidence to show that the Prosecution has requested the publication of the billboards and the television broadcast in Republika Srpska, relying instead on mere assertions and speculation,

HEREBY DISMISSES the Motion.

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

Patrick Robinson
Presiding

Dated this twenty-eighth day of July 2004
At The Hague
The Netherlands

[Seal of the Tribunal]

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1. Decision On Motions To Remove Photographs Of Accused From ICTY Website, 20 Apr. 2004.
 2. *Prosecutor v. Dusko Tadic* Case No. IT-94-1, Opinion and Judgment, 7 May 1997, paras 542-44, *Prosecutor v. Simi} et al.*, Case No. IT-95-5, Decision on Joint Defence Motion to Exclude Evidence, 1 Aug. 2002.