



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/227
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**PRACTICE DIRECTION ON PROCEDURE FOR THE INVESTIGATION AND
PROSECUTION OF CONTEMPT BEFORE
THE INTERNATIONAL TRIBUNAL**

(IT/227)

PRACTICE DIRECTION ON PROCEDURE FOR THE INVESTIGATION AND PROSECUTION OF CONTEMPT BEFORE THE INTERNATIONAL TRIBUNAL

I. INTRODUCTION

In accordance with Sub-rule 19(B) of the Rules of Procedure and Evidence 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 (“Rules” and “International Tribunal” respectively) and having consulted with the Bureau, the Registrar, the Prosecutor and the Appeals Chamber, I issue this Practice Direction in order to establish a procedure for the investigation and prosecution of contempt before the International Tribunal:

II. GENERAL

1. Part III of this practice direction applies to instances where the Prosecutor is directed or an *amicus curiae* is appointed to investigate an allegation of contempt pursuant to Rule 77(C) (i) or (ii) of the Rules, respectively.
2. Part IV of this practice direction applies to instances where the Prosecutor or an *amicus curiae* appointed to prosecute an allegation of contempt pursuant to Rule 77(D) (i) or (ii) of the Rules, respectively
3. Reference to “Respondent(s)” shall mean the person(s) against whom the allegation of contempt is made.

III. INVESTIGATION

4. A request to a Chamber to investigate an allegation of contempt must be made prior to the commencement of the investigation.
5. The request for an investigation shall be made *ex parte* and confidentially before the Chamber in which the contempt allegedly occurred.

6. The application to investigate must be by written motion and supported by a statement setting out all available information, including *inter alia*:

- (i) The facts and/or evidence relied upon on which the investigation is being sought and must identify separately and numerically, each alleged act(s) (or series of acts) to be investigated; and
- (ii) The name, description and the address of the Respondent (if known) or such available information relevant to the identity of the person(s) behind the alleged act(s) (or series of acts).

Upon submission, an amendment to the application may be made with leave of the Chamber but not otherwise.

7. Upon a Chamber having considered the application for investigation and having reason to believe that a person (other than the Prosecutor) may be in contempt of the Tribunal, the Chamber will in the first instance direct the Prosecutor to investigate the contempt allegation unless the Prosecutor makes a showing of a conflict of interest with respect to the relevant conduct of the alleged contempt. The Prosecutor shall make the showing by way of a statement supported by the facts giving rise to a conflict of interest, and shall be submitted to the Chamber *ex parte* and confidentially.

8. Where the Chamber *proprio motu* or upon a showing by the Prosecutor pursuant to paragraph 7 above is of the view that the Prosecutor has a conflict of interest, the Chamber may issue an order directing the Registrar to appoint an *amicus curiae* to investigate the matter and report back and make recommendations to the Chamber. The Chamber's order shall be confidential and *ex parte* and shall set out *inter alia*:

- (i) the incident to be investigated;
- (ii) the documents and filings, including confidential material which the Registry of the International Tribunal and/or the Prosecutor shall make available to the *Amicus Curiae* Investigator for the purposes of the investigation;
- (iii) investigative instructions (if any) including instructions concerning the summoning and questioning of witnesses, recording their statements and collecting evidence and such other matters as may be necessary for the conduct and completion of the investigation;

- (iv) the due date for the *Amicus Curiae* Investigator to report back to the Chamber.

9. Upon the Registrar having identified the *Amicus Curiae* Investigator to be appointed, the Registrar shall first consult the Chamber as to the suitability of the candidate and require a solemn declaration and undertaking in the form set out in Annex I to this Practice Direction, to be made by the *Amicus Curiae* Investigator. The Registrar shall thereafter issue a confidential & *ex parte* order appointing the *Amicus Curiae* Investigator and transmit the order to the *Amicus Curiae* Investigator together with the following:

- (i) the application together with the supporting documents mentioned in paragraph 6 above; and
- (ii) the order mentioned in paragraph 8 above and such other material as instructed by the Chamber in paragraph 8(ii) above.

10. A request for clarification or further instructions as a result of the order in paragraph 8 above may be made by the Registrar through a confidential and *ex parte* application to the Chamber that issued the order. The appointed *Amicus Curiae* Investigator may petition the Chamber for this purpose but shall be restricted to seeking clarification and/or further instructions concerning the matters contained in paragraph 8(i) – (iv) above or related matters.

11. If during the course of investigations ordered by the Chamber in paragraph 8 above, the Registrar becomes aware of any reason which may prejudice or affect the conduct of the investigations, the Registrar shall immediately notify the Chamber that issued the said order and upon consultation with that Chamber, take remedial action including terminating and/or appointing a new or additional *Amicus Curiae* Investigator.

12. The completed report of the *Amicus Curiae* Investigator shall be confidentially submitted to the Registrar within the time limit prescribed in the order of the Chamber in paragraph 8 (or such other time as prescribed by that Chamber) for onward transmission to that Chamber.

IV. PROSECUTION

13. Upon completion of the investigation of an alleged contempt of the International Tribunal pursuant to Rule 77 (C)(i) or (ii) of the Rules, and where sufficient grounds have been determined by a Chamber in order to proceed against a person for contempt, the Chamber in which the contempt allegedly occurred shall adjudicate the matter unless there are exceptional circumstances

such as cases in which the impartiality of a Chamber may be called into question, warranting the assignment of the case to another Chamber.

14. In accordance with Rule 77(D) of the Rules, where the Prosecutor investigated the contempt allegation pursuant to Rule 77(C)(i), the adjudicating Chamber will direct the Prosecutor to prosecute the alleged contempt. Where an *Amicus Curiae* Investigator was appointed to investigate the allegation pursuant to Rule 77(C)(ii), the adjudicating Chamber may direct *amicus curiae* to prosecute the matter .

15. Where the adjudicating Chamber decides to issue an order in lieu of an indictment and directs an *amicus curiae* to prosecute the matter, such order shall be public unless otherwise determined by the adjudicating Chamber, shall be served without delay on the Respondent and shall:

- (i) detail the charges against the Respondent and set a date for the Respondent to be called upon to appear before the adjudicating Chamber to enter a plea with respect to the charges of contempt of the Tribunal;
- (ii) direct the Registrar to appoint, on behalf of the adjudicating Chamber, an impartial party as the *Amicus Curiae* Prosecutor to prosecute the charges detailed by the adjudicating Chamber;
- (iii) set out the documents and filings including confidential material which the adjudicating Chamber considers necessary, at this stage, for the preparation of the case and which the Registry of the International Tribunal and/or the Prosecutor shall make available to the *Amicus Curiae* Prosecutor;
- (iv) set out the terms of reference for the *Amicus Curiae* Prosecutor; and
- (v) set out any other case management instructions.

16. Prior to the date as set out in paragraph 15(i) above, the Registrar shall, pursuant to the directive stated in paragraph 15(ii) above, identify the *Amicus Curiae* Prosecutor to be appointed and shall first require a solemn declaration and undertaking, to be made by the *Amicus Curiae* Prosecutor, in the form set out in Annex II to this Practice Direction. The Registrar shall thereafter issue an order appointing the *Amicus Curiae* Prosecutor and transmit such order to the *Amicus Curiae* Prosecutor together with the following:

- (i) the order of the adjudicating Chamber mentioned in paragraph 15 above; and
- (ii) such other material as instructed by the adjudicating Chamber in paragraph 15(iii) above.

17. The Registrar may, if so required, request for clarification or further instructions as a result of the order in paragraph 15 above, from the adjudicating Chamber.

18. In contempt proceedings before the adjudicating Chamber where an *Amicus Curiae* Prosecutor is directed to prosecute pursuant paragraph 15 above, unless otherwise determined by the adjudicating Chamber, the Prosecutor and defence of the accused person(s) (“Defence”) in the proceedings where the contempt allegedly occurred, shall have the liberty to appear at any hearing of the contempt proceedings as concerned parties. All confidential filings by the *Amicus Curiae* Prosecutor or the Respondent in the contempt proceedings shall not be disclosed to the Prosecutor and the Defence except by order of the adjudicating Chamber *proprio motu* or upon the request of the Prosecutor or Defence and after hearing the *Amicus Curiae* Prosecutor and/or the Respondent.

19. In the case of contempt proceedings before the International Tribunal, the Registrar shall ensure that the Registry of the International Tribunal:

(i) provides the Respondent with assistance reasonably required in matters relating to the Respondent’s defence, such matters being those normally provided by the Registry of the International Tribunal to accused persons but taking into account that the Respondent’s position is that of an accused person for contempt before the International Tribunal and subject to rules, regulations, instructions or directives applicable to such assistance, including assignment of counsel pursuant to Rule 45 of the Rules in the case of indigence, obtaining travel visas for the Netherlands if necessary and securing access to the premises of the International Tribunal;

(ii) provides the *Amicus Curiae* Investigator and/or *Amicus Curiae* Prosecutor with assistance, subject to rules, regulations, instructions or directives applicable to such assistance, as is reasonably necessary for the conduct and completion of the investigative task and prosecution respectively, but without prejudice to the functions and mandate of the Registry of the International Tribunal, including the management of all matters relating to the assignment to investigate or the prosecution, travel necessary for the investigation or prosecution and daily subsistence for such travel, travel visas for the Netherlands if necessary and securing access to the premises of the International Tribunal;

The Registrar shall be at liberty to request for clarification and directions from the Chamber ordering the investigation or the adjudicating Chamber with respect to the matters aforesaid.

20. Pursuant to Rule 77(E) of the Rules, the adjudicating Chamber may, subject to the rights of the Respondent as an accused person before the International Tribunal, reduce any time prescribed by or under the Rules having regard to the complexity of issues raised in the contempt proceedings.

Theodor Meron
President

Annex I

Confidential and *Ex Parte*

In the matter of [describe the order of the Chamber directing the Registrar to appoint an *Amicus Curiae* Investigator pursuant paragraph [8] of the Practice Direction IT/xx] (the “Chamber” and “Order” respectively) and [briefly describe the task to be investigated] (the “Investigation”).

I, the undersigned, in anticipation of an appointment as *Amicus Curiae* Investigator pursuant to the Order, hereby solemnly declare and undertake as follows:

- (A) I am not in a position of conflict or potential conflict with regards to the Investigation and declare that there are no circumstances whatsoever, past or present including information in my possession or previous employment that would impact on my impartiality or ability to perform the Investigation and conscientiously believe this to be true in every particular.
- (B) I shall perform the duties incumbent upon me in all loyalty, discretion and good conscience and I will faithfully observe all rules, regulations, instructions or directives applicable to my assignment.
- (C) I shall respect the impartiality and independence of the Investigation and shall not seek nor accept instructions regarding my functions from any institution, person or other authority other than the Chamber or Registrar of the International Tribunal or his designated representative.
- (D) Save for that which is required for the Investigation and the terms set out in the Order, I shall not communicate, at any time, without the authorisation of the Registrar or his designated representative, to any institution, person or other authority other than the Chamber or Registrar of the International Tribunal or his designated representative, any information which has become known to me by reason of my function, or use any such information in any other way. These obligations do not lapse upon termination of the Investigation.

Full name printed in block capitals

Signature

Date

Annex II

In the matter of [describe the order of the Chamber directing the Registrar to appoint an *Amicus Curiae* Prosecutor pursuant paragraph [15] of the Practice Direction IT/xx] (the “Chamber” and “Order” respectively) and [briefly describe the task to be prosecuted] (the “Proceedings”).

I, the undersigned, in anticipation of an appointment as *Amicus Curiae* Prosecutor pursuant to the Order, hereby solemnly declare and undertake as follows:

- (A) I am not in a position of conflict or potential conflict with regards to the Proceedings and declare that there are no circumstances whatsoever, past or present including information in my possession or previous employment that would impact on my impartiality or ability to prosecute in the Proceedings and conscientiously believe this to be true in every particular.
- (B) I shall perform the duties incumbent upon me in all loyalty, discretion and good conscience and I will faithfully observe all rules, regulations, instructions or directives applicable to my assignment.
- (C) I shall respect the impartiality and independence of role of *Amicus Curiae* Prosecutor in the Proceedings and shall not seek nor accept instructions regarding my functions from any institution, person or other authority other than the authority of the Chamber in connection with the adjudication of the Proceedings.

Full name printed in block capitals

Signature

Date