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: 2 February 2010

IN THE APPEALS CHAMBER

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

Registrar: Mr. John Hocking

IN THE CASE AGAINST

FLORENCE HARTMANN

PUBLIC

NOTICE OF FILING OF PUBLIC REDACTED VERSION OF RESPONDENT'S BRIEF REFILED PURSUANT TO 17 DECEMBER 2009 ORDER

***Amicus Curiae* Prosecutor**

Mr. Bruce A. MacFarlane, Q.C.

Counsel for the Appellant

Mr. Karim A. A. Khan

Co-Counsel for the Appellant

Mr. Guénaël Mettraux

1. The *Amicus Curiae* Prosecutor hereby files the public redacted version of the Respondent's Brief filed on 22 January 2010.

2. For ease of reference, the four minor errors identified in the corrigendum filed concurrently with this document have been corrected.

Word Count: 64

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

Bruce A. MacFarlane, Q.C.
Amicus Curiae Prosecutor

Dated this 2nd day of February 2010
in Ottawa, Canada

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A. Introduction

1. The *Amicus Curiae* Prosecutor ("**Prosecutor**") hereby files his response to the Appellant's Brief ("**AB**"). All grounds of appeal (and "sub-grounds") are opposed and should be dismissed as Ms. Hartmann has failed to establish any error of law invalidating the decision, or error of fact occasioning a miscarriage of justice.

B. Preliminary Observations: the Core Facts

2. The core facts of this case are quite straightforward. After leaving the Tribunal as Spokesperson for the Prosecutor, Ms. Hartmann published a book in September, 2007. It disclosed information concerning two Appeals Chamber decisions, including their contents, purported effect and confidential nature. An essential part of the Spokesperson's job was to know what information was confidential and could not be given to the media or the public.[1]

3. A month after the publication of the book, the Registrar wrote to Ms. Hartmann, cautioning her about the disclosure of confidential information and warning her that administrative or legal measures may be taken.[2]

4. Three months later, in January 2008, Ms. Hartmann published an article that was posted online. It was an English version of the earlier account that had been published in French. On this occasion, however, Ms. Hartmann deleted reference to the confidential nature of the decisions. It continued, however, to describe the contents and purported effect of both decisions.

5. In a Suspect interview conducted during a resulting investigation, Ms. Hartmann said that: her sources for the book had quite correctly told her that the decisions were confidential; no media release had been issued at the time of one of the decisions because it had been issued confidentially;[3] and she knew that contempt proceedings had previously been brought against journalists.[4]

[1] Ruxton Statement, p. 4.
[2] P10.
[3] P2.1, Recording 1003-2, p. 12, line 21.
[4] P1.1, Recording 1002-1, pp. 5-6.

C. Standard of Review

6. Appeals Chambers ("**ACs**") will consider arguments alleging errors on questions of law invalidating a decision,[5] and errors of fact that have occasioned a miscarriage of justice.[6] The same standard of review applies to all appeals against judgements, including appeals against convictions for contempt.[7]

7. Recycling arguments advanced and rejected at trial will not succeed on appeal. Appellants must demonstrate rejection of previous arguments constituted such an error as to warrant intervention.[8] Arguments lacking the potential to reverse or revise the impugned judgement may immediately be dismissed.[9]

8. Appellants must provide precise references to relevant transcript pages or paragraphs in the Judgement to which the challenges are being made.[10] Obscure, contradictory, or vague submissions need not be considered in detail.[11] ACs can exercise their inherent discretion and dismiss arguments which are evidently unfounded without providing detailed reasoning.[12]

9. Reasonableness is the standard of review for errors of fact.[13] Appellants must demonstrate that the "evidence relied on by the Trial Chamber could not have been accepted by any reasonable tribunal of fact or [..]the evaluation of the evidence is 'wholly erroneous'."[14] ACs need not agree with the finding;[15] they simply ask whether it was reasonable. An appeal is not a trial *de novo*[16]*;* the AC does not operate as a second Trial Chamber[17] ("**TC**"). ACs only substitute the finding with their own when no reasonable trier of fact could have reached the original decision.[18] In determining whether or not a finding

[5] Art. 25(1)(a), Statute
[6] Art. 25(1)(b), Statute
[7] *Jokić*, para. 11; *Jović*, para. 11; *Marijačić AJ*, para. 15. Also, *Mrkšić*, para. 10; *Krajišnik*, para. 11; *Martić*, para. 8.
[8] *Jokić*, para. 14; *Mrkšić*, para. 16; *Jović*, para. 14; *Marijačić AJ*, para. 17. Also, *Krajišnik*, para. 24
[9] *Jokić*, para. 14; *Jović*, para. 14; *Marijačić AJ*, para. 17. Also, *Mrkšić*, para. 16; *Krajišnik*, para. 20; *Martić*, para. 17
[10] *Jović*, para. 15. Also, *Mrkšić*, para. 17; Practice Direction on Appeals Requirements, para. 4(b).
[11] *Mrkšić*, para. 17. Also, *Marijačić AJ*, para. 18.
[12] *Jović*, para. 15; *Jokić*, para. 16. Also, *Mrkšić*, para. 18.
[13] *Jokić*, para. 13.
[14] *Kupreškić*, para. 30.
[15] *Strugar*, opinion of Shahabudeen J. para. 27.
[16] *Haraqija & Morina*, para. 5; *Halilović*, para. 10; *Brđanin*, para. 15; *Blaškić*, para. 13.
[17] *Furundžija* AJ, para. 40.
[18] *Jović*, para. 13; *Marijačić AJ*, para. 16. Also, *Mrkšić*, para. 13; *Krajišnik*, para. 14; *Jokić*, para. 13; *Halilović*.

was reasonable, ACs will not lightly disturb findings of fact.[19] Only errors of fact which have occasioned a miscarriage of justice will overturn the judgement.[20]

10. Correctness is the standard of review for errors of law.[21] Appellants must identify alleged errors of law, present arguments in support of its claim and explain how the error invalidates the judgment.[22] Allegations which have no chance of changing the outcome of a judgement can be rejected.[23] Where ACs find errors of law arising from the application of the wrong legal standard, the correct legal standard is articulated and the relevant factual findings are reviewed.[24]

D. Response to Brief

I. Pleadings

11. Ms. Hartmann argues that the charges were unclear; that she understood the Order in Lieu of Indictment ("**OILI**") alleged disclosure of only four facts, beyond which she had not received notice, and that the four facts were in the public domain.[25]

12. The Prosecutor submits: this is a recycled argument with no basis justifying intervention; the argument, anchored on a theory of "constructive concessions" which allows the defence to re-define the charges against her, has no basis in law and certainly no basis in this case; the argument places a premium on gamesmanship when the record makes it perfectly clear that Ms. Hartmann and her counsel were well aware of the scope of the charges and the Prosecutor's position on them; and the TC was correct in its disposition of this issue.

13. It was precisely this point that prompted Ms. Hartmann to take the extraordinary step of accusing the original TC of proceeding "by stealth". Essentially, Appellant contended that

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para. 9; *Hadžihasanović*, para. 10; *Stakić*, para. 10.
[19] *Jokić*, para. 13; *Mrkšić*, para. 14; *Marijačić AJ*, para.16; *Jović*, para. 13; *Marijačić AJ*, para. 16; *Martić*, para. 11.
[20] *Mrkšić*, para. 13; *Krajišnik*, para. 14; *Martić*, para. 11.
[21] *Jović*, para. 12; *Marijačić AJ*, para. 16. Also, *Jokić*, para. 12; *Mrkšić*, para. 12; *Krajišnik*, para. 13; *Martić*, para. 10.
[22] *Jović*, para. 12; *Marijačić AJ*, para. 15. Also, *Mrkšić*, para. 11; *Krajišnik*, para. 12; *Martić*, para. 9; *Jokić*, para. 12; *Brđanin*, para. 9; *Krnojelac*, para. 10; *Kvočka*, para. 16.
[23] *Jović*, para. 12; *Marijačić AJ*, para. 17. Also, *Mrkšić*, para. 11; *Krajišnik*, para. 12; *Martić*, para. 9.
[24] *Inter alia*, *Mrkšić*, para. 12; *Krajišnik*, para. 13; *Martić*, para. 10.
[25] AB, paras. 1-12.

the Chamber had organized the charges in such a way as to make conviction more probable. In its review of the disqualification issue in March 2009, the Panel established by the President had differing views on most of the issues canvassed, but it was unanimous on this point: "[T]he suggestion that the Specially Appointed Chamber was attempting 'to modify the charges against Ms. Hartmann 'by stealth' is groundless".[26] The point was resurrected once again at trial before the "new" TC panel; again, it was dismissed unanimously.[27] The issue has been fully considered, from several angles, and there are no new facts or bases justifying reconsideration on appeal. However, for the benefit of the AC, the scope of the charges from OILI through conviction is set out below.

14. Ms. Hartmann disclosed information related to AC decisions dated 20 September 2005 and 6 April 2006, including the contents and purported effect of these decisions, on pages 120-122 of her book[28] and in her article.[29] The caption page of each decision indicated its status as confidential.[30] The motions which gave rise to each of the decisions were filed confidentially:[31]

> 20 September 2005
>
> 18.07.2005 Trial Chamber issued an oral decision REDACTED[32]
>
> REDACTED.[33]
>
> 20.09.2005 AC issued confidential "[D]ecision on the request for review of the Trial Chamber's oral decision of 18 July 2005."[34]
>
> 6 April 2006
>
> REDACTED[35]

[26] Panel's Report, paras. 13, 17, 22, 42 make it clear that this issue was before the Panel. The contention was firmly and unanimously dismissed, para. 43.
[27] Judgement, paras. 30-35.
[28] As alleged in OILI, para. 2; PTB, paras. 10, 18; FTB, paras. 7, 20, Annex A. Also P3.1, pp. 120-122, Decisions of the Appeals Chamber "in late September 2005" and on 6 April 2006.
[29] As alleged in OILI para. 3; PTB para. 11, 19; FTB paras. 8, 22, Annex B.
[30] P6, P7.
[31] OILI, para. 1; PTB, para. 21; FTB, paras. 4, 15, n. 3; P6, n. 1; P7, para. 1.
[32] REDACTED
[33] REDACTED.
[34] OILI, para. 1; PTB, para. 20; FTB, paras. 15-16.
[35] REDACTED.

06.12.2005 TC issued confidential decision.

REDACTED[36] [37] [38] [39]

06.04.2006 AC issued confidential "[D]ecision on the request for review of the Trial Chamber's decision of 6 December 2005."[40]

Confidential and *ex parte* motions preceded these:[41]

REDACTED

15. "Therefore, information disclosed by Ms. Hartmann was subject to an order or orders by a Chamber which were in effect at the time the information was disclosed."[42] From OILI through to conviction the scope of the charges has remained unchanged. The Prosecutor's position was clearly set out in the Pre-Trial Brief, expanded on in the Final Trial Brief and supported by the disclosure that Ms. Hartmann has had since November 2008. Ms. Hartmann has had ample fair notice of the charges against her. Counsel's argument amounts to an impermissible attempt to redefine the terms of the OILI issued by the Trial Chamber..

a) Defence's "Theory of Constructive Concessions"

16. At the heart of the Appellant's contention is a curious theory of "constructive concessions". It applies at many points in the assessment of the Defence's argument, but it has particular application here. I now turn to that issue.

[36] REDACTED
[37] REDACTED
[38] REDACTED.
[39] *Ibid.*
[40] OILI, para. 1; PTB, para. 20; FTB, para. 15-16.
[41] REDACTED
[42] OILI, para. 1; PTB, para. 21; FTB, para. 17.

17. Ms. Hartmann's counsel has advanced a theory of "constructive admissions" throughout these proceedings: i.e., unless you argue against a point advanced by the Defence, or jurisprudence relied upon by the Defence, or a legal nuance, you will be taken to have agreed with what the Defence has said on the point. No authorities are advanced in support for this theory.[43] This strategy is, once again, revived in the AB.[44]

18. This theory may have some facial appeal in an ideal environment, unconfined by time deadlines and requirements respecting word count. But the realities of trial and appellate litigation are quite different.

19. In the present case, the "reality" is this: Appellant has consistently filed oversized briefs and other filings, with no previous authority from the Chamber. The other party is placed in a clear position of prejudice: deal with all points, and file an equally oversized brief, or comply with the Chamber's direction respecting timelines and word count. The Prosecutor has opted to comply throughout. As a practical matter, that means decisions must be made on which points to address, to what depth, and which ones will not be addressed – or dealt with in a more cursory way.

20. The position of the Prosecutor is simple. There is no valid theory of "constructive concessions". Unless a concession comes from the Prosecutor, it is not a concession of the prosecution. Put another way, prosecutorial concessions originate with the Prosecutor, not the Defence.[45]

b) Application here

21. Counsel for the Appellant contend they advanced a theory of "four facts", the Prosecutor did not contest the point, so he concedes. That does not, however, accord with reality. Given the issues raised at the Status Conference, and the questions posed to both counsel on the scope of the charges, the Prosecutor filed a formal pre-trial Statement to make

[43] No jurisprudence is cited even now: see AB, para. 10, accompanying footnotes.
[44] See, AB paras 4, 10, 12, 53.
[45] The Prosecutor has made this point before, at the trial level, evidently with no impact on counsel for the Appellant: Response to Disqualification Motion, paras. 16, 17. Nonetheless, this has been, and will continue to be, the Prosecutor's position in these proceedings. It should be noted that the Prosecutor has not been slow to make admissions, where they are supported by the evidence: eg. Admissions (referred to in: Judgement, para. 17); Ruxton Statement.

perfectly clear what his position was with respect to the scope of the charges – noting, at the same time that this was a point of disagreement between the parties.[46] Such is, of course, the nature of the adversarial process. Parties will agree on some points. And disagree on others. On this one, there has been and continues to be a difference of view.

22. Whatever may previously have been the understanding, theory or hope of the Appellant was surely laid to rest with the filing of this Statement on 2 February 2009 – fully four months before the trial commenced.[47]

23. Appellant had a clear understanding of the Prosecutor's position on this issue for months before the trial. Moreover, the terms of the OILI issued by the Chamber were clear.[48] Any contention to the contrary is, with the greatest of respect, pure gamesmanship and has no place in the International Tribunal.

24. The TC dealt with this point at some length in its judgment. Amongst other things, it concluded that the "wording of the Indictment is clear and unambiguous", and that "nothing in the text of the Indictment gives rise to the unreasonably restrictive interpretation of the charges as advanced by the defence."[49]

25. Two further issues raised by the Appellant should be addressed, albeit briefly. It is argued that the disclosure of legal reasoning is permissible. Two decisions of this Chamber are cited in support. Neither deal with this issue.[50] Moreover, it is submitted that the TC was correct in noting that Rule 77 does not distinguish between categories of information the disclosure of which may amount to a contempt.[51] Second, what the Appellant refers to as "new information"[52] comes directly from the relevant pages of the Appellant's book, and falls within the categories of "contents" and "purported effect", as set out in the OILI.

[46] *Amicus* Statement, para 4-5.
[47] Appellant has never moved to strike this statement.
[48] Significantly, at no point before trial did the Appellant bring any motions in relation to the OILI.
[49] Judgement, para. 32.
[50] AB para. 14, citing *Nobilo* and *Vujin*. None of the paragraphs cited support this view.
[51] Judgement, para. 34.
[52] AB para. 4.

26. The Chamber was correct in the conclusions that it reached. This ground of appeal (and all its "sub-grounds") ought to be dismissed in its entirety.

II. Freedom of Expression

27. Ms. Hartmann's alleges the curtailment of her freedom of expression is inconsistent with international law.[53] The Prosecutor submits valid restrictions of the open court principle have not been acknowledged by the Appellant; that the Appellant selectively applies the ECHR and that the authorities the Appellant relies on can be distinguished. This ground of appeal ought to be dismissed.

a) Open Court Principle

28. Courts and tribunals regularly restrict freedom of expression for a variety of reasons[54] including, where it could:

- influence proceedings before a trial;
- victimize jurors, witnesses[55] or others after the conclusion of proceedings; or
- violate privilege.[56]

29. The balancing approach taken by the TC when determining whether to displace the presumption of openness is consistent with international law.[57] The tension between openness and the need for confidential information was noted by the Supreme Court of Canada ("**SCC**"). In *Vancouver Sun*, where informer privilege supplanted the open court principle, the court described the importance of information in a legal system as follows:[58]

> *Information is at the heart of any legal system*. Police investigate crimes and act on the information they acquire; lawyers and witnesses present information to courts; juries and *judges make decisions based on that information*; and those decisions, reported by the popular and legal press, make up the basis of the law in future cases. In Canada, as in any truly democratic society, the courts are expected to be open, and

[53] AB paras. 15, 21.
[54] Miller, pp. 354-359; Fenwick & Phillipson, pp. 205-207, 223-227; For a list reasons for and against publication bans see *Dagenais*, para. 83-85.
[55] *Butterworth*
[56] *Vancouver Sun*, para. 37
[57] Judgement paras 68-74; The TC relies on the *ECHR*, art. 10(2), *ICCPR*, art. 19(2) and *UDHR*, art 19 Judgement, para. 70.
[58] *Vancouver Sun*, para. 1 (emph. added)

> information is expected to be available to the public. However, *from time to time, the safety or privacy interests of individuals or groups and the preservation of the legal system as a whole require that some information be kept secret*.

30. The Appellant relies on authorities where the rationale for the prohibition on publication was to prevent influencing the particular proceedings.[59] In particular, *Webber* and *Dupuis* both involved premature publication of information from an investigation file. Orders restricting publication to prevent jurors, witnesses or triers of fact from being influenced by reading the daily news are quite different from the present matter for the following reasons:

i. Reporting is restricted pursuant to the ban but often hearings are held in open session and the record may be available for inspection;

ii. A temporal limit to the restriction coincides with the end of the proceedings. A jury who has rendered its decision can no longer be influenced. Consequently, the risk to the administration of justice no longer exists.

31. The rationale for the orders breached by Ms. Hartmann survived the proceedings; they were the culmination of a series of confidential and sometimes *ex parte* motions and closed session hearings.[60] The restrictions in this case are similar to those described above where confidentiality is imposed for reasons such as safety, privacy or the preservation of the legal system as a whole. In such matters, files are sealed, hearings are held in closed session and the confidential status survives the end of proceedings.[61] The TC was correct in disregarding the cases and testimony relied on by the Appellant. The correct legal standard was applied.

b) European Court of Human Rights ("ECtHR")

32. Ms. Hartmann's conviction is an interference with her freedom of expression which was prescribed by law. The question is whether a legitimate aim, necessary in a democratic society, exists for such an interference.

[59] Eg./ the testimony of Mr. Joinet. The TC was correct in their assessment of weight to be given to his testimony. (Judgement, n. 176) Ms. Hartmann's counsel indicated that Mr. Joinet would only provide facts; not "legal conclusions". T. 249, 267-269. Relying on this evidence as legal authority is inconsistent.
[60] See above para. 14.
[61] See below para. 66.

i) Legitimate Aim

33. Preserving the supply of information from external sources is a legitimate aim. Securing information which may be used as evidence needed to ensure fair trials requires the cooperation a number of parties: sovereign states, NGO's,[62] and individuals. Without such cooperation, the Tribunal's ability to exercise its jurisdiction to prosecute and punish serious violations of humanitarian law would be frustrated. To facilitate and encourage cooperation, protection is given to parties who furnish information.[63] Notably, the ability to compel a party to provide evidence does not negate the need for protective measures. Just as the subpoena power to compel witnesses ought to be used sparingly; so too should the power to compel state cooperation.

34. Failure to enforce its own confidential orders would undermine the confidence of those who provide information. Like the Tribunal, many states rely on intelligence from foreign sources. Measures must be taken to protect these sources. A UK committee given the task of reviewing the Official Secrets Act 1911 made the following observation on the nature of the relationship between intelligence sharing nations: [64]

> Exchanges between governments not amounting to negotiations are often on a confidential basis. One nation may entrust to a second nation or to its friends or allies information which it is on no account prepared to allow to go further. *A breach of this trust could have a seriously adverse effect on relations between the countries concerned, which might extend well beyond the particular matter which leaked.*

The question of whether the judiciary can disclose in their judgement intelligence received and relied upon in legal proceedings by the Foreign Secretary has been a matter before the courts in the UK for the last year. On one hand, the Foreign Secretary identified the threat to the relationship with its intelligence sharing partner as a primary concern.[65] On the other hand, citizens should be aware of the actions of elected officials. Regardless of the outcome of this protracted dispute, it is clear that the decision to disclose confidential information lies either with the judiciary or the executive and not journalists.

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[62] *Kovacević* Subpoena Decision
[63] Rules 53, 54*bis*, 69, 70, 75
[64] *Report of the Departmental Committee on Section 2 of the Official Secrets Act 1911*, Cmnd. 5104, 1972 – The Franks Committee p 50, para 130 reprinted in *Shayler* at para. 9. (emph. added)
[65] A series of high court judgements and revised judgements were issued between 21 August 2008 and 19 November 2009. The appeal was argued before the Court of Appeal in December 2009, the decision is pending.

35. The SCC has also acknowledged that special measures may be needed to "avoid the perception by …allies and intelligence sources that an inadvertent disclosure of information might occur."[66] Since such a disclosure "would …jeopardize the level of access to information that foreign sources would be willing to provide", evidence can be heard *in camera* and *ex parte.*[67] In determining whether the restriction on the freedom of expression was justifiable, Arbour J found that "the preservation of Canada's supply of intelligence information from foreign sources is…a pressing and substantial objective."[68] She went on to say: "*In camera* hearings reduce the risk of an inadvertent disclosure of sensitive information and thus the provision is rationally connected to the objective."[69]

ii) Necessary in a democratic society

36. Ms. Hartmann's conviction was necessary to preserve the Tribunal's trust relationship with those who provide confidential information. In this respect, consider the uncontradicted evidence of Robin Vincent when he testified that once it is publically perceived that breaches of confidentiality are occurring, "it's unlikely that the cooperation that tribunal seeks will actually be forthcoming".[70] In order to maintain this trust relationship, the Tribunal must enforce its orders. Where a person knowingly and willfully interfered with the administration of justice by in violation of an order, criminal sanctions are justified. In the present matter, where Ms. Hartmann was found guilty on two separate counts,[71] a conditional discharge would send the message that not only are breaches occurring, but that they are tolerated.

iii) Proportionality

37. Criminal sanctions for publishing information received in confidence, including disclosure by a third party such as a journalist, are proportionate to the aim pursued.[72] Further, a consensus exists among member States of the Council of Europe regarding the

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Mohamed v. Secretary of State; *Mohamed* Judgement 6.
[66] *Ruby*, para. 44.
[67] *Ibid*.
[68] *Ibid*., para. 54.
[69] *Ibid*.
[70] T. 153. TC noted that "this testimony was not challenged by the Accused", Judgement, n. 171.
[71] Judgement, para 89.
[72] *Stoll*, para. 156; *Z v. Switzerland*; Also *Hadjianastassiou* where an officer was convicted and sentenced to five months imprisonment for disclosing military information of minor importance.

need for appropriate criminal sanctions to prevent the disclosure of certain confidential items of information.[73] Criminal conviction is permissible under international law.

38. The ECtHR has held that "the nature and severity of the penalty imposed are further factors to be taken into account when assessing the proportionality of interference".[74] The 7,000 Euros fine, the lowest sentence issued for contempt, is well below the maximum 100,000 Euros.[75] Other contemnors were fined 10,000-20,000 Euros. No prison term was imposed; other contemnors received sentences between 3-15 months.[76] Allowances for payment in installments were made in light of Ms. Hartmann's financial circumstances.

39. The Accused was not prevented from expressing her views because the penalties came after she published her book and article.[77] There was no prior restraint; no order to withdraw either publication from circulation.[78] The publications were not seized;[79] no order to destroy[80] or redact the impugned passages from either publication was issued. Indeed, the least intrusive restrictions necessary to achieve this legitimate aim were imposed.

iv) Restrictions on Public Interest

40. No right of unlimited access to information exists; even the right of an accused to the disclosure of relevant evidence is not absolute.[81] The ECtHR in *Fitt* noted that "it is not the role of this Court to decide whether or not such non-disclosure was strictly necessary since, as a general rule, it is for the national courts to assess the evidence before them."[82] The Court regularly balances the public interest in being informed with other equally important interests such as protecting the reputation of individuals, right to private life, etc.[83] The TC was correct in following suit.

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[73] *Stoll*, para. 155.
[74] *Chauvy*, para. 78; *Sürek*, para. 64.
[75] Rule 77(G). This amount is also low compared to national practice. In *Hinch* a fine of $15,000AUS (over 9000 Euros) for the first count and sentenced to four weeks imprisonment on the second count.
[76] *Šešelj* TJ
[77] *Stoll*, para. 156.
[78] *Editions Plon*. See also *Margetić* Protective Measures Decision ordering the accused journalist/former editor-in-chief to remove the confidential information from his Website; *Šešelj* TJ
[79] See *Vereniging Weekblad Bluf!*, para. 45, the weekly in question was seized and withdrawn from circulation. The Court held that since a large number of people had seen the information in question, the withdrawal from circulation was no longer necessary to achieve the legitimate aim pursues. Notably the Court held it would have been quite possible to prosecute the offenders.
[80] *Chauvy*, para. 78 citing *Editions Plon*
[81] *Fitt*, para. 45.
[82] *Ibid*., para. 46.
[83] *Chauvy*, para. 69.

41. The present appeal about Ms. Hartmann and her disclosure of confidential information. In *Leigh* a claim that the right to receive and impart information was interfered with was found to be "indirect and remote".[84] Notably, the ECtHR itself has refrained from examining complaints *in abstracto*. That said, unchallenged evidence of specific victims who have sought access to information for other proceedings and were denied was not before the TC. In fact, mechanisms exist for access to confidential information;[85] parties needing access routinely make applications to the tribunal.[86]

42. Ms. Hartmann has failed to meet the requisite standard of review; this ground and all its "sub-grounds" should be dismissed.

III. Impartial Tribunal

43. An impartial tribunal heard Ms. Hartmann's case. This ground is based on an uncontested decision where no leave to appeal was sought: Defence motion pertaining to the nullification of TC's Orders and Decisions ("**Motion**"). The Motion related to twenty-eight decisions and orders, several of which concerned non-substantive issues such as scheduling.[87] The OILI is the only decision that, if overturned, might affect the judgement. As will be shown below, the recycled arguments fail to meet the standard of review needed to invalidate the decision or establish a miscarriage of justice has occurred.

44. The Panel reviewing the motion did not find Ms. Hartmann "was indicted by a TC that lacked the appearance of impartiality."[88] The apprehension of bias resulted from the Chamber's composite roles: involvement in both investigation and prosecution phases.[89] The Panel concluded "exceptional circumstances" [90] warranted recusal of the investigative TC and assignment of the case to another Chamber.[91] This conclusion demonstrates that any appearance of bias, and consequently any prejudice to the Appellant, only arose after the confirmation of the OILI and once the prosecution phase began. The authorities the

[84] At para. 4.
[85] Rule 75(H); See generally Trial Transcript pp. 330-334.
[86] *Karadžić* Protective Measures Decision; *Milosevic* Rule 75(H) Decision
[87] Response to Nullification Motion, Appendix A.
[88] AB, para. 32.
[89] Panel's Report, para. 47.
[90] Practice Direction on Procedure for the Investigation and Prosecution of Contempt before the International Tribunal, IT/22, para. 13. Panel's Report paras. 48-53.
[91] Panel's Report, para. 53.

Appellant relies on do not address this temporal element: the influence of Lord Hoffman's connections to Amnesty International could have played a role throughout the *Pinochet* proceedings; the judge in *Dube* was married to counsel for the state at all relevant periods.

45. The Appellant has not shown the OILI failed to meet the requisite standard for confirmation. She failed to show the confirming Judge or the newly appointed TC[92] erred in finding a *prima facie* case had been established.[93] The test for confirming an OILI is whether the supporting documentation provides a "credible case which would (if not contradicted by the Defence) be a sufficient basis to convict the accused on the charge."[94] The Appellant has merely shown that, in her opinion, when contradicted by the Defence, the supporting documentation would not be sufficient to convict the accused. This is the incorrect legal standard. Further, when considered in light of the conviction, it is hardly convincing.

46. The Prosecutor opposes the relief sought and ground of appeal. For the reasons outlined above, this ground and all the "sub-grounds" should be dismissed.

IV. Alleged *Actus Contrarius*

46. The Prosecutor opposes the relief sought and the ground of appeal.

47. The AC in *Marijacic* held that protective measures imposed by a Chamber would be undermined "without an explicit *actus contrarius*"[95] No explicit *actus contrarius* has disclosed the breadth of information made public in the Appellant's publications. A compilation of the information in the decisions cited by Ms. Hartmann would not enable someone to reconstruct the information disclosed by Ms. Hartmann, as set out in the OILI.

48. A further consideration applies to the present ground, *actus contrarius*, and the next, waiver. Presently, anyone can easily determine contumacious acts *ex ante*. In the matter of a few keystrokes on the Tribunal's website members of the public can readily ascertain what information is available to them. There is a single, accurate repository of information. Should Ms. Hartmann's position succeed it would render such a task very difficult. Those seeking to comply will need to consult a multitude of sources around the world to establish

[92] *Ibid.*, para. 44; Nullification Decision, para. 11.
[93] Standard set out in Article19(1) of the Statute; Rule 47.
[94] *Milošević* Review Decision
[95] *Marijačić AJ*, para. 45; followed in *Margetić*, para. 49.

the confidential status of various materials. The Prosecutor submits Ms. Hartmann's position is untenable

49. This ground and all the "sub-grounds" should be dismissed.

V. Alleged Waiver

50. The parties allegedly disclosing information did not represent the Applicant's official position. Even if a purported waiver was convincingly established; it would not invalidate or overturn the Judgement. The outcome of these proceedings would remain unaffected since:

i. parties cannot unilaterally withdraw confidentiality;

ii. disclosure of confidential information by a third party does not lift confidentiality; and

iii. disclosures by Ms. Hartmann exceed the scope of information discussed by certain individuals from Serbia-Montenegro.

The Prosecutor opposes the relief sought and the ground of appeal and submits it should be dismissed.

50. This Chamber has held that "an appellant may not unilaterally withdraw the confidential status of a filing that has been ordered by the Appeals Chamber."[96] Where reasons for confidentiality no longer exist, a Chamber instructs the Registry to lift the confidential status of the document in question.[97] Chambers regularly vary or rescind measures which render information confidential. Orders have, among other things, rescinded protective measures where witnesses no longer required them;[98] lifted the seal on exhibits,[99] and granted access to confidential material.[100] The assertion that needing explicit orders from a Chamber to lift confidentiality contradicts practice cannot be sustained.[101]

51. REDACTED. This casts serious doubt on Ms. Hartmann's assertion that the parties allegedly disclosing information, did so in the Applicant's name. REDACTED

[96] *Martinović* Confidential Status Decision, p. 3.
[97] *Blaškić* Order, p. 2; *Šešelj* Confidential Status Order.
[98] *Blaškić* Variance Decision, para. 13; *Karadžić* Protective Measures Decision, para. 1; *Popović* Protective Measures Decision, p. 1.
[99] *Prlić* Order
[100] *Simić* Access Decision; *Karadžić* Access Decision.
[101] AB, para. 63.

REDACTED [102] This holding is consistent with the jurisprudence that a party cannot unilaterally withdraw confidentiality.

52. *Jović* clearly states: information disclosed by a third party remains confidential.

53. Finally, the information discussed in the public domain does not cover the breadth of Ms. Hartmann's disclosures.

54. This ground of appeal and all the "sub-grounds" ought to be dismissed.

VI. Seriousness of the Conduct

55. Ms. Hartmann argues her conviction is unsustainable because the conduct charged wasn't sufficiently serious to justify prosecution and conviction.[103] Her recycled arguments fail to demonstrate how this point, if in error, invalidates the judgment. The Prosecutor submits the TC was correct in law and consequently opposes the relief sought and the ground of appeal.

56. In her Motion for Reconsideration, Ms. Hartmann alleged the circumstances of her case were not serious enough to warrant conviction for contempt;[104] the TC rejected her argument.[105] It was revived in the Defence FTB,[106] and was again rejected in the Judgment.[107] No justification exists for resurrecting it at this stage. The TC observed powerfully, pre-trial: "…repetition of arguments does not make a proposition any more correct in fact or in law".[108]

57. Appellant also argues that other people who have disclosed confidential information

[102] REDACTED
[103] AB, paras. 68-72.
[104] Motion for Reconsideration, paras. 9, 19, 39, 45.
[105] Joint Decision, paras. 15-19;
[106] Defence FTB, paras. 50-52; 160-166.
[107] Judgement, para. 24-25.
[108] Nullification Decision, para. 12; especially n. 33.

have avoided prosecution. Allegedly, the record is "full of examples".[109] It is unnecessary to enquire into the circumstances of other cases to determine whether there was or was not sufficient evidence to justify charges, or to make assessments on whether other disclosures were deliberate or inadvertent. Appellant has failed to demonstrate how the situation in other cases has any bearing on the Judgment, much less invalidate it.[110] And, in any event, the knowing disclosure of confidential information by a recently-departed, senior employee of the Tribunal who worked with the Prosecutor[111] can, it is submitted, only be described as serious and defiant.[112]

58. The proper issue on appeal is whether the TC was correct as a matter of law in arriving at the conclusion that seriousness was best considered on the issue of sentence, not culpability[113]. The Prosecutor submits that this conclusion was correct, and is supported by ample authority from this Chamber.

59. To satisfy the *actus reus* of contempt as outlined in Rule 77(A)(ii) of the Rules, an order of a Chamber must be objectively breached.[114] Where a breach of this nature occurs, it is unnecessary to show actual interference with the Tribunal's administration of justice.[115] This Chamber has held that "a violation of a court order *as such* constitutes an interference with the International Tribunal's administration of justice".[116] Defiance of the order *per se* interferes with the administration of justice for the purposes of a conviction for contempt. No additional proof of seriousness or harm to the International Tribunal's administration of justice is required.[117]

60. This point of law is well-established. The Appellant has failed to establish any error. This ground and all the "sub-grounds" ought to be dismissed summarily.

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[109] AB, para. 71.
[110] This is similar to the "selective prosecution" argument advanced and rejected by in the Joint Decision, paras. 9, 13, 19.
[111] Judgement, paras. 57, 66, 81
[112] Appellant suggests in AB para. 69 that the TC should have considered whether Ms. Hartmann was nothing more than negligent; no facts are relied upon, and the record does not support this conclusion.
[113] Judgement, para. 25.
[114] *Marijačić TJ*, para. 17; *Haxhiu* TJ, para. 10; Judgement, para. 21.
[115] *Jović*, para. 30; *Marijačić TJ* para. 19; *Haxhiu* TJ, para. 10; Judgement paras. 21, 53.
[116] *Jović* para. 30 (emphasis in original); *Marijačić AJ* para. 44: *Bulatović* Contempt Decision, para. 17; Judgement, para. 21.
[117] *Jović*, para. 30.

VII. Risk to the Administration of Justice

61. Ms. Hartmann argues that her conviction is unsustainable because the evidence fails to show that her conduct created a "real risk" of interference with the Tribunal's ability to exercise its jurisdiction.[118]

62. In brief, the prosecutor submits: the TC's factual findings are dispositive; the legal conclusions reached were correct and in line with precedents of this Chamber; and the Tribunal's jurisprudence is consistent with general principles of law.

63. The TC made important findings of fact, based on *viva voce* and documentary evidence before it that was unchallenged and uncontradicted:[119]

> In publishing confidential information, the Chamber considers the Accused created a real risk of interference with the Tribunal's ability to exercise its jurisdiction to prosecute and punish serious violations of humanitarian law. The disclosure of protected information in direct contravention of a judicial order serves to undermine international confidence in the tribunal's ability to guarantee the confidentiality of certain information and may deter the level of cooperation that is vital to the administration of international justice.

64. The approach taken and conclusions reached by the TC accord with decisions of this Chamber. This Chamber has previously noted that the law of contempt is and has been a creature of the common law, and "[i]t is therefore to the common law that reference must *initially* be made to determine the scope of the law of contempt."[120] As discussed above,[121] defying an order *per se* interferes with the administration of justice; no additional proof of harm or risk is required. *Jović* is fully dispositive of this ground of appeal.[122]

65. Deviations from the presumption of openness, such as going into a closed session or issuing a confidential decision, occur because the Chamber has decided such a departure is necessary in the interests of the due administration of justice. Therefore, once the order has been issued, anyone who reveals information from a closed session or confidential decision

[118] AB, para. 73-81.
[119] Judgement, para. 74.
[120] *Nobilo*, para. 41. (emph. in original)
[121] See above para. 59.

frustrates the result the ruling is designed to achieve and can be found in contempt. This is consistent with relevant national practice.[123] In *Leveller*, Lord Diplock explained the relationship between breaching an order and the administration of justice as follows:[124]

> [T]he doing of such an act with knowledge of the ruling and of its purpose may constitute a contempt of court, not because it is a breach of the ruling but because it interferes with the due administration of justice.

66. Contrary to the Appellant's assertions,[125] prosecution for contempt once proceedings are complete do occur.[126] For example, Lord Denning held that victimization of a witness done for the purpose of punishing him for having given evidence can result in contempt.[127] Where the rationale for the restriction survives the proceedings, so too does the risk of contempt. As discussed above, the supply of evidence from external sources may dry up once it is publically perceived that breaches of confidentiality are occurring. As noted by Robin Vincent: "it's unlikely that the cooperation that tribunal seeks will actually be forthcoming".[128] The exercise of the Tribunal's jurisdiction not only conforms to international law, it is essential for the Tribunal to function.

67. This argument, framed in different ways and under different rubrics, has been advanced unsuccessfully throughout these proceedings.[129] The Appellant is simply recycling failed arguments without showing how rejecting them constitutes an error that warrants intervention. The Prosecutor opposes the relief sought and the ground of appeal. The findings of fact were reasonable and the application of the law correct. This ground of appeal and all the "sub-grounds" ought to be dismissed.

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[122] *Supra* note 117

[123] The authorities cited can be distinguished on the basis of their facts are dissimilar to the present case. *Dagenais*, for example was a review of a publication ban imposed to prevent influencing an ongoing trial, not a contempt case once a disclosure was made.

[124] *Leveller*, p 452

[125] AB, paras. 76.

[126] See above paras. 28-29. Further, the Appellant has taken the quote cited in para. 76 out of context. In fact it reads "post-1981 it has always been used in relation to such proceedings, not in relation to the administration of justice generally." In 1981 the Contempt of Court Act 1981 came into effect in the UK. This is important because s. 2 specifies that the proceedings must be active. As discussed above in paras. 30-31, a distinction must be drawn between restrictions designed to prevent prejudicing proceedings and confidential orders as in the present matter. While the common law may have been influenced by the legislation in so far as it relates to publication which might prejudice proceedings, it does not extend other contumacious publications.

[127] *Butterworth*

[128] *Supra* note 70.

[129] Motion for Reconsideration, para. 47 at (ii); Defence FTB, para. 158; Defence closing arguments, T. 538. Appellants now characterizes it as "double counting" (AB para. 82). The simple answer is that evidence can be

VIII. No need to show intention to interfere with the administration of justice

68. Ms. Hartmann argues that her conviction is unsustainable because no proof of an intention to interfere with the administration of justice was demonstrated. With some differences, this is similar to the last argument concerning "real risk". Again, the position is advanced with recycled arguments which do not meet the standard of review.

69. In brief, the prosecutor submits: the TC's factual findings on the issue are dispositive; Ms. Hartmann's argument is really a discussion on what, in her view, the law ought to be as distinct from what the law really is; and, based on decisions of this Chamber, and supported by national jurisprudence, the TC's legal conclusions were correct.

70. As discussed above, the finding that "the Accused created a real risk of interference with the Tribunal's ability to exercise its jurisdiction to prosecute and punish serious violations of humanitarian law" was based on unchallenged and uncontradicted *viva voce* and documentary evidence.[130]

71. Ms. Hartmann's suggestion that proving intention to interfere is a general principle of international law should be considered in light of the following authorities:

72. First, Lord Scarman said:

> If a court is satisfied that for the protection of the administration of justice from interference it is necessary to order that evidence either be heard in private or written down and not given in open court, it may so order. Such an order, or ruling, may be the foundation of contempt proceedings against any person who, with knowledge of the order, frustrates its purpose by publishing the evidence kept private or information leading to its exposure…those who are alleged to be in contempt must be shown to have known, or to have had the proper opportunity of knowledge, of the existence of the order. [131]

73. Next, Lord Denning held:

> …On principle it seems to me that in order to be found guilty the accused

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relevant to many different facts in issue.
[130] *Supra* note 119.
[131] *Leveller*, p 473

> must have had a guilty mind, some knowledge or intent, some *mens rea* as it is called…[A] person is only to be found guilty of it if he has published information…in which he knows that publication is prohibited by law, or recklessly in circumstances in which he knows that the publication is prohibited by law, but nevertheless goes on and publishes it, not caring whether it is prohibited or not. As if he said: 'I don't care whether it is forbidden, or not. I am not going to make any enquiries. I am going to publish it.' [132]

74. The TC's finding that it is not necessary to prove specific intent is consistent with the above mentioned authorities. These authorities, and the judgement, are also consistent with the jurisprudence of this Chamber which has dealt authoritatively with the issue. Consider for example *Marijačić*:

> The language of Rule 77 shows that a violation of a court order as such constitutes an interference with the International Tribunal's administration of justice. It is not for a party or a third person to determine when an order "is serving the International Tribunal's administration of justice". It has already been established in jurisprudence that any defiance of an order of the court interferes with the administration of justice.[133]

75. A closer look at the cases Ms. Hartmann relies on to support her position reveals that they are not as authoritative as suggested. First, Appellant relies heavily on *Nobilo*, a decision of this Chamber, and provides a brief extract from the judgement in support for the proposition that an accused can only be convicted for contempt where he has been shown to have acted with the specific intent of frustrating confidential orders.[134] The Prosecutor invites the Chamber to see what was actually said in the decision. In *Nobilo*, the Chamber noted that the offence of contempt is a protean one concerned with many widely diverse types of conduct and states of mind. The Chamber then said that:

> [t]hree different types of conduct which amount to contempt (at least at common law), and which *exemplify* that this is so, are:
>
> […]

[132] *Re F*
[133] *Marijačić AJ*, para. 44.
[134] AB, para. 84.

> (c) *the publication of a witness's identity* where protective measures have been granted to avoid such disclosure, with knowledge of the existence of those measures and with the specific intention of frustrating their effect, where the contempt is based not upon the violation of the order granting protective measures but because the disclosure interfered with the administration of justice.[135]

Thus, *Nobilo* provided *examples* of contemptuous conduct, and noted the relevance of specific intent in cases involving the publication of a witness's identity. That is not the case here.

76. Second, in *Hinch*,[136] where a majority upheld the contempt conviction of a journalist, Young CJ makes the following observation:

> To allow reference in the media to the prior convictions of a person accused of criminal offences, as in the present case, even though it is said that there was no intention to prejudice the fair trial of the accused, would be to open the door to trial by media. It is a door which, once opened, will not be easily closed for it may be expected that the media will always deny an intention to interfere with the course of justice whilst maintaining its right to publish what it conceives to be in the public interest.

77. In contrast, the conclusions in *Jović* are fully dispositive of this ground of appeal:[137]

> …the *actus reus* of contempt under Rule 77(A)(ii) is the disclosure of information relating to proceedings before the International Tribunal where such disclosure would be in violation of an order of a Chamber. In such a case, "[t]he language of Rule 77 shows that a violation of a court order *as such* constitutes an interference with the International Tribunal's administration of justice." Any defiance of an order of a Chamber *per se* interferes with the administration of justice for the purposes of a conviction for contempt. No additional proof of harm to the International Tribunal's administration of justice is required... The fact that some portions of the Witness's written statement or closed session testimony may have been

[135] *Nobilo*, para. 40(c) (emph. added)
[136] At. p. 730; *Hinch* HCA upheld this conviction. This like many authorities AB relies on can be distinguished.
[137] *Supra* note 117.

> disclosed by another third party does not mean that this information was no longer protected… or that its violation would not interfere with the Tribunal's administration of justice.

78. The standard of review on these findings of fact is reasonableness; on questions of law, correctness. The Appellant fails to show how this ground meets the standard of review. Consequently, this ground and all the "sub-grounds" ought to be dismissed.

IX. Registry's Letter

79. Ms. Hartmann argues the TC improperly relied upon the contents of a letter sent to her by the Registrar.[138] This is, once again, an issue that is very much rooted in the facts of this case. For the reasons set out below, the Prosecutor opposes the relief sought and the ground (and "sub-grounds") of appeal.

80. This is not a document that "came out of the blue" at trial, and took the Appellant by surprise. It is common ground that this letter was sent by the Registrar, and received by the Appellant, in October, 2007 – well before any investigation was even commenced, and certainly well before charges were laid. She and her counsel had full notice of its contents for over 8 months before the trial started. The facts are as follows.

81. Ms. Hartmann herself was the recipient of the letter in October 2007; it was formally disclosed in November 2008; it was included in the original 65*ter* list in the Pre-trial brief filed on 8 January 2009 and in the amended 65*ter* list of 4 February 2009[139]. Correspondence between counsel later confirmed that the Prosecutor intended to rely upon it in evidence, although until the Accused formally elected not to testify on 15 June 2009, it was believed that it would be relied upon and tendered during cross-examination of Defence witnesses[140]. The point is this: Ms. Hartmann knew about the document for 20 months. As well, the Prosecutor's clear and stated intention to rely upon it for evidentiary purposes had been unflagging for at least 8 months prior to trial.

82. This letter has considerable probative value, particularly with respect to the *mens rea* necessary to establish the second count. First, "sandwiched" between the two publications in

[138] AB, paras. 91-92.
[139] Submission to Amend 65ter lists.
[140] See email chain of correspondence filed by Defence: D49-D57; D66-D67.

issue, the Accused was put on notice that there was a live issue concerning whether in her book she had improperly disclosed confidential information. There can be no doubt, therefore, that she was fixed with knowledge of that issue on or about 19 October 2007. Yet she chose to go ahead with the article, which in the Suspect Interview she conceded was "an English version of passages in the book".[141] Ms. Hartmann explained that she had been asked to compile the essence of her book in English, so she took passages from the book, and on her own published them in English.[142] "Its nothing new", she advised.[143]

83. A careful comparison of the book passages and the article establishes that the latter is a mirror reflection of the relevant passages in the book[144] but, inexplicably, contains no reference to the confidential nature of the AC decisions. Reasonable inferences can be drawn from the facts established in evidence that after publishing a book in which she disclosed confidential information, she was warned *but elected to go ahead* with a further publication which in material respects replicates the contemptuous material from her publication four months earlier.

84. This point was fully considered by the TC, and is simply being repeated on appeal with no demonstration that the TC's rejection constitutes such an error as to warrant intervention. Indeed, for the reasons outlined above, the TC was correct in its disposition of this matter, both as an issue of fact and of law. Consequently, this ground and all the "sub-grounds" ought to be dismissed.

X./XI Mistake of Fact and Law

85. Appellant argues that the TC allegedly erred in "excluding /disregarding the reasonable possibility that FH was unaware of the criminal nature of her conduct…as a result of an error of fact or law."[145] This argument fails for two reasons[146]: first, it invites the Chamber to reach a conclusion on the basis of speculation, and without evidence in support. Second, the speculative conclusions sought to be drawn fly in the face of the TC's express findings of fact *based on the evidence* that "[…] the accused did not labour under a mistake of

[141] P3.1, generally, pp. 1004-2, pp. 9-11; specifically, p. 1004-2, p. 9, line 35.
[142] *Ibid.*, esp. p. 10, lines 31-32.
[143] *Ibid.*, p. 9, line 35.
[144] See FTB, Annexes A and B.
[145] AB, para. 93.
[146] In addition, the authorities relied on do not support her arguments. Cassese, pp. 251, 256.

fact"[147], and that, in relation to the law, the evidence "[…] demonstrate[s] knowledge, rather than ignorance, of the law".[148] The ground advanced therefore fails to meet the standard of review.

E. Conclusion

86. All grounds of appeal should be dismissed as Ms. Hartmann has failed to establish any error of law invalidating the decision, or error of fact occasioning a miscarriage of justice. The AC is respectfully requested to dismiss the appeal.

Word Count: 8996

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

Bruce A. MacFarlane, Q.C.
Amicus Curiae Prosecutor

Dated this 2nd day of February 2010
in Winnipeg,
Canada

[147] Judgement, para. 64.
[148] Judgement, para. 66.

F. Annex – Table of Authorities

I. ICTY Jurisprudence - *In the case against Florence Hartmann*

1.	OILI	*In the case against Florence Hartmann*, IT-02-54-R77.5, Order in Lieu of Indictment, 27 August 2008.
2.	PTB	*In the case against Florence Hartmann*, IT-02-54-R77.5, Prosecutor's Pre-Trial Brief Pursuant to Rule 65*ter*(E), 8 January 2009
3.	Motion for Reconsideration	*In the case against Florence Hartmann*, IT-02-54-R77.5, Defence Motion for Reconsideration, 14 January 2009
4.	Joint Decision	*In the case against Florence Hartmann*, IT-02-54-R77.5, Joint Decision on Defence Motion for Reconsideration and Defence Motion for Voir-Dire Hearing and Termination of Mandate of the Amicus Prosecutor, 29 January 2009
5.	Submission to Amend 65ter lists	*In the case against Florence Hartmann*, IT-02-54-R77.5, Submission Pursuant to Oral Decision on Prosecution Motion to Amend Rule 65*ter* Witness & Exhibit lists, 4 February 2009.
6.	Admissions	*In the case against Florence Hartmann*, IT-02-54-R77.5, Prosecution's Statement of Admissions of the Parties and Matters Not in Dispute, 6 February 2009
7.	*Amicus* Statement	*In the case against Florence Hartmann*, IT-02-54-R77.5, Statement of *Amicus Curiae* Prosecutor Concerning an Issue Raised by the Chamber During 30 January 2009 Status Conference, 2 February 2009
8.	Response to Disqualification Motion	*In the case against Florence Hartmann*, IT-02-54-R77.5, Prosecution Response to Defense Motion for Disqualification, 16 February 2009
9.	Panel's Report	*In the case against Florence Hartmann*, IT-02-54-R77.5, Report of Decision on Defence Motion for Disqualification of Two Members of the TC and of Senior Legal Officer, 25 March 2009

10. Response to Nullification Motion	*In the case against Florence Hartmann*, IT-02-54-R77.5, Prosecutor's response to motion concerning nullification of TC's Orders and Decisions, 5 May 2009
11. Nullification Decision	*In the case against Florence Hartmann*, IT-02-54-R77.5, Decision on Defence motion pertaining to the nullification of TC's Orders and Decisions, 19 May 2009
12. Ruxton Statement	*In the case against Florence Hartmann*, IT-02-54-R77.5, Joint Admission by the Parties on the Evidence of Mr. Gavin Ruxton, 9 June 2009
13. FTB	*In the case against Florence Hartmann*, IT-02-54-R77.5, Prosecutor's Final Brief, 2 July 2009
14. Defence FTB	*In the case against Florence Hartmann*, IT-02-54-R77.5, Defence Final Brief, 2 July 2009
15. Judgment	*In the case against Florence Hartmann*, IT-02-54-R77.5, Judgment on Allegations of Contempt, 14 September 2009
16. AB	*In the case against Florence Hartmann*, IT-02-54-R77.5, Appellant's Brief, 15 January 2010

II. ICTY Jurisprudence - General

17. *Blaškić*	*Prosecutor v. Timohir Blaškić*, IT-95-14-A, Appeal Judgement, 29 July 2004
18. *Blaškić* Variance Decision	*Prosecutor v. Timohir Blaškić*, IT-95-14-A, Decision on Prosecution's Motion for Variance of Protective Measures in the Prosecutor v. Šešelj & Margetić Case, 24 January 2006
19. *Blaškić* Order	*Prosecutor v. Timohir Blaškić*, IT-95-14-R, Order Withdrawing Confidential Status of Pre-Review Order and Decisions, 05 December 2005
20. *Brđanin*	*Prosecutor v. Radoslav Brđanin*, IT-99-36-A, Appeal Judgement, 3 April 2007

21. *Bulatović* Contempt Decision	*Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-R77.4, Contempt Proceedings Against Kosta Bulatović: Decision on Contempt of the Tribunal, 13 May 2005
22. *Furundžija* AJ	*Prosecutor v. Anto Furundžija*, IT-95-17/1-A, Appeal Judgement, 21 July 2000
23. *Hadžihasanović*	*Prosecutor v. Enver Hadžihasanović*, IT-01-47-A, Appeal Judgement, 22 April 2008
24. *Halilović*	*Prosecutor v. Sefer Halilović*, IT-01-48-A, Appeal Judgement, 16 October 2007
25. *Haraqija & Morina*	*Prosecutor v. Astrit Haraqija & Bajrush Morina*, *IT*-04-84-R77.4-A, Appeal Judgement, 23 July 2009
26. *Haxhiu* TJ	*Prosecutor v. Baton Haxhiu*, Case IT-04-84-R77.5, Judgement, 24 July 2008
27. *Jokić*	*Contempt Proceedings Against Dragan Jokić*, IT-05-88-R77.1-A, Judgement on Allegations of Contempt, 25 June 2009
28. *Jović*	*Prosecutor v. Josip Jović*, IT-95-14 & 14/2-R77-A, Appeal Judgement, 15 March 2007
29. *Karadžić* Protective Measures Decision	*Prosecutor v. Radovan Karadžić*, IT-95-5/I8-PT, Decision on Prosecution's Motion for Rescission of Protective Measures for KDZ027 and KDZ142, 26 August 2009
30. *Karadžić* Access Decision	*Prosecutor v. Radovan Karadžić*, IT-95-5/I8-PT, Decision on Motion for Access to Confidential Materials in Completed Cases, 5 June 2009.
31. *Kovacević* Subpoena Decision	*Prosecutor v. Milan Kovacević*, IT-95-11-A, Decision Refusing Defence Motion for Subpoena, 23 June 1998
32. *Krajišnik*	*Prosecutor v. Momčilo Krajišnik*, IT-00-39-A, Appeal Judgement, 17 March 2009
33. *Krnojelac*	*Prosecutor v. Milorad Krnojelac*, IT-97-25-A, Appeal Judgement, 17 September 2003
34. *Kupreškić*	*Prosecutor v. Zoran Kupreškić*, IT-95-16-A, Appeal Judgement, 23 October 2001

35. *Kvočka*	*Prosecutor v. Miroslav Kvočka*, IT-98-30/1-A, Appeal Judgement, 28 February 2005
36. *Margetić* Protective Measures Decision	*Prosecutor v. Margetić*, IT-95-14 R77-6, Order on the Implementation of Protective Measures, 28 July 2006
37. *Margetić*	*Prosecutor v. Margetić*, IT-95-14 R77-6, Trial Judgement, 7 February 2007
38. *Marijačić* TJ	*Prosecutor v. Ivica Marijačić & Markica Rebić*, IT-95-14-R77.2, Trial Chamber Judgement, 10 March 2006.
39. *Marijačić* AJ	*Prosecutor v. Ivica Marijačić & Markica Rebić*, IT-95-14-R77.2-A, Appeal Judgement, 27 September 2006.
40. *Martić*	*Prosecutor v. Milan Martić, IT*-95-11-A, Appeal Judgement, 8 October 2008
41. *Martinović* Confidential Status Decision	*Prosecutor v. Martinović*, IT-98-34-A, Decision on Vinko Martinović's Withdrawal of Confidential Status of Appeal Brief, 4 May 2005
42. *Milošević* Rule 75(H) Decision	*Prosecutor v. Slobodan Milošević*, IT-02-54-R75H-1, Decision on Application Pursuant to Rule 75(H). 30 January 2008.
43. *Milošević* Review Decision	*Prosecutor v. Slobodan Milošević*, IT-01-51-I, Decision on Review of the Indictment, 22 November 2001
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