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SCSL-2003-07-PT-055

(990 - 998)

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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
FREETOWN - SIERRA LEONE

IN THE TRIAL CHAMBER

Before: Judge Bankole Thompson
Judge Pierre Boutet
Judge Benjamin Mutanga Itoe

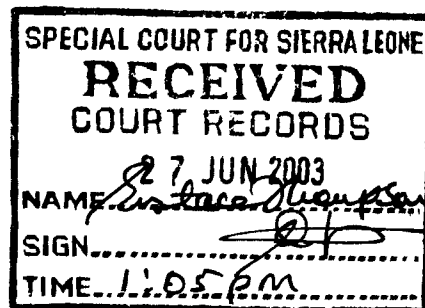
Registrar: Mr. Robin Vincent

Date filed: 27 June 2003

THE PROSECUTOR

Against

MORRIS KALLON



CASE NO. SCSL - 2003 - 07 - PT

PROSECUTION RESPONSE TO DEFENCE OFFICE
APPLICATION DATED 19 JUNE 2003

Office of the Prosecutor:

Mr Desmond de Silva, QC
Mr Luc Côté
Mr Walter Marcus-Jones
Mr Christopher Staker
Mr Abdul Tejan-Cole

Defence Counsel:

Mr James Oury
Mr Stephen Powles

Defence Office:

Mr John R.W.D. Jones
Ms Claire Carlton-Hanciles
Mr Ibrahim Yillah
Mr Haddijatu Kah-Jallow
Mr Sam Scratch

SPECIAL COURT FOR SIERRA LEONE
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APPLICATION DATED 19 JUNE 2003**

I. INTRODUCTION

1. The Prosecution files this response to the document of the Defence Office entitled “Application for Leave to Submit *Amicus Curiae* Briefs” (the “**Defence Office Application**”), dated 19 June 2003, which was filed in these proceedings.¹
2. Although dated 19 June 2003, the Defence Office Application was served electronically on the Prosecution only on 25 June 2003.
3. The Prosecution submits that the Defence Office Application should not be considered by the Trial Chamber, as the Defence Office no longer has standing to file submissions in this case, given that counsel have now been assigned for the Defence and are representing the Accused.

¹ RP 663-666.

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II. ARGUMENT

4. The functions of the Defence Office are set out in Rule 45 of the Rules of Procedure and Evidence (the “**Rules**”). Under Rule 45(A) and (B), it has the function of providing “advice, assistance and representation” to suspects and accused. When performing this category of functions, the Defence Office acts for a *party* to proceedings before the Court. The Prosecution submits that it is evident that a lawyer cannot act as legal representative for a *party* and at the same time make submissions before the Court as an independent third-party *amicus curiae* or intervenor. The conflict between these two capacities requires no further elaboration.
5. In this case, although the Defence Office is not presently acting for the Accused, it is a former legal representative of the Accused. For the Defence Office now to make submissions in the case in an independent capacity, in which it might contradict positions or arguments taken by the Accused, would be a potential conflict with the duties owed by a legal representative to a former client.
6. Even in cases where the Defence Office does not act for an Accused, it still has the function and duty to support Defence counsel generally. In the performance of that function, the Defence Office can provide to Defence counsel any arguments or authorities that it believes could be of assistance to the Defence. Defence counsel can then decide for themselves whether or not they wish to advance those arguments or authorities in the proceedings. If Defence counsel do not wish to advance a particular argument or authority on behalf of their client, the Defence Office should not seek independently to put it before the Chamber by adopting the guise of an *amicus curiae* or third party intervenor. The role of the Defence Office is to assist Defence counsel, not to act as a second Defence team presenting its own arguments in a case independently of, and in addition to, the Accused’s own lawyers.
7. Accordingly, the Prosecution submits that where an Accused is represented by Defence Counsel, the Defence Office has no standing to present submissions in the case. The position may be different in a case where the Accused has no legal representation at all. For instance, the Defence Office Application refers (at para. 5)

to the example of the *Milosevic* case before the International Criminal Tribunal for the Former Yugoslavia, in which the Trial Chamber asked the Registrar to designate three counsel to appear before it as *amici curiae*.² In that case, the accused had informed the Registrar that he had no intention of engaging a lawyer to represent him, and the Trial Chamber considered the appointment of *amicus curiae* to be desirable and in the interests of securing a fair trial. In the present case, however, the Accused is represented by Defence counsel.

8. In other cases in which organizations have been permitted to file *amicus curiae* submissions before the International Tribunals, the organizations concerned have been third parties independent of the Registry or the Tribunal in question. Given the role of the Defence Office, as part of the Registry of the Special Court, of either representing Accused or supporting and assisting those who do represent Accused, the Prosecution submits that the Defence Office is not in a position to make genuinely independent submissions as a third party *amicus curiae*.
9. Alternatively, even if the Defence Office Application could be considered, it should be denied. Where submissions are filed by an *amicus curiae* or intervenor under Rule 74, the parties must have a right to respond to those submissions. In this case, the Prosecution response has already been filed, and the Defence reply will have been filed by the time that any *amicus curiae* submissions could be filed. If *amicus curiae* submissions were admitted at this stage, the Prosecution and Defence would be entitled to file further pleadings in response thereto, with attendant delays in the proceedings. This would set an undesirable precedent. If the Defence Office is permitted to file *amicus curiae* submissions in this case, it might seek to do so in any number of other cases. There would effectively be a third party in many proceedings, with a corresponding increase in the number of pleadings, and pages of pleadings, filed in each case, which would become unwieldy.

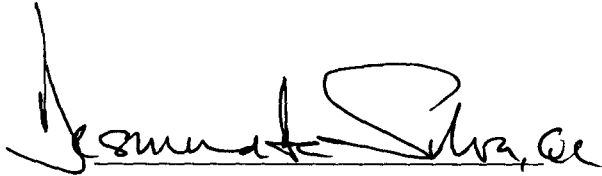
² *Prosecutor v. Milosevic, Order Inviting Designation of Amicus Curiae*, Case No. IT-01-50-PT, T. Ch., 30 October 2001.

III. CONCLUSION

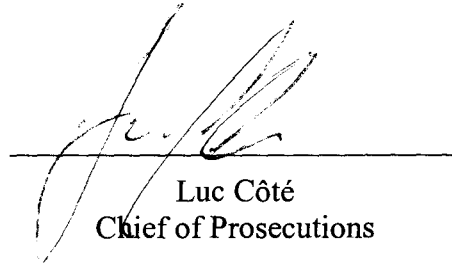
10. For the reasons given above, the Prosecution submits that the Defence Office Application should not be considered.

Freetown, 27 June 2003.

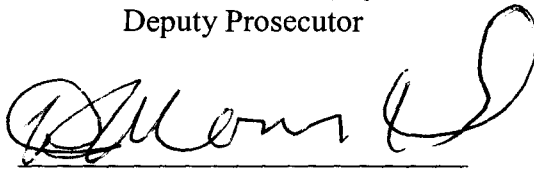
For the Prosecution,



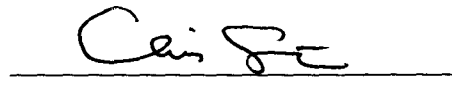
Desmond de Silva, QC
Deputy Prosecutor



Luc Côté
Chief of Prosecutions



~~Walter Marcus-Jones~~
Senior Appellate Counsel



Christopher Staker
Senior Appellate Counsel



Abdul Tejan-Cole
Appellate Counsel

INDEX OF AUTHORITIES

Prosecutor v. Milosevic, Order Inviting Designation of Amicus Curiae, Case No. IT-01-50-PT, T. Ch., 30 October 2001



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-01-50-PT

Date: 30 October 2001

Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge Mohamed Fassi Fihri

Registrar: Mr. Hans Holthuis

Order of: 30 October 2001

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

ORDER INVITING DESIGNATION OF *AMICUS CURIAE*

Office of the Prosecutor:

Ms. Carla Del Ponte
Ms. Hildegard Uertz-Retzlaff

The Accused:

Slobodan Milošević

THIS TRIAL 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”),

CONSIDERING as follows:

- the accused is entitled to defend himself in person and has not appointed counsel to act on his behalf,
- the accused has informed the Registrar of the International Tribunal in writing that he has no intention of engaging a lawyer to represent him,
- Article 20 of the Statute of the International Tribunal requires the Trial Chamber to ensure that a trial is fair and that it is conducted with full respect for the rights of the accused, and
- *amici curiae* have already been designated by the Registrar of the International Tribunal to assist the Trial Chamber in relation to the same accused in other proceedings pending before the International Tribunal,

THE TRIAL CHAMBER therefore considers it desirable and in the interests of securing a fair trial that an *amicus curiae* be appointed as permitted by the Rules of Procedure and Evidence, not to represent the accused but to assist in the proper determination of the case, and pursuant to Rule 74,

INVITES the Registrar to designate the same three counsel to appear before it as *amici curiae*, to assist the Trial Chamber by:

- (a) making any submissions properly open to the accused by way of preliminary or other pre-trial motion;
- (b) making any submissions or objections to evidence properly open to the accused during the trial proceedings and cross-examining witnesses as appropriate;

- (c) drawing to the attention of the Trial Chamber any exculpatory or mitigating evidence; and
- (d) acting in any other way which designated counsel considers appropriate in order to secure a fair trial, and

EXTENDS the time for filing by designated counsel of preliminary motions pursuant to Rule 72 until 30 days after designation by the Registrar, and

DIRECTS the Registrar to provide designated counsel with all such material as is or has been provided to the accused.

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

Richard May
Presiding

Dated this thirtieth day of October 2001
At The Hague
The Netherlands

[Seal of the Tribunal]