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JKIT-02-54-R77.5
01227 - 01225
23 JANUARY 2009**Case No. IT-02-54-R77.5*****In the case against Florence Hartmann*****PUBLIC****DECISION****THE ACTING REGISTRAR,**

NOTING the Statute of the Tribunal as adopted by the Security Council under Resolution 827 (1993), and in particular Article 21 thereof;

NOTING the Rules of Procedure and Evidence as adopted by the Tribunal on 11 February 1994, as subsequently amended ("Rules"), and in particular Rules 44, 45 and 77 thereof;

NOTING the Directive on the Assignment of Defence Counsel as adopted by the Tribunal on 28 July 1994, as subsequently amended ("Directive"), and in particular Articles 14(A), and 16(C);

NOTING the Code of Professional Conduct for Counsel Appearing Before the International Tribunal, IT/125 REV.2 ("Code of Conduct");

NOTING that on 27 August 2008, a specially appointed Trial Chamber issued the Order in Lieu of An Indictment On Contempt for the prosecution of Ms Florence Hartmann ("Accused") for contempt of the Tribunal pursuant to Rule 77 of the Rules;

NOTING that the Rules in parts four to eight apply *mutatis mutandis* to proceedings pursuant to Rule 77 of the Rules;

CONSIDERING that the Accused applied for Tribunal legal aid pursuant to Article 8 of the Directive on the basis that she does not have means to remunerate counsel, and also requested the assignment of Mr. William Bourdon, attorney at law from France, as her counsel;

CONSIDERING that on 23 September 2008, the Registrar assigned Mr. Bourdon, as counsel to the Accused for a period of 120 days, determining that an interim assignment of counsel was necessary to ensure that the Accused's right to counsel was not affected whilst the Registry examined her ability to remunerate counsel;

CONSIDERING that on 13 November 2008, the Registrar issued a decision in which he found that the Accused lacked sufficient means to remunerate counsel, and confirmed the assignment of Mr. Bourdon as counsel to the Accused;

CONSIDERING that on 19 December 2008, the Registrar withdrew the assignment of Mr. Bourdon at the request of the Accused and assigned Mr. Karim A. A. Khan, Barrister from the United Kingdom, who was chosen by the Accused as replacement counsel;

CONSIDERING that on 19 December 2008, the Registrar assigned Mr. Guénäel Mettraux as a Legal Consultant to the defence team of the Accused, at the request of Mr. Khan, who indicated that he would be requesting Mr. Mettraux's assignment as his co-counsel if Mr. Mettraux's application for admission to the Registrar's list of counsel eligible for assignment to indigent suspects and accused ("Rule 45 list") was successful;

CONSIDERING that Mr. Mettraux applied for admission to the Rule 45 list, and submitted documentation in order to establish that he fulfills the qualification requirements for admission to the Rule 45 list;

NOTING that pursuant to Rule 44(A)(i) of the Rules, an applicant for admission to the Rule 45 list must present evidence that, *inter alia*, he or she is admitted to the practice of law in a State, or is a university professor of law;

CONSIDERING that Mr. Mettraux is not currently admitted to the bar in a State but has indicated his intention to seek admission to the Bar of England and Wales;

CONSIDERING that Mr. Mettraux has provided documentation showing that he was a visiting professor of law in the Law Faculty of the University of Sarajevo from 2006 to 2008, that he was a visiting professor of law at Dickinson State School of Law, Penn State University, delivering lectures during summer courses in 2006 and 2007, that he will act as a visiting professor of law at the University of Geneva in February 2009, and has indicated that he would also act as a visiting professor at the University of Leiden in 2009;

CONSIDERING that in the Registrar's opinion, and in line with the views expressed by the Executive Committee of the Association of Defence Counsel Practicing before the Tribunal ("ADC-ICTY"), not all forms of appointment as professor of law make a lawyer suitably qualified to represent accused persons before this Tribunal under Rule 44(A) of the Rules;

CONSIDERING that the Registrar is not satisfied that Mr. Mettraux currently meets the requirement of Rule 44(A)(i) of the Rules for admission to the Rule 45 list;

CONSIDERING however, that Mr. Mettraux has previously acted as co-counsel in two cases before the Tribunal, including one in which he was assigned by the Registrar under Rule 45 of the Rules as applicable at the time,¹ as he was then admitted as a trainee-lawyer at the Bar of Geneva, Switzerland;

CONSIDERING also that Mr. Mettraux has published extensively in the field of International Criminal Law, and has been working in the field of International Criminal Law in various capacities since 1999, also providing training to defence counsel appearing before the Tribunal in the context of training provided by the ADC-ICTY, and has been commended for his work by experienced defence counsel;

CONSIDERING that on 16 January 2009, Mr. Khan confirmed his request for the assignment of Mr. Mettraux as his co-counsel and Mr. Mettraux indicated his willingness to be assigned as co-counsel in the Accused's case;

¹ Directive on the Assignment of Defence Counsel, IT/73/Rev 9, as amended on 12 July 2002.
Case No. IT-02-54-R77.5

CONSIDERING that Mr. Mettraux's request for admission to the Rule 45 list was made for the purpose of his assignment as co-counsel in the present case;


CONSIDERING that whilst the Registrar has not yet placed Mr. Mettraux on the Rule 45 list, pending his admission to the Bar of England and Wales, the Registrar is satisfied that Mr. Mettraux's accomplishments and experience in the field of International Criminal Law, and his representation of accused persons before this Tribunal demonstrate his professional skills and competence to act as co-counsel in this particular case under the supervision of lead counsel pursuant to Article 32(A) of the Code of Conduct;

CONSIDERING that the Registrar is further satisfied, in accordance with Article 16(G)(ii) of the Directive that the assignment of Mr. Mettraux presents no significant scheduling conflict and no potential or actual conflict of interest, and that the assignment would not otherwise prejudice the defence of Mr. Boskoski, whose case is currently on appeal before the Tribunal;

CONSIDERING that Mr. Boskoski has consented to Mr. Mettraux's dual assignment;

CONSIDERING that based on the totality of the information available to him, the Registrar is satisfied that the exceptional assignment of Mr. Mettraux as co-counsel would be in the interests of justice in this particular case, and would not require additional funding;

HEREBY DECIDES to assign Mr. Mettraux as co-counsel to Mr. Khan effective as of the date of this decision.



John Hocking
Acting Registrar

Dated this 22nd day of January 2009
At The Hague,
The Netherlands.