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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: 1 December 2008
Original: English

IN A SPECIALLY APPOINTED CHAMBER

Before: Judge Carmel Agius, Presiding
Judge Alphons Orié
Judge Christine Van den Wyngaert
Registrar: Mr Hans Holthuis
Decision of: 1 December 2008

IN THE CASE AGAINST
FLORENCE HARTMANN

PUBLIC

DECISION ON DEFENCE MOTION REQUESTING THE PROVISION OF
SUPPORTING MATERIALS IN THE FRENCH LANGUAGE

Amicus Curiae Prosecutor

Mr Bruce MacFarlane

Counsel for the Accused

Mr William Bourdon

1. On 13 November 2008, the Defence for Florence Hartmann (“the Accused”) filed a motion to receive French translations of the material provided by the *amicus curiae* Prosecutor (“Prosecution”) in English on a CD-ROM (“Motion”).¹ At the request of the Presiding Judge at the Further Appearance of the Accused held on 14 November 2008, the Prosecution filed the Index of documents disclosed to the Defence on this CDROM, (“Index”).² On 19 November 2008, the Prosecution filed a confidential Response to the Motion (“Response”).³ On 24 November 2008, the Defence filed a request to reply to the Prosecution Response, including its reply therein (“Reply”).⁴ As the Response raises specific factual allegations concerning the Accused, pursuant to Rule 126*bis* of the Rules of Evidence and Procedure (“Rules”), the Chamber grants leave to the Defence to reply.

Submissions

2. In the Motion, the Defence submits that the materials disclosed by the Prosecution on the CDROM consist mainly of English documents.⁵ It submits that the Accused is of French nationality, and does not have sufficient knowledge of the English language as to be able to grasp all the “subtleties, semantics and texts” of the English documents.⁶ According to the Defence, the Accused has a right under Article 21 to receive the material in her native language.⁷

3. The Prosecution, in its Response, submits that the issue at hand is whether it must disclose all documents to the accused in a language requested by the Defence, irrespective of the capacity of the accused to understand the language in which the documents are disclosed.⁸ According to the Prosecution, there is evidence clearly demonstrating that the Accused understands and is proficient in both English and French, submitting that 1) she wrote an article that is the subject of the Indictment against her in English, 2) during the suspect interview, both her counsel and the Accused were satisfied to have the questions posed in English, without interpretation, and the answers provided in French, 3) prior to the suspect interview, the Accused was provided with copies of three confidential documents in English, and no request was made at that time to receive them in French, 4) the Accused worked in a

¹ Motion No. 4, 14 November 2008.

² Index of Documents Contained on CD-ROM Disclosed to the Defence by the *Amicus Curiae* Prosecutor, 17 November 2008.

³ Prosecutor’s Response to Defence Motion for Disclosure in French, 19 November 2008.

⁴ Motion for Leave to Reply to the Written Response of the *Amicus Curiae* Bruce MacFarlane dated 18 November 2008, 24 November 2008.

⁵ Motion, p. 1.

⁶ Motion, p. 1.

⁷ Motion, p. 2.

bilingual environment for six years in her former capacity as spokesperson for the Office of the Prosecutor, *inter alia* participating in press conferences and interviews in English, and 5) in March of 2008, she was interviewed, in English, by a Canadian broadcasting corporation on Tribunal related matters.⁹ Finally, the Prosecution notes that all documents on the CDROM have been provided in either English or French, or both, and were disclosed as originally provided to the Prosecution, and submits that it has met the standard of disclosure as set out in Rule 66 of the Rules.¹⁰

4. Concerning the two Appeals Chamber decisions that are the subject of the charges against the Accused (Items 3 and 5 of the Index), the Prosecution submits that because they are both available in French, it is prepared to obtain these French versions from the Registry and provide them to the Defence, should the Chamber find it appropriate to do so.¹¹

5. In its Reply, the Defence acknowledges that there are pre-existing or available French translations for most of the documents listed on the Index, with the exception of Item 7, the *amicus curiae* Investigator's Report, dated 12 June 2008 ("Investigator's Report").¹² It submits that the Investigator's Report contains a summary of all the evidence collected by the *amicus curiae* Investigator (Mr MacFarlane) in support of the charges against the Accused, and a translation into French of this particular document is therefore imperative.¹³

6. The Defence reiterates that while the Accused may have sufficient command of the language to communicate in English, she does not have a sufficient command of the technical, legal vocabulary allowing her to understand the entirety of the report.¹⁴ In this regard, it submits that the Accused, when appearing before the court as a witness in the Vukovar case, testified entirely in French, and that during the suspect interviews held with the Accused in this case, her counsel repeatedly expressed his reservations with the quality of the consecutive translation provided by the Investigator.¹⁵

7. Finally, through a separate filing of 24 November 2008, the Defence requests that the confidential status of the Prosecution's Response be lifted, submitting that there are no

⁸ Response, paras 1, 3.

⁹ Response, paras 5(a)-(e), 6.

¹⁰ Response, paras 6, 10.

¹¹ Response, para. 11.

¹² Reply, p. 1.

¹³ Reply, p. 3.

¹⁴ Reply, pp. 1-3.

¹⁵ Reply, p. 2.

reasons as to why the issue of language used by the Tribunal with regard to the Accused should be dealt with as a confidential matter.¹⁶

Applicable Law

8. Rule 66 of the Rules provides that subject to the provisions of Rules 53 and 69, the Prosecutor shall make supporting materials available to the Defence “in a language which the accused understands.”

Discussion

9. As a preliminary point, it is the position of the Specially Appointed Chamber (“Chamber”) that the obligation under Rule 66 is to provide materials *in a language that the accused understands*, and not, as submitted by the Defence in its Reply, in the *language of the accused*, as formulated in *Delalić et al.*, cited by the Defence.¹⁷ The Chamber’s position is consistent with more recent Trial Chamber decisions on the subject,¹⁸ and is clearly reflected in the present wording of Rule 66 of the Rules.¹⁹

10. The Chamber is satisfied that the Accused understands English, so that the disclosure obligations pursuant to Rule 66(A) of the Rules have been met by the Prosecution. The Chamber notes, however, that in its Reply, the Defence has reduced its request of a French translation of the supporting material to only one document, namely the Investigator’s Report of 12 June 2008. The Report itself consists of 36 pages.²⁰ Considering the limited amount of pages that require translation, and recalling the discretion the Chamber may exercise when considering requests for the translation of documents as part of its pre-trial management,²¹ the Chamber comes to the conclusion that providing the Defence with a French translation of the Investigator’s Report excluding the Appendices would advance the preparation of the case for trial. This advantage outweighs, in the particular circumstances of this case, the additional efforts of the translation of the Investigator’s Report into French.

¹⁶ Motion, 24 November 2008, pp. 1-2.

¹⁷ Reply, pp. 3-4; citing *Prosecutor v. Delalić et al.*, Decision on Defence Application for Forwarding the Documents in the Language of the Accused”, 27 September 1996, para. 6.

¹⁸ *Prosecutor v. Karadžić*, Decision on the Accused’s Request that all Materials, including Transcripts, be Disclosed to him in Serbian and Cyrillic Script, 25 September 2008 (“*Karadžić* Decision”), para. 7; *Prosecutor v. Popović et al.*, Decision on Joint Defence Motions Requesting the Translation of the Pre-Trial brief and Specific Motions, 24 May 2006, para. 9.

¹⁹ At the time of the *Delalić et al.* Trial Chamber Decision, the operative Rules contained no formulation concerning the language in which the Supporting Materials were required to be provided to the Accused.

²⁰ The Chamber notes that there are 55 pages of Appendices attached to the Report, including, *inter alia*, correspondence between the parties, passages from Florence Hartmann’s book translated into English, an article written the Accused for the Bosnian Institute, and interviews with and/or about Florence Hartmann.

11. With regard to the Prosecution's proposal in paragraph 11 of its Response, *i.e.*, to obtain and provide the Defence with the already existing French translations of the Appeals Chamber's decisions of 20 September 2005 and 6 April 2006,²² the Chamber agrees with this approach in principle, yet finds that the more appropriate provision of these documents is through the Registry.

12. Concerning the Defence's request to lift the confidential status of the Prosecution's Response, the Chamber finds no valid reason why the Response should indeed be of a confidential nature.

13. For the foregoing reasons, and pursuant to Rules 3(A), 54, 66 of the Rules as well as Article 33 of the Statute, the Chamber;

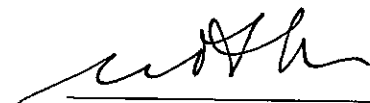
GRANTS the Defence Motion, in part;

ORDERS the Registry to translate the Investigator's Report filed 12 June 2008 into French, and to provide it to the Defence accordingly;

REQUESTS the Registry to provide the Defence with the French translations of the two Appeals Chamber Decisions; and

ORDERS the Registry to lift the confidential status of the Response.

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



Judge Carmel Agius
Presiding Judge

Dated this 1st day of December 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

²¹ *Karadžić* Decision, para. 9; *Prosecutor v. Tolimir*, Decision on Interlocutory Appeal against Oral Decision of Pre-trial Judge of 11 December 2007, 28 March 2008, para. 6.

²² Response, para. 11 (a decision on the request for review of the Trial Chamber's oral decision of 18 July 2005, dated 20 September 2005 [Case No.: IT-02-54-AR108bis.2] and a decision on the request for review of the Trial Chamber's decision of 6 December 2005, dated 6 April 2006 [Case No.: IT-02-54-AR108bis.3]).