

25-02-54-R77.5
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20 August 2009

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**UNITED
NATIONS**



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

Case No. IT-02-54-R77.5

Date: 20 August 2009

Original: English

IN A SPECIALLY APPOINTED CHAMBER

Before: Judge Bakone Justice Moloto, Presiding
Judge Mehmet Güney
Judge Liu Daqun

Registrar: Mr. John Hocking

Decision of: 20 August 2009

IN THE CASE

AGAINST

FLORENCE HARTMANN

PUBLIC

**DECISION ON PROSECUTION MOTION TO RE-
CLASSIFY A PROSECUTION EXHIBIT FROM
CONFIDENTIAL TO PUBLIC**

Amicus Curiae Prosecutor

Mr. Bruce MacFarlane, QC

Counsel for the Accused

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

THE SPECIALLY APPOINTED CHAMBER (“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 (“Tribunal”);

BEING SEISED OF the “Prosecution Motion to Re-Classify a Prosecution Exhibit from Confidential to Public” filed confidentially on 23 July 2009 (“Motion”);

NOTING that in the Motion, the Prosecution seeks post-trial re-classification of a document exhibited in this case as Exhibit P10 on the basis that there is no indication that the document was sent confidentially, that it does not contain confidential information, and that both parties have referred to this document in open session during the Final Arguments heard in this case on 3 July 2009;¹

NOTING that in the alternative, the Prosecution seeks re-classification of this same exhibit with a redaction of the personal information of Florence Hartmann (“the Accused”), with a view to protecting her privacy rights, should the Accused so prefer;²

NOTING that the Defence “Response to *Amicus* Motion to Change Status of Prosecution Exhibit” was filed publicly on 4 August 2009 (“Response”), whereby it opposed the re-classification of Exhibit P10 from a confidential to a public exhibit;³

NOTING the Defence submissions that, *inter alia*, the Prosecution has put forth no legal basis in support of his application; that the Prosecution is in effect requesting to re-open its case; that there is no indication that the UN immunities that cover material contained in the Accused’s personnel file were lifted for the purposes of these proceedings; and that the document was communicated confidentially to the Accused;⁴

NOTING that the record reflects that the Prosecution, prior to seeking the admission of Exhibit P10, informed the Defence that it intended to discuss the document in court;⁵

NOTING that the Defence did not request to go into closed session when Exhibit P10 was being discussed openly in court,⁶ and that no redaction of this portion of the transcript was sought by the Defence following this discussion;

¹ Motion, para. 2.

² Motion, para. 3.

³ Response, para. 14.

⁴ Response, paras 7-9, 12 and 13.

⁵ 15 June 2009, T. 200.

NOTING the absence of any request by the Defence to accord Exhibit P10 confidential status at its admission;

NOTING the Prosecution's submission that Exhibit P10 emanated from the Registry and not from the Accused's personnel file;⁷

NOTING that the discussion relating to the content and origin of Exhibit P10 was conducted in public session;⁸

NOTING, however, that at the end of the discussion of Exhibit P10, the Chamber went into private session at the request of the Prosecution, to enable the Prosecution to elaborate on the investigative proceedings in this case;⁹

NOTING, finally, that the only reason confidential status was accorded to Exhibit P10 was that the Chamber admitted the exhibit while it was still in private session following the Prosecution's elaboration on the investigative proceedings;

CONSIDERING that a request by a party to change the status of an exhibit from confidential to public does not entail re-opening the case as argued by the Defence;

CONSIDERING the discussion of the content and origin of Exhibit P10 was conducted in public session, the ruling concerning its admission should have also been done in public session and was inadvertently concluded in private session;

CONSIDERING, further, that the parties have made reference to Exhibit P10 in public session during their Final Arguments in court on 3 July 2009;

CONSIDERING, moreover, that on review, nothing in the contents of Exhibit P10 save for the address details of the Accused warrants the assignment of confidential status to this exhibit;

CONSIDERING, finally, that in the absence of circumstances that would justify the continued status of Exhibit P10 as confidential and in the interest of a public trial,¹⁰ the Chamber deems it appropriate to accord public status to this exhibit;

⁶ 15 June 2009, T. 200-201, "It is a one-page letter forwarded from the then Registrar to the accused, dated the 19th of October, 2007, and it concerns the very issues before the Chamber. It is on official UN stationery, in particular ICTY stationery. It is signed personally by the Registrar, and it evidences the address to which the letter was forwarded. Essentially, without going into all the detail concerning the document, it was a letter from the Registrar which cautioned the accused about the apparent disclosure of confidential information, cautioned or warned. There's various adjectives and verbs that can be used, but it's at minimum, a caution that there appears to be a problem here." See also T. 202-205.

⁷ 15 June 2009, T. 213.

⁸ 15 June 2009, T. 200-213.

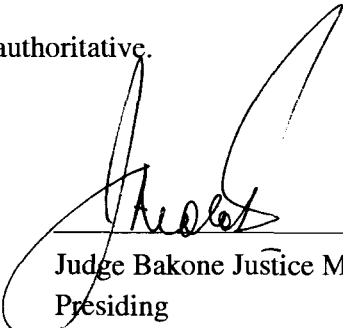
⁹ 15 June 2009, T. 213-214 (private session).

CONSIDERING, however, that it would be appropriate to redact the address details contained in this exhibit in order to protect the privacy interests of the Accused;

REQUESTS that the Prosecution submit Exhibit P10 with the requested redaction of the Accused's address details no later than three working days from the date of the filing of this Decision;

ORDERS the Registry, upon having received the redacted version of Exhibit P10 from the Prosecution, to accord it public status.

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



Judge Bakone Justice Moloto
Presiding

Dated this twentieth day of August 2009

At The Hague,

The Netherlands

[Seal of the Tribunal]

¹⁰ Article 21(2) of the Statute of the Tribunal.