



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-02-54-R77.5

Date: 18 February 2009

Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President

Acting Registrar: Mr. John Hocking

Decision of: 18 February 2009

**IN THE CASE AGAINST
FLORENCE HARTMANN**

PUBLIC

DECISION ON MOTION FOR DISQUALIFICATION

Amicus

Mr. Bruce MacFarlane, QC

Counsel for Ms. Hartmann

Mr. Karim A. A. Khan, Lead Counsel
Mr. Guénaél Mettraux, Co-Counsel

I, PATRICK ROBINSON, President 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”);

NOTING the “Defence Motion for Disqualification of Two Members of the Trial Chamber and of Senior Legal Officer in Charge of the Case” (“Motion”), filed confidentially by Counsel for Florence Hartmann (“Defence”) on 3 February 2009 before the specially-appointed Trial Chamber (“Trial Chamber”) to Case No. IT-02-54-R77.5, *In the Case Against Florence Hartmann*;¹

NOTING the confidential “Report Pursuant to Rule 15(B)(ii)”, presented to me by the Presiding Judge of the Trial Chamber on 9 February 2009 (“Report of the Presiding Judge”);

NOTING the “Prosecution Response to Defence Motion for Disqualification”, filed confidentially on 16 February 2009 (“Response”);²

NOTING that one of the main arguments of the Defence is that the interpretation of Rule 77 of the Rules of the International Tribunal (“Rules”) is subject to the Statute of the International Tribunal (“Statute”) as well as “generally-recognized standards of fundamental human rights”³ and that, as such, the disqualification of the Judges is warranted due to “the direct, constant and multi-faced involvement by the Trial Chamber with many aspects of [the] investigation and prosecution” of this case;⁴

CONSIDERING that this argument is a direct challenge to the validity of Rule 77 of the Rules itself;

NOTING that the Defence also argues that the involvement of the Trial Chamber has created “an appearance of a lack of impartiality on the part of the [...] Chamber and an appearance of bias against Ms Hartmann”;⁵

CONSIDERING that in his Report, the Presiding Judge asserts that the Judges of the Trial Chamber acted in accordance with the requirements of Rule 77 of the Rules;

¹ I note that the Defence filed a public-redacted version of the Motion on 6 February 2009. Furthermore, on 10 February 2009, the Defence filed the public “*Addendum to Defence Motion for Disqualification of Two Members of the Trial Chamber and of Senior Legal Officer in Charge of the Case*”, with confidential annexes.

² The Prosecution filed a public-redacted version of its Response on the same day.

³ Motion, para. 7.

⁴ Motion, paras 4-5 and 13-14.

⁵ Motion, para. 5.

CONSIDERING that Rule 15(B)(ii) of the Rules provides that, “[f]ollowing the Report of the Presiding Judge, the President shall, if necessary, appoint a panel of three Judges drawn from other Chambers to report to him its decision on the merits of the application”;

CONSIDERING that, in my view, it is necessary to appoint a panel of three judges to provide me with their decision on the merits of the application, including, in particular (a) whether the provisions of Rule 77 of the Rules are in violation of the Statute and/or generally recognized standards of fundamental human rights under customary international law; and (b) in the event that the finding as regards to (a) is in the negative, whether the conduct of the Trial Chamber breached the principle of impartiality required under the Statute and/or generally recognized standards of fundamental human rights under customary international law;

HEREBY ORDER that the Bench in *In the Case Against Florence Hartmann*, Case No. IT-02-54-R77.5, shall be composed as follows:


Judge O-Gon Kwon

Judge Iain Bonomy

Judge Christoph Flügge

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

Done this 18th day of February 2009,
At The Hague,
The Netherlands.



Judge Patrick Robinson
President