



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: 8 October 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: 8 October 2008

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

CONFIDENTIAL

**DECISION ON REQUEST BY *AMICUS CURIAE* TO NOTIFY
THE APPELLANT OF THE EXISTENCE OF CERTAIN
DOCUMENTS**

Counsel for the Prosecution:

Mr. Peter Kremer QC

The Appellant:

Mr. Momčilo Krajišnik

Amicus Curiae:

Mr. Colin Nicholls QC

Counsel for the Appellant on the matter of JCE:

Mr. Alan M. Dershowitz

Mr. Nathan Z. Dershowitz

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 *Amicus Curiae*’s “Request for Permission to Notify the Appellant of the Existence of Certain Documents”, filed confidentially on 24 September 2008 (“Request”), in which *Amicus Curiae* seeks the permission of the Appeals Chamber to inform Momčilo Krajišnik (“the Appellant”), through an e-mail to the Appellant’s legal associate Marko Sladojević, of “the existence of particular documents in [the Appellant’s] possession which are of direct relevance to the issues raised in the statement of Stefan Karganović”;¹

NOTING that the Prosecution has communicated to the Appeals Chamber that it will not respond to the Request;

NOTING the “Submission Relating to Amicus Curiae’s Request to Notify the Appellant of the Existence of Certain Documents”, filed confidentially on 1 October 2008 by the Appellant, in which he requests the Appeals Chamber to allow Amicus Curiae to inform him of the existence of the said documents, or in the alternative, to take *proprio motu* these documents into consideration;²

NOTING that, in its confidential “Decision on Appellant Momčilo Krajišnik’s Motion to Present Additional Evidence” of 20 August 2008 (“Rule 115 Decision”), the Appeals Chamber admitted into evidence the statement of Stefan Karganović to which the Request refers (“Exhibit AD2”);³

NOTING that, in its confidential “Decision on Prosecution’s Motion to Adduce Rebuttal Evidence” of 8 October 2008, the Appeals Chamber admitted into evidence seven documents tendered by the Prosecution as rebuttal evidence to challenge the credibility and reliability of Exhibit AD2, and decided to call Stefan Karganović as a witness of the Appeals Chamber at the evidentiary hearing on 3 and 5 November 2008;⁴

NOTING that *Amicus Curiae* argues that he is aware of the existence of documents which are of direct relevance to the credibility and reliability of Mr. Karganović’s allegations regarding Counsel Nicholas Stewart’s professionalism and competence, because these documents were discovered by

¹ Request, para. 15.

² Submission Relating to Amicus Curiae’s Request to Notify the Appellant of the Existence of Certain Documents, 1 October 2008, para. 8.

³ Rule 115 Decision, paras 20 and 149.

⁴ Decision on Prosecution’s Motion to Adduce Rebuttal Evidence (confidential), 8 October 2008, paras 10, 16.

Amicus Curiae in his former capacity as assigned counsel for the Appellant from 8 December 2006 to 16 May 2007;⁵

CONSIDERING that *Amicus Curiae* argues that he handed over these documents to the Appellant on 5 July 2007 along with all the other case-related material following the termination of *Amicus Curiae*'s previous counsel mandate, and that they do not form part of the trial record;⁶

CONSIDERING that *Amicus Curiae* raises concerns that the Appellant may not be aware of the existence of these documents, because the case-related material handed over to the Appellant amounted to approximately 150 unsorted boxes of documents and 200 gigabytes of electronic data which is predominantly in English;⁷

CONSIDERING that *Amicus Curiae* was appointed in order to "help ensure that the appeal is a fair one" and "to keep an eye on [the Appellant's] interests", but that *Amicus Curiae* "is not requested to conduct any new factual investigations" and "is to work independently" from the Appellant;⁸

CONSIDERING that *Amicus Curiae* does not seek to conduct any new factual investigations, but instead seeks the Appeals Chamber's permission to specify for the Appellant "the titles of the documents in question and precisely where they can be found in the electronic materials" in the Appellant's possession;⁹

CONSIDERING that *Amicus Curiae* avers that whether or not these documents have any significance for the Appellant's appeal is a matter to be determined solely by the Appellant;¹⁰

FINDS therefore, that *Amicus Curiae*'s Request does not infringe upon his obligation to work independently from the Appellant;

HEREBY GRANTS the Request, and

ALLOWS *Amicus Curiae* to inform the Appellant by 10 October 2008 through an email to his Legal Associate Marko Sladojević of the existence of the particular documents in the Appellant's possession which are of direct relevance to the issues raised in Exhibit AD2.

⁵ Request, paras 2-4.

⁶ Request, paras 4-5 and 15.

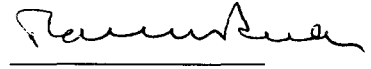
⁷ Request, paras 5-6, 11.

⁸ Decision on Momčilo Krajišnik's Request to Self-Represent, on Counsel's Motion in Relation to Appointment of *Amicus Curiae*, and on the Prosecution Motion of 16 February 2007, 11 May 2007, para. 19.

⁹ Request, para. 13.

¹⁰ Request, para. 12.

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



Judge Fausto Pocar
Presiding Judge

Dated this eighth day of October 2008,
At The Hague,
The Netherlands.

[Seal of the Tribunal]