



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-04-74-T
Date: 11 October 2006
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, Presiding
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Decision of: 11 October 2006

THE PROSECUTOR

v.

Jadranko PRLIĆ
Bruno STOJIC
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ

**DECISION ON REQUEST BY THE GOVERNMENT OF THE REPUBLIC OF
CROATIA FOR LEAVE TO APPEAR AS *AMICUS CURIAE***

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Daryl Mundis

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Peter Murphey for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

TRIAL CHAMBER III (“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 (“Tribunal”);

BEING SEIZED OF the “Request for Leave to Appear as *Amicus Curiae*” filed on 18 September 2006 (“Request”) by the Government of the Republic of Croatia in which it requests the Chamber to authorise it to file an *amicus curiae* brief pursuant to Rule 74 of the Rules of Procedure and Evidence (“Rules”);

NOTING the “Prosecution’s Response to Request of the Republic of Croatia to Appear as *Amicus Curiae*” filed on 2 October 2006 (“Prosecution Response”) by the Office of the Prosecutor (“Prosecution”) in which the Prosecution objects to the Request;

NOTING the Tribunal’s “Information Concerning the Submission of *Amicus Curiae* Briefs” filed on 27 March 1997 (“Information”);¹

CONSIDERING that in support of its Request, the Government of the Republic of Croatia submits that the *amicus curiae* brief it wishes to file would help clarify before the Chamber issues on the participation of the political and military leaders in the joint criminal enterprise alleged in paragraph 16 of the Indictment of 16 November 2005 issued against *Jadranko Prlić et al.* (“Indictment”) and the policy pursued by President Tudjman in Bosnia and Herzegovina as alleged in paragraph 23 of the Indictment;²

CONSIDERING that the Government of the Republic of Croatia also submits that these issues are crucial for understanding the overall context of the events alleged in the Indictment, in particular the significance of the joint criminal enterprise and the criminal responsibility of the Accused as alleged in the Indictment;³

¹ IT/122, 27 March 1997.

² Request, p. 2.

³ Request, p. 2.

CONSIDERING that, according to the Republic of Croatia, the brief would be filed at the conclusion of the Prosecution's case and would be a co-effort "of renowned lawyers, historians and other scientists" whose names are given in the Request;⁴

CONSIDERING that if the Chamber were to grant the Request, the Republic of Croatia would submit to the Judges the names of representatives who would appear before the Chamber and make submissions pursuant to the procedure stated under Rule 74 of the Rules;⁵

CONSIDERING that the Prosecution opposes the Request for the following five reasons:⁶ 1) the Government of the Republic of Croatia does not state with sufficient clarity the matters on which it seeks to appear as *amicus curiae*;⁷ 2) the Government seeks basically to intervene on factual matters that are irrelevant in and go far beyond the scope of this case, *i.e.* relating to historical and political events which, if addressed, risk confusing individual, collective and State responsibility;⁸ 3) providing clarification on these issues would not assist the Chamber in the determination of the case and, moreover, would be contrary to the Tribunal's jurisprudence which, in principle, does not authorise an *amicus curiae* to appear on factual matters but only on questions of law;⁹ 4) the Government of the Republic of Croatia, concerned with the possible adverse consequences – financial or social and political – of the case, does not present sufficient impartiality to appear as *amicus curiae*;¹⁰ and 5) the Government has failed to demonstrate what essential information the *amicus curiae* brief would provide the Chamber as opposed to those of the Parties to the case;¹¹

CONSIDERING that the Prosecution submits in support of its Response a number of documents which, it claims, bear witness to the lack of impartiality of the Republic of Croatia to appear as *amicus curiae*;¹²

CONSIDERING that pursuant to Rule 74 of the Rules "[a] Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to

⁴ Request, p. 3.

⁵ Request, p. 5.

⁶ Prosecution Response, para. 29.

⁷ Prosecution Response, paras. 7 – 8.

⁸ Prosecution Response, paras. 9 – 13.

⁹ Prosecution Response, paras. 14 – 19.

¹⁰ Prosecution Response, paras. 20 – 26.

¹¹ Prosecution Response, paras. 27 and 28.

¹² Prosecution Response, Annexes 1 – 3.

a State, organization or person to appear before it and make submissions on any issue specified by the Chamber”;

CONSIDERING that the Information also provides that “[a]t its discretion, a Chamber may solicit an *amicus* submission from a particular State, organisation or person”¹³ and that “[a]mici may be invited to participate in oral argument at the Chamber’s sole discretion”;¹⁴

CONSIDERING that, pursuant to the provisions of the Rules and Information, it is in the Chamber’s discretion to authorise an *amicus curiae* to appear if the Chamber considers it useful and desirable for the proper determination of the case;

CONSIDERING that, pursuant to the Information, “[i]n general, *amicus* submissions shall be limited to questions of law”¹⁵ and that “*in any event* [the submissions] may not include factual evidence relating to elements of a crime charged”;¹⁶

CONSIDERING that the Tribunal’s jurisprudence corroborates this matter in the Information and, in general, limits *amici curiae* submissions to questions of law;¹⁷

CONSIDERING that, regarding this matter, the Information provides that “[t]he parties will be given an opportunity to comment on such *amicus* briefs as have been accepted, but *amici* will not be subject to cross-examination, nor will they be allowed to call witnesses”;¹⁸

CONSIDERING that the Chamber finds that the points raised in the Request are basically factual¹⁹ and hence, in accordance with the Information and Tribunal’s jurisprudence, are not to be submitted by an *amicus curiae* but, if so required, by the Parties to the case; furthermore that most of the points go far beyond the scope of the Indictment and dealing with them during the proceedings will not assist the Chamber in its determination of the case;

¹³ Information, para. 2.

¹⁴ Information, para. 2 (emphasis added).

¹⁵ Information, para. 5(b).

¹⁶ Information, para. 5(b) (emphasis added).

¹⁷ See in particular *The Prosecutor v. Rahim Ademi and Mirko Norac*, Case No. IT-04-78-PT, “Decision on Submission of an *Amici Curiae* Brief Pursuant to Rule 74 of the Rules”, 7 February 2005, and *The Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-PT, “Order Granting Leave to Appear as *Amicus Curiae*”, 11 April 1997.

¹⁸ Information, para. 5(e).

CONSIDERING that, *inter alia*, the Chamber finds that it would not be in the interests of justice to authorise a State, whose former political and military leaders are mentioned in the Indictment as being participants in a joint criminal enterprise, to appear in the proceedings as *amicus curiae*;

CONSIDERING that, pursuant to Rule 98 of the Rules, it is in the power of the Chamber to call, if necessary, the experts proposed by the Republic of Croatia, and noting that that the Parties can also call them to appear as witnesses in the case or as experts pursuant to Rule 94 *bis* of the Rules;

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 74 of the Rules,

REJECTS the Request.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this eleventh day of October 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁹ According to the Government of Croatia, the aim of the participation of the *amici curiae* is basically to clarify the context of the case regarding the participation of the political and military leaders of the Republic of Croatia in the joint criminal enterprise as alleged in the Indictment (Request, pp. 2 and 3).