



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-A

Date: 17 November 2009

Original: English

IT-02-54-R77.5-A
A1204 - A1200
17 November 2009

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IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Andréia Vaz
Judge Theodor Meron
Judge Burton Hall
Judge Howard Morrison

Registrar: Mr John Hocking

Decision of: 17 November 2009

**IN THE CASE AGAINST
FLORENCE HARTMANN**

PUBLIC

**DECISION ON MOTION REGARDING
BELATED FILING OF RESPONDENT'S BRIEF**

Counsel for the Appellant

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

Amicus Curiae Prosecutor

Mr. Bruce MacFarlane, QC

1. The Appeals 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 (“Appeals Chamber” and “International Tribunal”, respectively) is seized of the “Motion Regarding Belated Filing of Respondent’s Brief” (“Motion”), filed by Florence Hartmann (“Appellant”) on 26 October 2009.

I. BACKGROUND

2. On 14 September 2009, a Specially Appointed Chamber issued the “Judgement on Allegations of Contempt” in the present case, convicting the Appellant of two counts of contempt of the International Tribunal and sentencing her to pay a fine of 7,000 Euros.¹ On 24 September 2009, the Appellant filed her confidential notice of appeal.² On 2 October 2009, the *Amicus Curiae* Prosecutor (“*Amicus* Prosecutor”) filed a motion requesting the Appeals Chamber to strike the Notice of Appeal and order the Appellant to re-file it in accordance with the requirements of the International Tribunal.³ On 5 October 2009, the Appellant filed a motion challenging the *Amicus* Prosecutor’s standing in the appeal proceedings and accordingly requesting that the *Amicus* Prosecutor’s Motion to Strike be stricken from the record.⁴

3. On 9 October 2009, the Appeals Chamber ordered the Registry to serve a copy of the Notice of Appeal on the *Amicus* Prosecutor, as well as all related filings.⁵ The same day, the Appellant filed her confidential appeal brief,⁶ along with a motion to extend the word limit of the Appeal Brief.⁷ On 13 October 2009, the *Amicus* Prosecutor filed a confidential response to the Appellant’s Motion for Extension of Word Limit,⁸ and the Appellant filed a response to the *Amicus* Prosecutor’s Motion to Strike.⁹ On 14 October 2009, the Appellant filed a reply to the Response to Motion for Extension of Word Limit.¹⁰

¹ *In the Case Against Florence Hartmann*, Case No. IT-02-54-R77.5, Judgement on Allegations of Contempt, 14 September 2009, para. 90.

² Confidential Notice of Appeal of Florence Hartmann Against the Judgment of the Specially Appointed Trial Chamber, 24 September 2009 (“Notice of Appeal”). A public version of the Notice of Appeal was filed the same day.

³ Urgent Prosecutor’s Motion for Order Striking Notice of Appeal and Requiring Refiling, 2 October 2009 (“*Amicus* Prosecutor’s Motion to Strike”).

⁴ Motion to Strike Motion by Former *Amicus* Prosecutor, 5 October 2009.

⁵ Order to the Registrar to Serve Appeal Related Filings on the *Amicus Curiae* Prosecutor, 9 October 2009.

⁶ Confidential Florence Hartmann’s Appellant Brief, 9 October 2009 (“Appeal Brief”). A public version of the Appeal Brief was filed on 12 October 2009.

⁷ Motion Seeking Leave for Extension of World [*sic*] Limit for Appeals Brief, 9 October 2009 (“Motion for Extension of Word Limit”).

⁸ Confidential Urgent Prosecutor’s Response to Defence “Motion Seeking Leave for Extension of World [*sic*] Limit for Appeals Brief”, 13 October 2009 (“Response to Motion for Extension of Word Limit”). A public version of the Response to Motion for Extension of Word Limit was filed on 14 October 2009.

⁹ Florence Hartmann’s Response to *Amicus* Motion to Strike Notice of Appeal, 13 October 2009.

¹⁰ Reply *Re* Motion Seeking Leave for Extension of Word Limit for Appeals Brief, 14 October 2009.

4. On 21 October 2009, the *Amicus* Prosecutor filed a request for leave to exceed the word limit for the filing of his respondent's brief¹¹ and also filed his confidential respondent's brief.¹² The same day, the Appellant indicated by email to the Office of the President no objection to the *Amicus* Prosecutor's Motion to Exceed Word Limit. The *Amicus* Prosecutor filed his response to the present Motion on 28 October 2009.¹³ On 6 November 2009, the Appeals Chamber issued the "Decision on Motions to Strike and Requests to Exceed Word Limit" ("Decision of 6 November 2009"), in which, *inter alia*, it ordered the Appellant to re-file her Appeal Brief not exceeding 9,000 words by 20 November 2009 and ordered the *Amicus* Prosecutor to file a response to the Appeal Brief not exceeding 9,000 words by 30 November 2009.¹⁴

II. DISCUSSION

5. In her Motion, the Appellant submits that the *Amicus* Prosecutor failed to file his Respondent's Brief on time, failed to request an extension of time to file his Respondent's Brief, and has not shown good cause to justify the late filing. The Appellant explains that her Appeal Brief was filed on 9 October 2009,¹⁵ and thus, pursuant to the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings ("Practice Direction on Procedure"),¹⁶ as well as the Registry's Directive for the Court Management and Support Services Section ("Registry Directive"),¹⁷ the Appellant was required to file his Respondent's Brief no later than 19 October 2009.¹⁸ However, the Appellant notes that the *Amicus* Prosecutor did not file his Respondent's Brief until 22 October 2009.¹⁹

6. The Appellant argues that as a remedy, the Tribunal's practice would normally have warranted striking the Respondent's Brief.²⁰ However, given the Appeals Chamber's previous determination that the *Amicus* Prosecutor's participation in the appeal proceedings is in the interests of justice, the Defence instead submits that "the three (3) additional days that the *amicus* granted himself to finalise his Brief without allowance from the Appeals Chamber and without good cause having been shown should be regarded as remedying any alleged prejudice which the *amicus*

¹¹ Prosecutor's Motion Seeking Leave to Exceed the Word Limit, 21 October 2009 (*Amicus* Prosecutor's Motion to Exceed Word Limit").

¹² Confidential Respondent's Brief, 21 October 2009 ("Respondent's Brief").

¹³ Response to Motion Regarding Belated Filing of Respondent's Brief, 28 October 2009 ("*Amicus* Prosecutor's Response").

¹⁴ Decision of 6 November 2009, para. 27.

¹⁵ Motion, para. 4.

¹⁶ IT/155 Rev.3, 16 September 2005.

¹⁷ IT/121/Rev.1, 15 May 2007.

¹⁸ Motion, paras 10-14.

¹⁹ Motion, para. 8.

²⁰ Motion, para. 18.

claimed had resulted from the size of the Appellant's Brief".²¹ The Defence accordingly submits that the *Amicus* Prosecutor's Motion to Strike should be rendered moot.²²

7. In response, the *Amicus* Prosecutor submits that he "consciously and in good faith complied with the requirements of the relevant Practice Directions and Rules" and filed his Respondent's Brief on time. The *Amicus* Prosecutor explains that the Appellant filed her Appeal Brief after hours on Friday, 9 October 2009, and he thus had no knowledge that it had been filed at that time. He further explains that the Registry served him with a copy of the Appeal Brief on Monday, 12 October 2009, and that pursuant to the relevant Practice Directions and the Rules of Procedure and Evidence of the International Tribunal ("Rules"), his Respondent's Brief was thus due on 21 October 2009, and that he in fact filed it on that date.²³

8. The *Amicus* Prosecutor further explains that "[t]he interpretation of the relevant Practice Directions and the Rules advanced by the Appellant is contrary to principles of fairness and efficient administration of justice" as "[i]t effectively enables one party to reduce the opposing party's time to respond by filing strategically".²⁴ The *Amicus* Prosecutor accordingly submits that the relevant Practice Directions and Rules should be interpreted such that when a party files a document after hours, the time limit for filing a response runs from the time the Registry serves the document on the opposing party.²⁵ Alternatively, the *Amicus* Prosecutor requests that if the Appeals Chamber accepts the Appellant's interpretation, the Appeals Chamber recognize the filing of the Respondent's Brief as validly done pursuant to Rule 127(A)(ii) of the Rules.²⁶

9. The Appeals Chamber finds that in light of the Decision of 6 November 2009, in which it ordered the Appellant to re-file her Appeal Brief by 20 November 2009 and ordered the *Amicus* Prosecutor to file his response thereto by 30 November 2009, the Motion has been rendered moot.²⁷

III. DISPOSITION

10. On the basis of the foregoing, the Appeals Chamber,

²¹ Motion, paras 18-19.

²² Motion, para. 19.

²³ *Amicus* Prosecutor's Response, paras 14-15, *citing* Practice Direction on Procedure, para. 16; Practice Direction on Formal Requirements for Appeals from Judgement, IT/201, 7 March 2002 ("Practice Direction on Formal Requirements"), para. 15; Rule 126 of the Rules.

²⁴ *Amicus* Prosecutor's Response, para. 16.

²⁵ *Amicus* Prosecutor's Response, paras 16-18.

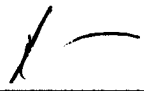
²⁶ *Amicus* Prosecutor's Response, para. 19.

²⁷ The Appeals Chamber recalls that it has found that time limits start running from the date of filing, not service. *See Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-AR65.1, Decision on Ante Gotovina's Appeal Against Denial of Provisional Release, 17 January 2008, para. 22.

DISMISSES the Motion.

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

Done this 17th day of November 2009,
At The Hague,
The Netherlands.



Judge Patrick Robinson
Presiding Judge

[Seal of the International Tribunal]