

**THE TRIAL CHAMBER**

Case No: STL-11-01/T/TC

Before: Judge David Re, Presiding
Judge Janet Nosworthy
Judge Micheline Braidy
Judge Walid Akoum, Alternate Judge
Judge Nicola Lettieri, Alternate Judge

Registrar: Mr Daryl Mundis

Date: 21 September 2018

Original language: English

Classification: Public

**ORDER FOR WRITTEN SUBMISSIONS ADDRESSING THE POTENTIAL
CONFLICT BETWEEN THE HEAD OF THE DEFENCE OFFICE'S PREVIOUS
AND PRESENT ROLES**

(Extract from Official Public Transcript of Hearing on 21 September 2018, page 72, line 15 to page 74, line 7)

The Chamber will be seeking submissions from the parties and Head of Defence Office, and her deputy, if necessary, on the issue which is raised in the "Publication of Correspondence with Head of Defence Office on Potential Conflict of Interest," the 10th of September, 2018, filing F3732.

But we're not doing that in court. We would seek to have written submissions filed on the issue concerning the potential conflict and whether judicial intervention is required by the Chamber arising from a possible conflict between Ms. Le Fraper du Hellen's previous role as counsel for Mr. Merhi until the 29th of June, 2018, and her role now as under Rule 57 of the Rules in monitoring the effectiveness of the representation of the accused, which is, under

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international human rights law, accused have a fundamental right to representation and as a corollary it must be effective.

There is international case law on the effectiveness of representation. For example, in the Krajisnik judgement at the ICTY on appeal on the 17th of March, 2009. And there is also international case law on the role of Chambers in monitoring that very issue. In fact, quoting directly from a decision of the ICTY again, in the case of Gotovina on the 29th of June, 2007, "Decision on Ivan Cermak's interlocutory appeal against Trial Chamber's decision on conflict of interest of attorneys Cedo Prodanovic and Jadranka Slokovic." At paragraph 21 it says: "The Appeals Chamber recalls that the issue of qualification, appointment and assignment of counsel is open to judicial scrutiny." And it refers to other international case law.

So the Chamber would be grateful to receive submissions by, I think, Monday, the 1st of October would be a good date. Separately, if possible, from the Head of Defence Office and her deputy. Bearing in mind the Trial Chamber, and of course the Appeals Chamber, and the Pre-trial Chamber, where appropriate, are the ultimate guardians of the right to a fair trial, which, of course, includes the effectiveness of legal representation. And that should be read in light of correspondence from the Head of Defence Office of the, I think, 4th of -- sorry, the 5th of September, 2018, where she said:

"I feel that I remain the sole competent authority to effect the most suitable measures to take within my mandate to protect the rights of the Defence, and in particular the matter of effective representation, as provided for in Article 57(G) and (H) of the Rules which falls within my exclusive jurisdiction."

In light of the international jurisprudence which appears to be to the contrary, the Chamber would be grateful to receive written submissions.

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