



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: 4 July 2008
Original: English

BEFORE THE PRE-APPEAL JUDGE

Before: Judge Theodor Meron, Pre-Appeal Judge
Registrar: Mr. Hans Holthuis
Decision of: 4 July 2008

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

PUBLIC

**DECISION ON MOMČILO KRAJIŠNIK'S REQUEST FOR
RECONSIDERATION OF THE PRE-APPEAL JUDGE'S
DECISION OF 11 JUNE 2008**

The Office of the Prosecutor:

Mr. Peter Kremer

The Accused

Momčilo Krajišnik

Amicus Curiae

Mr. Colin Nicholls

I, **THEODOR MERON**, Judge of 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 Pre-Appeal Judge in the present case,

RECALLING that Momčilo Krajišnik asked the Registry to arrange a meeting between him and *amicus curiae* for the purpose of discussing one of *amicus curiae*’s submissions¹ and that, subsequently, *amicus curiae* filed a motion requesting guidance as to Mr. Krajišnik’s request;²

RECALLING my Decision of 11 June 2008 in which I clarified that *amicus curiae* must work independently from Mr. Krajišnik and, consequently, that the meeting sought by Mr. Krajišnik with *amicus curiae* would be inappropriate;³

NOTING the “Motion for Review of the Pre-Appeal Judge’s Decision of 11 June 2008 Regarding the Amicus Curiae’s Visit to Krajišnik and Objection to Amicus Curiae Motion of 6 June 2008”, filed on 26 June 2008, in which Mr. Krajišnik seeks review of the Decision of 11 June 2008 and an order obliging *amicus curiae* to visit him at the UNDU;⁴

NOTING that the Prosecution informed Chambers through an informal communication that it does not intend to respond to the Motion;

CONSIDERING that, although Mr. Krajišnik styled his motion as a request for review, it does not meet the standards for a request for review laid out in Rule 119(a) of the Rules of Procedure and Evidence (“Rules”), principally because it does not allege any new facts;

CONSIDERING, therefore, that the motion is better construed as a request for reconsideration of the Decision of 11 June 2008;

RECALLING that “the Appeals Chamber has inherent discretionary power to reconsider decisions if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice”⁵ and that this power can be exercised to reconsider pre-appeal decisions;⁶

¹ Decision on *Amicus Curiae* Motion for Guidance, 11 June 2008 (“Decision of 11 June 2008”).

² *Amicus Curiae* Motion Regarding Request for UNDU Visit by Mr. Krajišnik [*sic*] (Public with Confidential Annex), 6 June 2008 (“Motion”), para. 7.

³ Decision of 11 June 2008.

⁴ Motion for Review of the Pre-Appeal Judge’s Decision of 11 June 2008 Regarding the Amicus Curiae’s Visit to Krajišnik and Objection to Amicus Curiae Motion of 6 June 2008, para. 17 (“Motion”). Two paragraphs in the Motion are numbered 17; Mr. Krajišnik’s ultimate request is in the second such paragraph.

⁵ Decision on Momčilo Krajišnik’s Motion for Reconsideration of the Appeals Chamber’s Decision of 27 September 2007, 18 October 2007, p. 1 (internal quotation marks omitted) (*quoting Kajelijeli v. Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, para. 203).

RECALLING that *amicus curiae*, by definition, is a “friend of the court”⁷ has “a mandate to assist the Tribunal, not Mr. Krajišnik”⁸ who has chosen to represent himself⁹ and that, consequently, *amicus curiae* owes no duty to Mr. Krajišnik;

RECALLING that “[a] defendant who decides to represent himself relinquishes many of the benefits associated with representation by counsel”¹⁰ and that Mr. Krajišnik “is not entitled to *amicus curiae*”;¹¹

CONSIDERING, further, that such a meeting may not be in Mr. Krajišnik’s best interests as *amicus curiae* is not Mr. Krajišnik’s lawyer, such that communications between the two individuals are not protected by the lawyer-client privilege;¹²

HEREBY FINDS that Mr. Krajišnik has not met the standard that would justify granting his request for reconsideration because he has not shown that the 11 June 2008 Decision was based on clearly erroneous reasoning or that it will result in an injustice and, therefore, **DENIES** the Motion.

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

Dated this 4th day of July 2008,
At The Hague, The Netherlands.



Theodor Meron
Pre-Appeal Judge

[Seal of the Tribunal]

⁶ See *Prosecutor v. Martić*, Case No. IT-95-11-A, Decision on Motion for Reconsideration of Oral Decision Issued on 29 February 2008, 10 March 2008, paras 4-5.

⁷ Black’s Law Dictionary (8th ed. 2004).

⁸ Decision on Prosecution’s Motion for Clarification and Reconsideration of the Decision of 28 February 2008, 11 March 2008, para. 8; see also 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 (“Decision of 11 May 2007”), para. 19 (appointing *amicus curiae* “to assist the Appeals Chamber”).

⁹ See Decision of 11 May 2007, para. 18.

¹⁰ *Prosecutor v. Milošević*, Case No. IT-02-54-AR73.6, Decision on Interlocutory Appeal by the *Amici Curiae* Against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case, 20 January 2004, para. 19.

¹¹ Decision of 11 May 2007, para. 18.

¹² See Rule 97 of the Rules.