



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 April 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: 18 April 2008

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

PUBLIC

**DECISION ON *AMICUS CURIAE* MOTION REQUESTING
LEAVE TO FILE A SUBMISSION**

The Office of the Prosecutor:

Mr. Peter Kremer QC

The Accused

Mr. Momčilo Krajišnik

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 “*Amicus Curiae* Motion Requesting Leave to File a Submission with Annex”, filed on 25 March 2008 (“Motion”), in which *amicus curiae* seeks to address the Appeals Chamber on the question of “[w]hether the Appeals Chamber is under a duty to consider the circumstances of the Appellant, including his status as a litigant *pro se*, as relevant considerations in determining whether to exercise the discretionary power to impose sanctions for any instances of procedural default arising in his appeal brief?”;¹

NOTING the “Prosecution Response to *Amicus Curiae* Motion Requesting Leave to File a Submission with Annex”, filed on 2 April 2008 (“Response”), in which the Prosecution argues that the Motion is out of time,² goes beyond the defined role of *amicus curiae*,³ and fails to establish that the interests of justice require a submission on this point;⁴

NOTING that *amicus curiae* has not replied to the Response;

RECALLING that the Appeals Chamber invited *amicus curiae* to assist the Tribunal by putting forth arguments in the interests of the Appellant Momčilo Krajišnik⁵ (“Mr. Krajišnik”) and explicitly noted that *amicus curiae* had authority to submit a notice of appeal, an appeal brief, a response brief, and a reply brief;⁶

RECALLING that the Appeals Chamber has also held that “there may be rare occasions where, in line with the mandate given to *amicus curiae* in the 11 May 2007 Decision, it is appropriate for *amicus curiae* to make a filing in relation to a Prosecution response to a motion brought by Mr. Krajišnik” and that such filings should be made within four days of the filing of such a Prosecution response;⁷

CONSIDERING that the four-day deadline for making submissions applies only to Prosecution responses to motions made by Mr. Krajišnik, rather than a Prosecution response to an appeal brief as appeal briefs and responses thereto are naturally longer and more complex than motions;

¹ Motion, para. 3.

² Response, para. 4.

³ Response, para. 5.

⁴ Response, paras 7-10.

⁵ 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 (“11 May 2007 Decision”), para. 19.

⁶ 11 May 2007 Decision, para. 21.

⁷ Decision on Krajišnik Request and on Prosecution Motion, 11 September 2007, para. 50.

CONSIDERING that the Appeals Chamber retains discretion to determine whether the interests of justice require further submissions by *amicus curiae* on behalf of Mr. Krajišnik;

CONSIDERING, however, that a submission by *amicus curiae* on the specific question that he proposes to address is unnecessary given that Mr. Krajišnik is aware of the need to prepare a motion pursuant to Rule 115 of the Rules of Procedure and Evidence in order to seek the admission of certain evidence;⁸

HEREBY DENIES the Motion.

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

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



Fausto Pocar
Presiding Judge

[Seal of the Tribunal]

⁸ Status Conference on Appeal, 31 March 2008, T. 146. *See also* Brief on Joint Criminal Enterprise on Behalf of Momčilo Krajišnik, 7 April 2008, para. 79.