

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-A

Date: 25 September 2017

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge William Hussein Sekule
Judge Vagn Prüsse Joensen
Judge José Ricardo de Prada Solaesa
Judge Graciela Susana Gatti Santana

Registrar: Mr. Olufemi Elias

Decision of: 25 September 2017

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON A REQUEST FOR LEAVE TO MAKE SUBMISSIONS
*AS AMICUS CURIAE***

Applicants

Ms. Felicity Gerry QC
Ms. Peta-Louise Bagott

Counsel for Mr. Radovan Karadžić

Mr. Peter Robinson
Ms. Kate Gibson

Office of the Prosecutor

Mr. Serge Brammertz
Ms. Laura Baig
Ms. Barbara Goy
Ms. Katrina Gustafson

THE APPEALS CHAMBER of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively);¹

NOTING the judgement issued in this case by the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (“Trial Chamber” and “ICTY”, respectively) on 24 March 2016;²

NOTING the appeal against the Trial Judgement filed by Mr. Radovan Karadžić (“Karadžić”) on 22 July 2016 (“Appeal”);³

BEING SEISED OF the “Request for Leave to Make Submissions as *Amicus Curiae*” (“Application”), filed by Felicity Gerry QC and Peta-Louise Bagott on behalf of a group of academics and legal practitioners (“Applicants”), on 24 August 2017, in which the Applicants request, pursuant to Rule 83 of the Rules of Procedure and Evidence of the Mechanism (“Rules”), leave to submit *amicus curiae* observations annexed to the Application (“*Amicus Curiae* Brief”) and appear as *amicus curiae* before the Appeals Chamber;⁴

NOTING that Rule 83 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, organisation, or person to appear before it and make submissions on any issues specified by the Chamber”;

RECALLING that deciding whether to grant leave to make submissions pursuant to Rule 83 of the Rules falls within the discretion of the Appeals Chamber;⁵

RECALLING FURTHER that the primary criterion for the Appeals Chamber in determining whether to grant leave to an *amicus curiae* to make submissions is whether this would assist the Appeals Chamber in its consideration of the appeal;⁶

¹ Order Assigning Judges to a Case Before the Appeals Chamber, 20 April 2016.

² *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Public Redacted Version of Judgement issued on 24 March 2016, 24 March 2016 (“Trial Judgement”).

³ Radovan Karadžić’s Notice of Appeal, 22 July 2016 (public with a confidential annex). *See also* Radovan Karadžić’s Appeal Brief, 5 December 2016 (confidential). Karadžić filed a revised public redacted version of his appeal brief on 23 December 2016.

⁴ Application, paras. 1, 26.

⁵ *See 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 et al.* Decision of 7 September 2010”), 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 of 5 February 2010”), para. 4; *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-A, Decision on the Admissibility of the *Amicus Curiae* Brief Filed by the “Open Society Justice Initiative” and on its Request to be Heard at the Appeals Hearing, 12 January 2007 (“*Nahimana et al.* Decision of 12 January 2007”), p. 3.

⁶ *See Šainović et al.* Decision of 7 September 2010, p. 2; *Hartmann* Decision of 5 February 2010, para. 5; *Nahimana et al.* Decision of 12 January 2007, p. 3.

NOTING that the Applicants seek leave to submit their observations with respect to the case of *R v Jogee* [2016] UKSC 8; *Ruddock v The Queen* [2016] UKPC 7 (“*Jogee*”), as they consider that the parties’ submissions in the Appeal do not accurately encapsulate the relevance of *Jogee* to the jurisprudence of the *ad hoc* tribunals concerning the *mens rea* of the third form of joint criminal enterprise;⁷

NOTING the Applicants’ submission that the proposed observations are intended to assist the Appeals Chamber in understanding the reasoning in *Jogee* and in determining its bearing on the *ad hoc* tribunals’ jurisprudence;⁸

NOTING that the proposed *Amicus Curiae* Brief is limited to questions of law;⁹

CONSIDERING that the *Amicus Curiae* Brief analyses matters raised in the Appeal, specifically the relevance of *Jogee* to applicable jurisprudence on the *mens rea* of the third form of joint criminal enterprise, and that, as such, it may assist the Appeals Chamber in its determination of the Appeal;¹⁰

FINDING, therefore, that the *Amicus Curiae* Brief is admissible under Rule 83 of the Rules;

CONSIDERING that it is in the interests of justice to allow each party to make submissions on the matters raised in the *Amicus Curiae* Brief;

FINDING that it is not necessary to hear oral submissions from the Applicants;

PURSUANT TO Rule 83 of the Rules,

HEREBY

GRANTS the Application in part and **ACCEPTS** the *Amicus Curiae* Brief as validly filed before the Appeals Chamber, without expressing any views on the merits of the Appeal;

DISMISSES the Application in all other respects;

⁷ Application, paras. 2, 16, 17.

⁸ Application, paras. 2, 16, 18.

⁹ See also *Hartmann* Decision of 5 February 2010, para. 5; *The Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Decision on the Kingdom of Belgium’s Application to File an *Amicus Curiae* Brief and on the Defence Application to Strike Out the Observations of the Kingdom of Belgium Concerning the Preliminary Response by the Defence, 9 February 2001, paras. 10, 14(b).

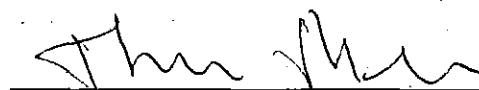
¹⁰ See Radovan Karadžić’s Appeal Brief, 5 December 2016 (confidential with public redacted version filed on 23 December 2016), paras. 522-548; Prosecution Response Brief, 15 March 2017 (confidential with public redacted version filed on 16 May 2017), paras. 290-299; Radovan Karadžić’s Reply Brief, 6 April 2017 (confidential with public redacted version filed on 13 April 2017), paras. 163-165.

INVITES Karadžić and the Office of the Prosecutor to file submissions in response to the *Amicus Curiae* Brief of no more than 3,000 words each within 30 days of the present Decision; and

ORDERS that such submissions, if any, are to be strictly limited to addressing the issues of law addressed in the *Amicus Curiae* Brief.

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

Done this 25th day of September 2017,
At The Hague,
The Netherlands



Judge Theodor Meron
Presiding Judge

[Seal of the Mechanism]



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