

ANNEX 1 to

Krasniqi Defence Referral to the Constitutional Court Panel

on the Legality of Charging Joint Criminal Enterprise

Public

List of Authorities

A. ICC

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| Concurring Opinion of Judge Wyngaert | ICC, <i>Prosecutor v. Ngudjolo</i> , ICC-01/04-02/12-4, Trial Chamber II, Judgment Pursuant to Article 74 of the Statute, Concurring Opinion of Judge Christine Van den Wyngaert , 18 December 2012. ¹ |
| <i>Lubanga</i> Confirmation of Charges | ICC, <i>Prosecutor v. Lubanga</i> , ICC-01/04-01/06-803-tEN, Pre-Trial Chamber I, Decision on the Confirmation of Charges , 29 January 2007. ² |
| <i>Katanga</i> Confirmation of Charges | ICC, <i>Prosecutor v. Katanga et al.</i> , ICC-01/04-01/07-717, Pre-Trial Chamber I, Decision on the Confirmation of Charges , 30 September 2008. ³ |

B. ICTY

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| <i>Tadić</i> Appeal Judgment | ICTY, <i>Prosecutor v. Tadić</i> , IT-94-1-A, Appeals Chamber, Judgment , 15 July 1999. ⁴ |
| <i>Hadžihasanović</i> Decision | ICTY, <i>Prosecutor v. Hadžihasanović et al.</i> , IT-01-47-AR72, Appeals Chamber, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility , 16 July 2003. ⁵ |
| <i>Krajišnik</i> Appeal Judgment | ICTY, <i>Prosecutor v. Krajišnik</i> , IT-00-39-A, Appeals Chamber, Judgment , 17 March 2009. ⁶ |
| <i>Prlić</i> Appeal Judgment | ICTY, <i>Prosecutor v. Prlić et al.</i> , IT-04-74-A, Appeals Chamber, Judgment , 29 November 2017. ⁷ |

¹ Referred to in paras 22, 72 of the Krasniqi Defence Constitutional Referral.

² Referred to in para. 59 of the Krasniqi Defence Constitutional Referral.

³ Referred to in para. 59 of the Krasniqi Defence Constitutional Referral.

⁴ Referred to in paras 4, 24-25, 29, 32, 38(2)-(3), 42, 58-60, 66-67 of the Krasniqi Defence Constitutional Referral.

⁵ Referred to in para. 22 of the Krasniqi Defence Constitutional Referral.

⁶ Referred to in para. 51 of the Krasniqi Defence Constitutional Referral.

⁷ Referred to in para. 51 of the Krasniqi Defence Constitutional Referral.

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| <i>Furundžija</i> | ICTY, <i>Prosecutor v. Anto Furundžija</i> , IT-95-17/1-T, Trial Chamber, Judgment , 10 December 1998. ⁸ |
| <i>Milutinović Decision</i> | ICTY, <i>Prosecutor v. Milutinović et al.</i> , IT-99-37-AR72, Appeals Chamber, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – Joint Criminal Enterprise , 21 May 2003. ⁹ |
| Separate and Partially Dissenting Opinion Judge Antonetti | ICTY, <i>Prosecutor v. Prlić et al.</i> , IT-04-74-T, Trial Chamber III, Judgment, Separate and Partially Dissenting Opinion of Presiding Judge Jean-Claude Antonetti , 29 May 2013. ¹⁰ |

C. ECtHR

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| <i>Vasiliauskas</i> | ECtHR, <i>Vasiliauskas v. Lithuania</i> , no. 35343/05, Judgment (Merits and Just Satisfaction) , 20 October 2015. ¹¹ |
| <i>Kononov</i> | ECtHR, <i>Kononov v. Latvia</i> , no. 36376/04, Judgment (Merits and Just Satisfaction) , 17 May 2010. ¹² |
| <i>Korbely</i> | ECtHR, <i>Korbely v. Hungary</i> , no. 9174/02, Judgment (Merits and Just Satisfaction) , 19 September 2008. ¹³ |
| <i>Žaja</i> | ECtHR, <i>Žaja v. Croatia</i> , no. 37462/09, Judgment (Merits and Just Satisfaction) , 4 January 2017. ¹⁴ |
| <i>Kokkinakis</i> | ECtHR, <i>Kokkinakis v. Greece</i> , no. 14307/88, Judgment (Merits and Just Satisfaction) , 25 May 1993. ¹⁵ |

D. ECCC

⁸ Referred to in paras 58, 66 of the Krasniqi Defence Constitutional Referral.

⁹ Referred to in para. 64 of the Krasniqi Defence Constitutional Referral.

¹⁰ Referred to in para. 67 of the Krasniqi Defence Constitutional Referral.

¹¹ Referred to in paras 21, 64, 72 of the Krasniqi Defence Constitutional Referral.

¹² Referred to in paras 21-22, 64-65, 70 of the Krasniqi Defence Constitutional Referral.

¹³ Referred to in para. 67 of the Krasniqi Defence Constitutional Referral.

¹⁴ Referred to in para. 68 of the Krasniqi Defence Constitutional Referral.

¹⁵ Referred to in para. 72 of the Krasniqi Defence Constitutional Referral.

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|------------------|-----|--|
| ECCC Decision | PTC | ECCC, <i>Co-Prosecutors v. Ieng Sary et al.</i> , 002/19-09-2007-ECCC/OCIJ (PTC38), Pre-Trial Chamber, Decision on the Appeals Against the Co-Investigative Judges Order on Joint Criminal Enterprise (JCE) , 20 May 2010. ¹⁶ |
| ECCC TC Decision | | ECCC, <i>Co-Prosecutors v. Ieng Sary et al.</i> , 002/19-09-2007/ECCC/TC, Trial Chamber, Decision on the Applicability of Joint Criminal Enterprise , 12 September 2011. ¹⁷ |
| ECCC Judgment | SC | ECCC, <i>Co-Prosecutors v. Nuon Chea et al.</i> , 002/19-09-2007-ECCC/SC, Supreme Court Chamber, Appeal Judgment , 23 November 2016. ¹⁸ |

E. ICJ

| | | |
|---|-----------|--|
| North Continental Shelf case | Sea Shelf | ICJ, <i>North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)</i> , Judgment of 20 February 1969 . ¹⁹ |
| Military and Paramilitary Activities in and Against Nicaragua | and | ICJ, <i>Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)</i> , Merits, Judgment of 27 June 1986 . ²⁰ |
| Asylum case | | ICJ, <i>Asylum Case (Colombia/Peru)</i> , Judgment of 20 November 1950 . ²¹ |

F. Post WWII Cases & Material

| | |
|----------------------------|--|
| <i>Essen Lynching case</i> | British Military Court for the Trial of War Criminals, <i>Erich Heyer et al.</i> , Case No. 8, Trial of Erich Heyer and Six Others , 18- |
|----------------------------|--|

¹⁶ Referred to in paras 5, 35, 58, 61 of the Krasniqi Defence Constitutional Referral.

¹⁷ Referred to in paras 5, 58, 60-61 of the Krasniqi Defence Constitutional Referral.

¹⁸ Referred to in paras 5, 31, 38(1)-(2), 45, 58, 61 of the Krasniqi Defence Constitutional Referral.

¹⁹ Referred to in para. 62 of the Krasniqi Defence Constitutional Referral.

²⁰ Referred to in para. 62 of the Krasniqi Defence Constitutional Referral.

²¹ Referred to in para. 62 of the Krasniqi Defence Constitutional Referral.

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|--|---|
| | 19 and 21-22 December 1945, UNWCC, Law Reports of Trials of War Criminals, Vol. I at 88-92. ²² |
| <i>Borkum Island</i> case | United States Army War Crimes Trials, <i>United States v. Kurt Goebell et al.</i> , Case No. 12-489, Review and Recommendations , 1 August 1947. ²³ |
| Report of the Deputy Judge Advocate for War Crimes | European Command, ' Report of the Deputy Judge Advocate for War Crimes ', June 1944 to July 1948. ²⁴ |
| <i>D'Ottavio et al.</i> | Italian Court of Cassation, <i>D'Ottavio et al.</i> , No. 270, Criminal Section I, Judgment , 12 March 1947, published in <i>Journal of International Criminal Justice</i> 5 (2007), pp. 232-234. ²⁵ |
| <i>Aratano et al.</i> | Italian Court of Cassation, <i>Aratano et al.</i> , No. 102, Criminal Section II, Judgment , 21 February 1949, published in <i>Journal of International Criminal Justice</i> 5 (2007), pp. 241-242. ²⁶ |
| <i>RuSHA</i> case | United States Military Tribunal I, <i>United States of America v. Greifelt et al.</i> , Case No. 8, Opinion and Judgment , 20 October 1947-10 March 1948, Trials of War Criminals before the Nuernberg Military Tribunals, Vol. V at 88-167. ²⁷ |
| <i>Dachau Concentration Camp</i> | General Military Government Court of the United States Zone, <i>Martin Gottfried Weiss et al.</i> , Case No. 60, Trial of Martin Gottfried Weiss and Thirty-Nine Others , 15 November-13 December 1945, UNWCC, Law Reports of Trials of War Criminals, Vol. XI at 5-17. ²⁸ |

²² Referred to in paras 26-29 of the Krasniqi Defence Constitutional Referral.

²³ Referred to in paras 30-34 of the Krasniqi Defence Constitutional Referral.

²⁴ Referred to in para. 32 of the Krasniqi Defence Constitutional Referral.

²⁵ Referred to in paras 36-37 of the Krasniqi Defence Constitutional Referral.

²⁶ Referred to in para. 38(1) of the Krasniqi Defence Constitutional Referral.

²⁷ Referred to in paras 40-41 of the Krasniqi Defence Constitutional Referral.

²⁸ Referred to in para. 42 of the Krasniqi Defence Constitutional Referral.

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|--|---|
| <i>Ulrich and Merkle</i> case | General Military Government Court of the United States Zone, <i>United States v. Ulrich and Merkle</i> , Case No. 000-50-2-17, Review and Recommendations , 12 June 1947. ²⁹ |
| <i>Wuelfert et al.</i> case | General Military Government Court of the United States Zone, <i>United States v. Hans Wuelfert et al.</i> , Case No. 000-50-2-72, Review and Recommendations , 19 September 1947. ³⁰ |
| <i>Tashiro Toranosuke et al.</i> | Hong Kong Military Court for the Trial of War Criminals No. 5, <i>Tashiro Toranosuke et al.</i> , Case No. WO235/905, Judge Advocate's Summing Up and Recommendation to Commander in Forces in Hong Kong , 28 October 1946. ³¹ |
| <i>Rüsselsheim</i> Deputy Theater Judge Advocate | United States Army War Crimes Trials, <i>United States v. Josef Hartgen et al.</i> , Case No. 12-1497, Review and Recommendations of the Deputy Theater Judge Advocate , 29 September 1945. ³² |
| <i>Rüsselsheim</i> Staff Judge Advocate | United States Army War Crimes Trials, <i>United States v. Josef Hartgen et al.</i> , Case No. 12-1497, Review of the Staff Judge Advocate , 23 August 1945. ³³ |
| 1946 US Manual for Trial of War Crimes | Deputy Theater Judge Advocate's Office War Crimes Group, <i>Manual for Trial of War Crimes and Related Cases</i> , 15 July 1946. ³⁴ |
| <i>Ikeda</i> | Temporary Court Martial in Batavia, <i>The Queen v. Ikeda</i> , No. 72 A/1947, Judgment , 30 March 1948. ³⁵ |
| <i>Ishiyama and Yasusaka</i> | Australian Military Court, <i>Ishiyama et al.</i> , AWC No. 2225 and AWC No. 2229, Trial of Japanese War Criminals , 8-9 April 1946. ³⁶ |

²⁹ Referred to in para. 43 of the Krasniqi Defence Constitutional Referral.

³⁰ Referred to in para. 43 of the Krasniqi Defence Constitutional Referral.

³¹ Referred to in para. 44 of the Krasniqi Defence Constitutional Referral.

³² Referred to in paras 46-48 of the Krasniqi Defence Constitutional Referral.

³³ Referred to in para. 47 of the Krasniqi Defence Constitutional Referral.

³⁴ Referred to in para. 48 of the Krasniqi Defence Constitutional Referral.

³⁵ Referred to in paras 49-52 of the Krasniqi Defence Constitutional Referral.

³⁶ Referred to in paras 53-55 of the Krasniqi Defence Constitutional Referral.

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|-----------------------|--|
| <i>Tashiro et al.</i> | United States Military Commission Yokohama, <i>United States v. Tashiro et al.</i> , Case No. 78, Review of the Staff Judge Advocate , 7 January 1949. ³⁷ |
| Yearbook of the ILC | ‘Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal’ , in ILC, ‘Report of the International Law Commission to the General Assembly’, A/1316, 5 June – 29 July 1950, Yearbook of the International Law Commission, Vol. II, 1950, pp. 364-85. ³⁸ |

G. EULEX

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|-------------------------|---|
| <i>D.N. case</i> | EULEX, <i>People v. D.N.</i> , Ap-Kž-67/2011, Supreme Court of Kosovo, Judgment , 29 May 2012. ³⁹ |
| <i>Xh. K. case</i> | EULEX, <i>People v. Xh. K.</i> , PAKR Nr 648/16, Court of Appeals, Judgment , 22 June 2017. ⁴⁰ |
| <i>J.D. et al. case</i> | EULEX, <i>People v. J.D. et al.</i> , PAKR Nr 455/15, Court of Appeals, Judgment , 15 September 2016. ⁴¹ |

H. STL

| | |
|------------------------|--|
| <i>Ayyash Decision</i> | STL, <i>Prosecutor v. Ayyash et al.</i> , STL-11-01/I, Appeals Chamber, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging , 16 February 2011. ⁴² |
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I. UK

³⁷ Referred to in para. 56 of the Krasniqi Defence Constitutional Referral.

³⁸ Referred to in para. 57 of the Krasniqi Defence Constitutional Referral.

³⁹ Referred to in para. 68 of the Krasniqi Defence Constitutional Referral.

⁴⁰ Referred to in para. 68 of the Krasniqi Defence Constitutional Referral.

⁴¹ Referred to in para. 68 of the Krasniqi Defence Constitutional Referral.

⁴² Referred to in para. 39 of the Krasniqi Defence Constitutional Referral.

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| <i>Newbury and Jones</i> case | United Kingdom, <i>DPP v. Newbury and Jones</i> , [1977] AC 500, House of Lords, Judgment , 12 May 1976. ⁴³ |
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J. Other

| | |
|---|---|
| Elgar Companion to the ECCC | Jørgensen, N. H. B., <i>The Elgar Companion to the Extraordinary Chambers in the Courts of Cambodia</i> , Edward Elgar Publishing Limited 2018. ⁴⁴ |
| Clarke Return to Borkum Island | Clarke, R. C., " Return to Borkum Island Extended Joint Criminal Enterprise Responsibility in the Wake of World War II ", <i>Journal of International Criminal Justice</i> 9 (2011). ⁴⁵ |
| Max Planck Institute for Foreign and International Criminal Law | Sieber, U., Koch, H. G., and Simon, J. M., Office of the Prosecutor Project Coordination, Participation in Crime: Criminal Liability of Leaders of Criminal Groups and Networks, Expert Opinion, Commissioned by the United Nations – ICTY, 2006. ⁴⁶ |
| On Being Concerned in a Crime | Jørgensen, N. H. B., "On Being 'Concerned' in a Crime: Embryonic Joint Criminal Enterprise?", in Linton, S. (ed), <i>Hong Kong's War Crimes Trials</i> , Oxford University Press 2013. ⁴⁷ |
| JCE and Command Responsibility | Ambos, K., " Joint Criminal Enterprise and Command Responsibility ", <i>Journal of International Criminal Justice</i> 5 (2007). ⁴⁸ |

⁴³ Referred to in para. 29 of the Krasniqi Defence Constitutional Referral.

⁴⁴ Referred to in paras 27, 30, 32, 57, 61 of the Krasniqi Defence Constitutional Referral.

⁴⁵ Referred to in para. 57 of the Krasniqi Defence Constitutional Referral.

⁴⁶ Referred to in para. 60 of the Krasniqi Defence Constitutional Referral.

⁴⁷ Referred to in para. 65 of the Krasniqi Defence Constitutional Referral.

⁴⁸ Referred to in para. 73 of the Krasniqi Defence Constitutional Referral.