



UNITED NATIONS

Case No.: MICT-18-116-AR90.1

International Residual Mechanism  
for Criminal Tribunals

The Appeals Chamber

**Before:** Judge Graciela Gatti Santana  
Judge Prisca Matimba Nyambe  
Judge Claudia Hoefer

**Registrar:** Mr. Abubacarr M. Tambadou

**Date:** April 17, 2025

PROSECUTOR  
v.  
ANSELME NZABONIMPA  
JEAN DE DIEU NDAGIJIMANA  
MARIE ROSE FATUMA  
DICK PRUDENCE MUNYESHULI  
AUGUSTIN NGIRABATWARE

*PUBLIC*

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REQUEST FOR LEAVE TO APPEAR AS AMICUS CURIAE ON BEHALF OF THE  
EUROPEAN CRIMINAL BAR ASSOCIATION (ECBA)

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Amicus Curiae:

Mr. Kenneth Sott

Mr. Peter Robinson

Mondriaantoren 19th floor, Amstelplein 40 - 1096 BC Amsterdam, The Netherlands  
Chamber of Commerce KVK 87360322  
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## I. INTRODUCTION

1. The European Criminal Bar Association (“ECBA”) respectfully requests leave to make submissions as *amicus curiae* pursuant to Rule 83 of the Rules of Procedure and Evidence (“Rules of Procedure and Evidence”)<sup>1</sup> of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) on the matters raised in the appellate proceedings concerning defence counsel Mr. Peter Robinson.<sup>2</sup>

2. The ECBA seeks to provide submissions on systemic legal issues in relation to the role and obligations of defence counsel.

## II. ABOUT THE ECBA AND ITS EXPERTISE

3. The ECBA, comprised of leading independent criminal defence lawyers in the Council of Europe, is dedicated to upholding the fundamental rights of individuals undergoing criminal investigation, suspects, accused, and convicted persons. With a substantial membership across the entire Council of Europe region, the ECBA convenes biannually and maintains several working groups that leverage the diverse practice expertise of its members to identify and address the most pressing challenges in criminal justice.

4. The ECBA has extensive experience in submitting *amicus curiae* observations in international *fora*, including the European Court of Human Rights (“ECtHR”), and regularly consults with European and international institutions on criminal law and fair trial standards.<sup>3</sup>

5. The ECBA’s Human Rights Committee, composed of senior defence practitioners and legal academics, monitors systemic developments in criminal justice and has expertise in professional ethics, defence counsel conduct, and regulation before international courts. The ECBA’s Human Rights Committee is well qualified to offer submissions of assistance in relation to the matters at issue due to its long-standing expertise and experience on human rights, in particular, the rights of the defence, and general criminal law aspects relevant to the questions at hand.

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<sup>1</sup> MICT/1/Rev.8, 26 February 2024.

<sup>2</sup> MICT-18-116-AR90.1, *Prosecutor v. Nzabonimpa et. al.*, Appeal of Decision on Allegations of Contempt, 3 March 2025.

<sup>3</sup> ECHR: *Pietrzak, Bychawska-Siniarska v. Poland* Application No. 17389/20, *Yasak v. Türkiye* (Applications Nos. 72038/17, 25237/18) and *Brejza and others v. Poland* (Application No. 27830/23 and 8 others); UN Human Rights Committee: *Kokorev v. Spain*, Application No. 3954/2021; United States Court of Military Commission Review (CMCR): *United States v. Abd al-Rahim Hussein al-Nashiri*; Italian Constitutional Court: Judgment No. 16/25.

### III. STATEMENT OF INTEREST AND PROPOSED SUBMISSIONS

6. The ECBA has no personal or professional relationship with Mr. Robinson or any party to the proceedings and submits this request in its institutional capacity.

7. Should leave be granted, the ECBA intends to provide **submissions on the following issues:**

#### **a. Due Process and Legal Certainty**

8. The ECBA will submit that the interpretation of the legal framework of the Mechanism needs to be carried out in accordance with the principles of due process and legal certainty. While defence counsel is bound by an obligation to the Mechanism, they are also duty-bound to their clients (Art 3(ii) Code of Professional Conduct for Defence Counsel (“Code of Conduct”).<sup>4</sup> In this capacity, they are required to uphold the principles of competence, integrity, and independence (Art 6 Code of Conduct). The fundamental responsibility of defence counsel is to ensure a fair trial before a Tribunal adhering to the rules of due process and legal certainty for their client. In this light, the ECBA will argue that it is essential to consider as a relevant factor that the interpretation of protective orders is undertaken with the objective of ensuring due process for an accused.<sup>5</sup>

#### **b. Comparative and Institutional Practice**

9. The ECBA will examine how similar matters involving counsel conduct are addressed in other international tribunals and domestic jurisdictions. The ECBA will provide comparative analysis of the relationship between disciplinary frameworks and contempt proceedings in various legal systems.

#### **c. Interpretation of "Prohibited Contact"**

10. The ECBA intends to analyse the scope and nature of protective orders regarding witness contact, including distinctions between procedural requirements and substantive prohibitions. The ECBA will examine legal standards for determining when non-compliance with procedural requirements may constitute contempt. The ECBA seeks to offer legal analysis regarding the proper construction of protective orders governing contact with protected witnesses. Such analysis will address the distinction between

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<sup>4</sup> Code of Professional Conduct for Defence Counsel Appearing before the Mechanism and Other Defence Team Members, Mict/6/Rev.1, 14 May 2021.

<sup>5</sup> C.f. ICTR-2001-63-T, *The Prosecutor v Nchamihigo*, Decision on Defence Motion on Contempt of Court and Reconsideration of Protective Measures for Defence Witnesses, 9 August 2007, para 8.

orders imposing absolute prohibitions on contact *versus* those establishing procedural prerequisites for permissible contact. The ECBA proposes to submit that procedural non-compliance ought to be distinguished from deliberate violations of court orders, with the former more appropriately addressed through disciplinary mechanisms rather than contempt proceedings. This distinction has a direct bearing on the preservation of the ability of defence counsel to fulfil their duty to investigate cases thoroughly in the furtherance of effective representation.

#### **d. Right to Effective Defence**

11. Should leave be granted, the ECBA will make submissions on the the right to adequate legal representation in international criminal proceedings. The ECBA intends to argue that the initiation of proceedings without proper assessment of a *prima facie* case, including the consideration of all relevant factors (see above), constitutes a violation of this fundamental right of the accused as well as the principle of equality of arms.

12. The right to legal representation in Article 19(4)(b) of the Statute of the International Residual Mechanism for Criminal Tribunals (“the Statute”) encompasses various elements. The accused is entitled to select a counsel of their choice, with whom they can communicate. The accused, furthermore, has a right to adequate time and facilities for the preparation of their defence. Even though it has been established that the right to equality of arms needs to receive a more liberal interpretation in the context of international criminal tribunals, it was still contended that the Court needs to “provide every practicable facility it is capable of granting” under the legislation of the Tribunals.<sup>6</sup> In its submission, the ECBA intends to elaborate on the scope and extent of the this right under the legislation of the International Residual Mechanism for Criminal Tribunals is capable of providing.<sup>7</sup>

13. The right to legal representation is also a fundamental component in guaranteeing due process and thereby ensuring the integrity of the administration of international criminal law. In its submission, the ECBA intends to argue that by hindering the full potential of criminal defence, not only due process, but also the integrity of the administration of justice as a whole will be impacted, affecting the legitimacy of International Criminal Tribunals.

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<sup>6</sup> IT-94-1-A, *The Prosecutor v Tadic*, Appeal Judgement, 15 July 1999, para. 52; *see also* MICT-13-56-A, *The Prosecutor v Ratko Mladić*, Appeals Judgement, 8 June 2021, para 63.

<sup>7</sup> *See also* IT-97-24-A, *The Prosecutor v. Stakić*, Appeals Judgement, 22 March 2006, para 149.

14. The ECBA will further submit that the right to legal representation safeguards the interests of justice<sup>8</sup> by ensuring all rights of the accused as well as preventing misconduct, such as coerced or false statement or confessions.

#### **e. The Systemic Impact of Criminalizing Professional Conduct**

15. Finally, the ECBA intends to provide submissions on the systemic impact of criminalizing professional conduct of lawyers. In this respect, the ECBA will address the vital position of lawyers in the administration of justice as intermediary between litigants and the courts. As recently pointed out by the President of the ECtHR on the topic of the importance of the legal profession in maintaining the rule of law, there has been some weakening of the rule of law in current times.<sup>9</sup> In particular, lawyers are increasingly under critical scrutiny and, in some cases, even attack. This appears to be a trend world-wide, not only in the United States of America, where we have recently witnessed several examples of retaliative acts against large law firms through punitive executive orders<sup>10</sup>, but also in Council of Europe Member States. This led the Council of Europe (“CoE”) to adopt the first-ever international treaty aiming to protect the profession of lawyer<sup>11</sup>. In the words of the CoE, this is to respond to increasing reports of attacks on the practice of the profession, whether in the form of harassment, threats or attacks, or interference with the exercise of professional duties (for example, obstacles to access to clients).<sup>12</sup> It is dedicated to the protection of the profession of lawyers addressing, *inter alia*, entitlement to practise, professional rights and professional discipline and specific protective measures for lawyers.<sup>13</sup> In this regard, the ECBA seeks to address both the need to protect the legal profession and the impact of criminalising defence counsel’s conduct in this context.

#### **f. Right to Review**

16. With regards to the role of defence counsel in review proceedings, the ECBA will provide submissions on the general principles and purposes of review proceedings before

<sup>8</sup> C.f. ICTR-99-52-A, *The Prosecutor v Nahimana et. al.*, Appeals Judgement, 28 November 2007, para 173.

<sup>9</sup> Joint CCBE – Council of Europe – OBF – OVB – Brussels Bars Reception: “The importance of the legal profession in maintaining the rule of law”, Speech by Marko Bošnjak, 4 April 2025, p. 4.

<sup>10</sup> <https://news.wttw.com/2025/04/15/trump-s-executive-orders-targeting-law-firms-tee-potential-constitutional-clash>; [https://news.bloomberglaw.com/environment-and-energy/susman-godfrey-moves-to-halt-trump-executive-order-against-firm?utm\\_source=rss&utm\\_medium=NEVE&utm\\_campaign=00000196-3672-d500-a39e-bff693780001](https://news.bloomberglaw.com/environment-and-energy/susman-godfrey-moves-to-halt-trump-executive-order-against-firm?utm_source=rss&utm_medium=NEVE&utm_campaign=00000196-3672-d500-a39e-bff693780001), <https://www.nytimes.com/2025/04/10/us/politics/trump-law-firms.html>.

<sup>11</sup> Council of Europe Convention for the Protection of the Profession of Lawyer.

<sup>12</sup> <https://www.coe.int/en/web/portal/-/council-of-europe-adopts-international-convention-on-protecting-lawyers>.

<sup>13</sup> See also Council of Europe Convention for the Protection of the Profession of Lawyer Explanatory Report.

International Courts and Tribunals. The ECBA intends to emphasise on how review proceedings extend beyond the rectification of individual cases as they serve an important function in maintaining the credibility and legitimacy of international tribunals. In order to avoid a miscarriage of justice and to enable the search for the truth in criminal proceedings, both the Prosecution and the Defence are provided with a remedy for review if the requirements of Article 24 of the Statute and Rule 146 of the Rules and Procedures and Evidence are met.

17. The review of a final judgement is an exceptional procedure,<sup>14</sup> and the threshold to institute review proceedings is high, in particular before the international tribunals.<sup>15</sup> The high threshold for review does not, however, diminish its function as an avenue to ensure a fair and just trial in both national and international proceedings. The ECBA intends to provide submissions on the importance of fair review proceedings, especially in light of the context in which proceedings at International Courts and Tribunals take place. Miscarriages of justice may arise from factual inaccuracies, legal or procedural errors, and professional misconduct. International criminal tribunals in particular encounter substantial difficulties in engaging with and safeguarding victims and witnesses. These challenges can lead to wrongful convictions, unwarranted acquittals, or trials that fall short of fundamental standards of fairness.

18. To mitigate these risks, domestic and international legal systems have implemented safeguards such as fair trial guarantees, procedural and evidentiary rules, witness protection, legal aid, and professional ethical standards. The ECBA intends to argue that international criminal courts and tribunals remain vulnerable to systemic and structural challenges that may heighten the risk of unjust outcomes. Therefore, effective and accessible mechanisms must be in place to rectify miscarriages of justice. Consistent with fundamental principles of fairness, convicted individuals should retain the right to challenge their convictions when new evidence emerges, even if other avenues of appeal have been exhausted.<sup>16</sup> For this right to be effective it must also encompass the Applicant's right to access such evidence.

#### IV. RELIEF SOUGHT

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<sup>14</sup> MICT-13-36-R, *Prosecutor v. Laurent Semanza*, Decision on a Request for Access and Review, 9 April 2018, para 13.

<sup>15</sup> See e.g., IT-94-1-A, *Prosecutor v. Dusko Tadic*, Decision on Appellant's Motion for the Extension of the Time Limit and Admission of Additional Evidence, 15 October 1998, para. 32.

<sup>16</sup> See also "Remedying international injustice: appeals, retrials and revisions of judgements in international criminal law." An International Bar Association International Criminal Court & International Criminal Law Programme report, December 2022.

19. For the foregoing reasons, the ECBA respectfully requests that the Chamber:

GRANT LEAVE to the ECBA to appear as *amicus curiae* and to file written submissions on the issues outlined above, within a page limit and deadline to be determined by the Chamber.

20. The ECBA confirms its availability to file its submissions on an expedited basis if so requested by the Chamber.

Yours sincerely,



Vânia Costa Ramos  
Chair of the European Criminal Bar Association



Alexis Anagnostakis  
European Criminal Bar Association Human Rights Officer

Rapporteurs: Anna Oehmichen, Nicola Canestrini, Vladimir Hrle, Alexis Anagnostakis



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Rev: April 2014/Rév. : Avril 2014