



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: 30 March 2009

Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President

Acting Registrar: Mr. John Hocking

Decision of: 30 March 2009

IN THE CASE AGAINST

FLORENCE HARTMANN

PUBLIC

DECISION ON MOTION FOR LEAVE TO BE HEARD

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 *confidential* and *ex parte* “Order Assigning Judges to a Contempt Matter” (“Order of 23 January 2008”), issued by then President of the International Tribunal, Judge Fausto Pocar, on 23 January 2008, appointing a Chamber (“Specially Appointed Chamber”) to determine whether it had reason to believe that Florence Hartmann or any other person may be in contempt of the International Tribunal;

NOTING the *confidential* “Defence Motion for Disqualification of Two Members of the Trial Chamber and of Senior Legal Officer In Charge of the Case” (“Motion of 3 February 2009”), filed by Counsel for Florence Hartmann (“Defence”) before the Specially Appointed Chamber on 3 February 2009;¹

NOTING the “Order Postponing Commencement of Trial”, issued by the Specially Appointed Chamber on 3 February 2009, in which the trial in this case was postponed *sine die* pending resolution of the Motion of 3 February 2009, given that the Motion was filed two days before the scheduled commencement of the trial;

NOTING the “Decision on Motion for Disqualification”, issued by myself on 18 February 2009, in which, pursuant to Rule 15(B)(ii) of the Rules, I appointed a panel of three Judges (“Panel”) to consider the Motion of 3 February 2009;

NOTING the *confidential* “Motion for Leave to be Heard” (“Motion of 24 March 2009”), filed before me by the Defence on 24 March 2009, in which the Defence requests, pursuant to Article 21 of the Statute of the International Tribunal and Rules 19, 54 and 77 of the Rules of the International Tribunal (“Rules”), “leave from the President to be heard as regard [*sic*] the continuation or otherwise of these proceedings should the President grant, in whole or in part, the Defence Motion of 3 February 2009”;²

NOTING the *confidential* “Report of Decision on Defence Motion for Disqualification of Two Members of the Trial Chamber and of Senior Legal Officer” (“Decision of 25 March 2009”), issued by the Panel on 25 March 2009, granting the Motion of 3 February 2009 in part and accordingly

¹ A public redacted version of the Motion of 3 February 2009 was filed on 6 February 2009.

² Motion of 24 March 2009, paras 7 and 22. A public version of the Motion of 24 March 2009 was filed the same day.

inviting the President to assign two new Judges to the Specially Appointed Chamber to replace Judge Carmel Agius and Judge Alphons Orié;

NOTING that in support of the Motion of 24 March 2009, the Defence submits that as demonstrated by its submissions during the pre-trial phase of the proceedings in this case, the assertions upon which Judge Pocar based the Order of 23 January 2008 “were patently wrong, inaccurate and dangerously misleading” and that if granted leave to be heard, the Defence would “establish that in the circumstances of the case and in light of the evidence that has already been put forth by the Defence contempt proceedings against Ms Hartmann would constitute an abuse of the Tribunal’s jurisdiction and a grave violation of her fundamental rights”;³

NOTING that the Defence also submits that if the Motion of 3 February 2009 is granted in whole or in part, the President “would be required to exercise his discretion pursuant to Rules 19 and 77 in deciding whether or not to re-assign a Trial Chamber to this matter” and that prior to deciding whether the proceedings in this case should continue, it would be in the interests of justice to hear the Defence and the *amicus* Prosecutor “as it would allow the President to fully consider all arguments as would militate for and against the continuation of proceedings and would enable him to exercise his discretion pursuant to Rules 19 and 77 in a fully informed manner”;⁴

NOTING that the Defence further submits that although its Motion of 24 March 2009 is not a motion for reconsideration, the President has the authority to reconsider the Order of 23 January 2008, and if leave to be heard is granted, the Defence will request reconsideration and annulment of that Order;⁵

CONSIDERING that the proceedings in this case are ongoing before the Specially Appointed Chamber, having been postponed pending resolution of the Motion of 3 February 2009, and that the President has no authority to undertake the action requested in the Motion of 24 March 2009;

FINDING, therefore, that I have no authority to hear the Defence in the circumstances of this case;

HEREBY DISMISS the Motion of 24 March 2009.

³ Motion of 24 March 2009, paras 3 and 13.

⁴ Motion of 24 March 2009, paras 9-10.

⁵ Motion of 24 March 2009, paras 14-15.

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

Done this 30th day of March 2009,

At The Hague,

The Netherlands.



Judge Patrick Robinson

President