



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

Case No. IT-04-78-PT
Date: 7th February 2005
Original: English

IN A SPECIALLY APPOINTED CHAMBER

Before: Judge Alphons Orie, Presiding
Judge O-Gon Kwon
Judge Kevin Parker

Registrar: Mr. Hans Holthuis

Decision: 7th February 2005

PROSECUTOR

v.

RAHIM ADEMI

and

MIRKO NORAC

**DECISION ON SUBMISSION OF AN AMICI CURIAE BRIEF
PURSUANT TO RULE 74 OF THE RULES**

The Office of the Prosecutor:

Carla del Ponte

The Amici Curiae:

Mirjan Damaška
Davor Krapac

Counsel for the Accused:

Čedo Prodanović for Rahim Ademi
Željko Olujić for Mirko Norac

THIS SPECIALLY APPOINTED CHAMBER (“the 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 Tribunal”);

NOTING the Prosecutor’s Request of 2nd September 2004 for referral of the present case by a Trial Chamber under Rule 11*bis* of the Rules of Procedure and Evidence (“the Rules”) to the authorities of Croatia, after having given the opportunity to the authorities of Croatia to be heard on the Request and the condition for the referral of this case;

BEING SEIZED OF a Request for leave to appear as *amici curiae* filed by Professor Mirjan Damaška and Professor Davor Krapac and submitted by the Registrar to the Chamber on 26th October 2004 (“the Request”);

NOTING that the Brief is offered by Professors Damaška and Krapac regarding the question of whether it is appropriate for the Court of the Republic of Croatia to exercise jurisdiction over the accused Rahim Ademi and Mirko Norac and whether Croatian substantive and procedural laws are compatible with the Tribunal’s Statute;

NOTING the expertise of Professors Damaška and Krapac in Croatian substantive and procedural law as accounted for in the Request;

NOTING the letter of 29th October 2004 from the Senior Legal Officer of the Chamber to the Minister of Justice of the Government of the Republic of Croatia, requesting information on whether Professors Damaška and Krapac would appear as *amici curiae* on behalf of the Government or in their own right as independent experts without any instructions from the Government;

NOTING the reply filed on 8th November 2004 by the Minister of Justice of the Government of the Republic of Croatia, in which the Minister asserts that Professors Damaška and Krapac were appointed by the Government but that “they will submit their brief in their personal capacity, as independent experts and without any instructions from the Government.”;

NOTING that the Parties did not make any submission as to the Request;

CONSIDERING that it would serve the interests of justice to grant leave to Professors Damaška and Krapac to appear before the Chamber as *amici curiae* and to file their brief as offered in the Request;

PURSUANT to Rules 54 and 74 of the Rules;

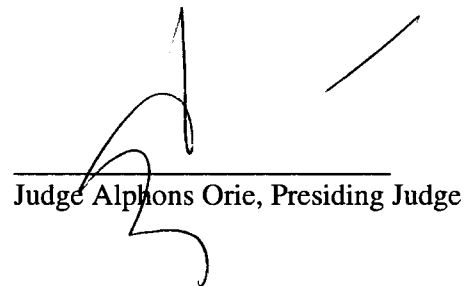
HEREBY GRANTS LEAVE to Professor Mirjan Damaška and Davor Krapac to appear as *amici curiae* before this Chamber; and

INVITES Professors Damaška and Krapac to file, if possible, their Brief as described in the Request on 14th February 2005; and

FURTHER INVITES Professors Damaška and Krapac to attend, if convenient, the hearing in the Chamber scheduled for Thursday, 17th February 2005 at 08:30AM in Courtroom I.

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

Done this seventh day of February, 2005,
At The Hague,
The Netherlands



Judge Alphons Orie, Presiding Judge

[Seal of the Tribunal]

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-04-78-PT

IN THE TRIAL CHAMBER

Before: Judge Alfons Orie
Judge O-Gon Kwon
Judge Kevin Parker

Registrar: Mr. Hans Holthuis

File: October 2004.

PROSECUTOR

V.

RAHIM ADEMI and MIRKO NORAC

***REQUEST FOR LEAVE TO APPEAR
AS AMICI CURIAE***

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The applicants hereby respectfully request leave to jointly submit an amicus curiae brief and participate in the oral argument in the case Prosecutor v. Rahim Ademi and Mirko Norac. In this case, the Prosecutor has moved the Tribunal that the case be transferred to the courts of the Republic of Croatia. The matter is presently pending before the Trial Chamber designated above. The Chamber is charged with deciding, pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, whether it is appropriate for the Court of the Republic of Croatia to exercise jurisdiction over the accused. The applicants believe that their combined expertise and experience may aid the Chamber in reaching the decision in this matter, especially in regard to the question whether Croatian substantive and procedural laws are compatible with the Tribunal's Statute, Rules of Procedure and Evidence, as well as doctrines elaborated by the Tribunal's case law. Although the applicants for leave submit their request in personal capacity, they were urged to do so by the Government of Croatia. They had no contacts with the accused, or their representatives, in regard to the instant case.

In accordance with the guidelines and practices established by the Tribunal, the applicants provide the following information in support of their request.

Professor Damaska avers that he holds a life-tenure appointment as Sterling Professor of Law on the faculty of the Yale University Law School in New Haven, Connecticut. He is member of the American Academy of Arts and Sciences, the Croatian Academy of Arts and Sciences, and the International Academy of Comparative Law. He also serves on the Governing Board of the American Society of Comparative Law. Although he teaches in a variety of areas, his specialty is international and comparative criminal law. He has extensively published in the field. In 1976, he was member of a group of experts who prepared a Draft International Criminal Code, (the Syracuse Draft,) upon the initiative of the Governing Board of the International Association of Criminal Law. He is currently

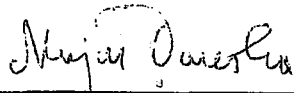
serving on the Advisory Board of the Journal of International Criminal Justice, whose Editor in Chief is Professor Antonio Cassese. In addition to his teaching and scholarly pursuit, the applicant also serves as consultant to American law firms in litigations with a transnational component. In the case *Prosecutor v. Blaskic*, he was of counsel to Russel Heyman Esq, then of the law firm of Leitham & Watkins. Until 1972, the applicant was professor of criminal law and procedure in the faculty of Law, Zagreb University. Prior to joining this Faculty, he was involved in legal practice, and was frequently consulted by prosecutors and judges. In that period he also co-authored the still widely used "Dictionary of Criminal Law and Procedure" for the use of lawyers in former Yugoslavia. Although residing in the United States of America, and becoming an American citizen, the applicant regularly visits Croatia, continues to publish in Croatian legal periodicals, and maintains contacts with Croatian legal academics and judges.

Professor Krapac avers that he holds a life-tenure appointment as Professor of Law on the Faculty of Zagreb University, where he was Dean from 1991 to 1993. He teaches criminal procedure. Beside occasional teaching stints at the Law Schools in Sarajevo (Bosnia and Herzegovina), Ljubljana (Slovenia) and Graz (Austria), he taught at the University of Maribor Law School (Slovenia). He was Croatian national reporter at various international congresses on criminal law and criminology, and, in 1996, general reporter at the 21th criminological research conference in Strasbourg. He is the author of numerous articles and several books. The latter include the first book on ICTY to appear in Croatia in 1995. He is Editor in Chief and Founder of the legal periodical titled "Croatian Annual of Criminal Law and Practice." Since 1991 he serves as President of the Croatian Association of Criminal Sciences and Practice. From 1994-2000 he was member of the State Judicial Council of the Republic of Croatia, and is currently member of the State Attorney's Office. Both bodies are constitutionally independent agencies for the recruitment of judges and prosecutors in Croatia. Occasionally, he is of counsel to the

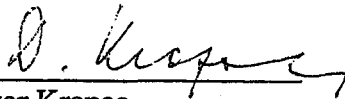
Croatian Government on criminal procedural law, human rights issues, and international criminal law

Believing that their familiarity with the legal framework and practical functioning of the Croatian criminal justice system equips them with knowledge useful to the resolution of questions before the above designated Chamber, the applicants request permission to appear as amici curiae in the case of Prosecutor v. Rahim Ademi and Mirko Norac.

Respectfully submitted.



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