

D 99/3/11
Case No. IT-99-36-A

BEFORE THE APPEALS CHAMBER

Before:

Judge Theodor Meron, President
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Amin El Mahdi
Judge Andréia Vaz

Declassified to Public
06 September 2012

Registrar:

Mr. Hans Holthuis

Decision:

7 November 2005

THE PROSECUTOR

v.

RADOSLAV BRDJANIN

**DECISION ON ASSOCIATION OF DEFENCE COUNSEL REQUEST TO PARTICIPATE
IN ORAL ARGUMENT**

Counsel for the Prosecutor:

Mr. Mark J. McKeon

Counsel for the Accused:

Mr. John Ackerman

Association of Defence Counsel:

Ms. Chrissa Loukas, Acting President
Mr. Peter Robinson
Ms. Joeri Mass, Head of Office

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 ("International Tribunal");

NOTING the Judgement rendered in this case by Trial Chamber II on 1 September 2004 ("Trial Judgement");

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NOTING the "Decision on Motion to Dismiss Ground 1 of the Prosecutor's Appeal", filed on 5 May 2005 ("Decision of 5 May"), which, *inter alia*, invited submissions from the Association of Defence Counsel of the International Tribunal ("Association") on the question whether a joint criminal enterprise (JCE) must include the actual physical perpetrators of an offence among its members, an issue that the Prosecution raised on appeal as a matter of "general importance" that the Appeals Chamber should address even though it has no effect on the judgement in this case;

NOTING the *amicus curiae* brief filed on that question by the Association on 5 July 2005;

BEING SEISED OF the Request to Participate in Oral Argument filed by the Association on 9 September 2005, in which the Association suggests that its participation at oral argument might be helpful to the Appeals Chamber;

NOTING the Response filed by the Prosecution on 19 September 2005, arguing that the Association should only be permitted to participate in oral argument if the Appellant, Mr. Brdjanin, agrees to turn over some of the time he has been allotted to the Association;

CONSIDERING that, as the Prosecution correctly observes, in the United States, where *amicus curiae* submissions are relatively common, the general practice in federal courts is that when *amici* participate at oral argument they share the time allocated to the party on whose side they are arguing;

CONSIDERING, however, that here the Association would be arguing on an issue in which Mr. Brdjanin has no interest in the outcome—a situation that would not arise in United States federal courts because of rules concerning standing and mootness—and that the United States practice is thus not particularly informative, as Mr. Brdjanin could hardly be expected to sacrifice some of his oral argument time in order to permit the Association to advance its views on a point that does not affect his case;

CONSIDERING that the main relevant criterion for the Appeals Chamber in determining whether to permit an *amicus curiae* to offer oral argument is whether that argument would assist the Appeals Chamber in its consideration of the question at issue;

CONSIDERING that the Decision of 5 May recognised that the issue raised by Ground 1 of the Prosecution's Appeal is of considerable significance to the Tribunal's jurisprudence, but that Mr. Brdjanin himself was unlikely to address the issue adequately as he had no incentive to do so, and that the Appeals Chamber would therefore benefit from the considered views of the Association reflecting the interests of potential future defendants;

CONSIDERING that these same reasons suggest that the Appeals Chamber would also benefit from a short oral presentation from the Association on the issue;

CONSIDERING that any prejudice to the Prosecution arising from the allocation of this time to the Association can be resolved by allowing the Prosecution equal time to respond;

HEREBY GRANTS the Association's Request. The Association will be permitted 15 minutes in total to present its argument and answer questions from the bench, limited in subject matter to the question presented by Ground 1 of the Prosecution's Appeal. The Prosecution will be permitted an additional 15 minutes to respond to the Association's arguments. The Appeals Chamber notes that it should not be considered necessary, for the purpose of allocating Tribunal resources, for members of the Association to travel to The Hague for the hearing; rather, the oral presentation should be prepared by one of the Association's members already present in The Hague. The date and schedule of oral argument will be determined by order in due course.

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

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Theodor Meron
Presiding Judge

Dated 7 November 2005
At The Hague
The Netherlands

[Seal of the Tribunal]