

**UNITED
NATIONS**



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-04-74-A
Date: 4 July 2017
Original: English

IN THE APPEALS CHAMBER

Before: Judge Carmel Agius, Presiding
Judge Liu Daqun
Judge Fausto Pocar
Judge Theodor Meron
Judge Bakone Justice Moloto

Registrar: Mr. John Hocking

Decision of: 4 July 2017

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
BERISLAV PUŠIĆ**

PUBLIC

**DECISION ON APPLICATION BY THE REPUBLIC OF CROATIA
FOR RECONSIDERATION OF THE DECISION OF 18 JULY 2016
DENYING LEAVE TO APPEAR AS *AMICUS CURIAE***

The Office of the Prosecutor:

Mr. Douglas Stringer
Ms. Barbara Goy
Ms. Laurel Baig

Government of Croatia:

Ministry of Justice
The Republic of Croatia

Counsel for the Accused:

Mr. Michael G. Karnavas and Ms. Suzana Tomanović for Mr. Jadranko Prlić
Ms. Senka Nožica and Mr. Karim A. A. Khan for Mr. Bruno Stojić
Ms. Nika Pinter and Ms. Natacha Fauveau-Ivanović for Mr. Slobodan Praljak
Ms. Vesna Alaburić and Mr. Davor Lazić for Mr. Milivoj Petković
Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Mr. Valentin Ćorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Mr. Berislav Pušić

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);

RECALLING the “Decision on Application by the Republic of Croatia for Leave to Appear as *Amicus Curiae* and to Submit *Amicus Curiae* Brief” rendered publicly by the Appeals Chamber on 18 July 2016 (“Decision of 18 July 2016”) wherein the Appeals Chamber declined to grant the Republic of Croatia (“Croatia”) leave to submit an *amicus curiae* brief and to appear as *amicus curiae* in the *Prlić et al.* appeal proceedings;¹

BEING SEISED of the “Application by the Republic of Croatia for Reconsideration of the Appeals Chamber Decision of 18 July 2016 Denying Leave to Appear as *Amicus Curiae* and to Submit *Amicus Curiae* Brief” filed publicly on 12 June 2017 (“Motion”), in which Croatia requests that the Appeals Chamber: (i) reconsider the Decision of 18 July 2016 (“First Request”); and (ii) affirm in the *Prlić et al.* upcoming appeal judgement specific statements set forth in the Decision of 18 July 2016 (“Second Request”);²

NOTING, with respect to the First Request, that Croatia submits that, during the appeal hearing held in March 2017 in the *Prlić et al.* proceedings, the Office of the Prosecutor (“Prosecution”) re-asserted that the Trial Chamber had found that three deceased Croatian officials, Franjo Tudman (“Tudman”), Gojko Šušak (“Šušak”), and Janko Bobetko (“Bobetko”), were members of the alleged joint criminal enterprise (“JCE”)³ and that, should the Appeals Chamber be inclined to consider these assertions, it requests the Appeals Chamber to reconsider its decision denying Croatia status as *amicus curiae*;⁴

NOTING, with respect to the Second Request, that Croatia asks the Appeals Chamber to affirm in its upcoming appeal judgement the statements it made in its Decision of 18 July 2016 that: (i) “[t]he Trial Chamber made no explicit findings concerning [the] participation [of Tudman, Šušak, and Bobetko] in the JCE and did not find them guilty of any crimes”; (ii) “the presumption of innocence of the three Croatian officials is not impacted”; and (iii) “the Appeals Chamber emphasizes that the findings in the Trial Judgement regarding the [t]hree Croatian [o]fficials in no way constitute findings of responsibility on the part of the state of Croatia”;⁵

¹ Decision of 18 July 2016, paras 10-11.

² Motion, para. 5.

³ Motion, paras 4, 8.

⁴ Motion, para. 5. See also Motion, para. 9.

⁵ Motion, paras 2-3, 5. See also Decision of 18 July 2016, para. 9.

NOTING the “Prosecution Response to Application by the Republic of Croatia for Reconsideration of the Appeals Chamber Decision of 18 July 2016 Denying Leave to Appear as *Amicus Curiae* and to Submit *Amicus Curiae* Brief” filed publicly on 22 June 2017 (“Response”), in which the Prosecution asks that the Motion be denied;⁶

NOTING the “Reply of the Republic of Croatia in Support of Its Application for Reconsideration of the Appeals Chamber Decision of 18 July 2016 Denying Leave to Appear as *Amicus Curiae* and to Submit *Amicus Curiae* Brief” filed publicly on 30 June 2017 (“Reply”), in which Croatia submits that the Response underscores the need for the Appeals Chamber to grant the requested relief;⁷

CONSIDERING that the Appeals Chamber may only reconsider its own non-final decisions pursuant to its inherent discretionary power if a clear error of reasoning has been demonstrated or if it is necessary to do so in order to prevent an injustice;⁸

CONSIDERING, with respect to the First Request, that Croatia does not allege that there was a clear error of reasoning;

CONSIDERING FURTHER that reconsideration is not necessary in order to prevent an injustice;

FINDING, therefore, that reconsideration of the Decision of 18 July 2016 is not justified;

CONSIDERING, with respect to the Second Request, that this constitutes a new motion on the part of Croatia pertaining to the upcoming appeal judgement in the *Prlić et al.* case;

FINDING that Croatia is not a “party” within the meaning of Rules 2, 73, and 107 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) and therefore lacks standing to advance a motion concerning the content of the eventual appeal judgement in this case;

PURSUANT to Rules 2, 73, and 107 of the Rules;

⁶ Response, paras 1, 11.

⁷ Reply, paras 1-2, 4.

⁸ *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Decision on Nteziryayo’s Motion for Reconsideration and on Prosecution’s Motion for Clarification of the 8 May 2013 Decision, 12 July 2013, para. 12; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on “Motion by Momčilo Krajišnik for Reconsideration of the Appellate Chamber’s Decision of September 11, 2007”, 27 September 2007, p. 1. See also *Prosecutor v. Zoran Žigić*, Case No. IT-98-30/1-A, Decision on Zoran Žigić’s “Motion for Reconsideration of Appeals Chamber Judgement IT-98-30/1-A Delivered on 28 February 2005”, 26 June 2006, para. 9.

FOR THE FOREGOING REASONS,

HEREBY DISMISSES the Motion.

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

Done this fourth day of July 2017,
At The Hague,
The Netherlands.



Judge Carmel Agius
Presiding

[Seal of the Tribunal]