



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-95-5/18-AR98bis.1

Date: 21 September 2012

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Patrick Robinson
Judge Liu Daqun
Judge Khalida Rachid Khan
Judge Bakhtiyar Tuzmukhamedov

Registrar: Mr. John Hocking

Decision of: 21 September 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON APPLICATION
FOR LEAVE TO SUBMIT AN *AMICUS CURIAE* BRIEF**

Office of the Prosecutor

Mr. Serge Brammertz
Mr. Alan Tieger
Ms Hildergard Uetz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

Counsel for Proposed Amici

Mr. Aaron R. Marcu

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);

NOTING the partial judgement of acquittal in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, rendered orally by Trial Chamber III (“Trial Chamber”) on 28 June 2012 pursuant to Rule 98 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”);¹

NOTING the “Prosecution Notice of Appeal of Judgement of Acquittal Under Rule 98 *bis*”, filed by the Office of the Prosecutor (“Prosecution”) on 11 July 2012 (“Prosecution Appeal”);

BEING SEISED OF the “Application for Leave to Submit an Amicus Brief on Behalf [of] Satko Mujagić, Fikret Alić and the Association of Witnesses and Survivors of Genocide Concerning Judgement of Acquittal Under Rule 98 *bis*”, filed by Counsel for Satko Mujagić, Fikret Alić, and the Association of Witnesses and Survivors of Genocide (collectively, “Applicants”) on 31 August 2012 (“Application”), wherein the Applicants request leave to file an *amicus curiae* brief pursuant to Rule 74 of the Rules in conjunction with the Prosecution Appeal;²

NOTING the “Response to Motion for Leave to Submit an Amicus Brief”, filed by Radovan Karadžić (“Karadžić”) on 3 September 2012 (“Response”), in which Karadžić states that he does not oppose the Application but requests leave to file a response brief should the Application be granted;³

NOTING that the Prosecution has not filed a response to the Application;

NOTING that Rule 74 of the Rules provides that “[a] Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to appear before it and make submissions on any issue specified by the Chamber”;

RECALLING that granting leave to make such submissions pursuant to Rule 74 of the Rules is within the discretion of the Appeals Chamber;⁴

¹ Rule 98*bis* Judgement, T. 28 June 2012 p. 28774.

² Application, para. 1. The Applicants have attached the proposed brief to the Application. See “Amicus Brief of Satko Mujagić, Fikret Alić, and the Association of Witnesses and Survivors of Genocide Concerning Judgement of Acquittal Under Rule 98 *bis*”, attached to the Application.

³ Response, paras 1, 2.

⁴ See *Prosecutor v. Ante Gotovina and Mladen Markač*, Case No. IT-06-90-A, Decision on Application and Proposed Amicus Curiae Brief, 14 February 2012 (“Gotovina Decision”), para. 3; *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on David J. Scheffer’s Application to File an Amicus Curiae Brief, 7 September 2010 (“Šainović Decision”), p. 2; *In the Case Against Florence Hartmann*, Case No. IT-02-54-R77.5-A, Decision on Application for Leave to File Amicus Curiae Brief, 5 February 2010 (“Hartmann Decision”), para. 4.

RECALLING FURTHER that the primary criterion for the Appeals Chamber in determining whether to grant leave to file an *amicus curiae* brief is whether such a submission would assist in the consideration of the questions at issue on appeal;⁵

NOTING that “[i]n general, *amicus* submissions shall be limited to questions of law, and in any event may not include factual evidence relating to elements of a crime charged”;⁶

RECALLING that “appellate proceedings at the Tribunal are largely party-driven and that the parties will assist the Appeals Chamber through submissions on issues of fact”;⁷

CONSIDERING that, although the victims of Karadžić’s alleged crimes may have a valuable “human and historical” perspective to offer⁸ and have “a special interest in seeing that history accurately records their suffering and the reasons they suffered”,⁹ a proposed *amicus curiae*’s “contentious application of th[e] law to the facts of the case and its conclusions that the Trial Chamber erred in a number of areas is not helpful to the Appeals Chamber”;¹⁰

CONSIDERING that the Applicants’ proposed *amicus curiae* brief is not limited to questions of law, but provides interpretations of evidence and repeats the task undertaken by the Trial Chamber and the parties in their submissions on appeal;¹¹

FINDING, therefore, that the proposed *amicus curiae* brief does not assist the Appeals Chamber in the determination of the present appeal and, thus, is not admissible under Rule 74 of the Rules;

⁵ See *Gotovina* Decision, para. 3; *Šainović* Decision, p. 2; *Hartmann* Decision, para. 4.

⁶ Information Concerning the Submission of *Amicus Curiae* Briefs, IT/122, 27 March 1997, para. 5(b). See also *Gotovina* Decision, para. 3; *Hartmann* Decision, para. 5.

⁷ *Gotovina* Decision, para. 11, referring to *Hartmann* Decision, para. 7.

⁸ Application, para. 9.

⁹ Application, para. 14.

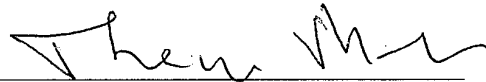
¹⁰ *Hartmann* Decision, para. 7. See also *Gotovina* Decision, para. 11.

¹¹ See Application, paras 7-13. See also *Gotovina* Decision, para. 11.

FOR THE FOREGOING REASONS,

DENIES the Application.

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



Judge Théodor Meron
Presiding

Dated this 21th day of September 2012,
At The Hague,
The Netherlands.

[Seal of the Tribunal]