

United Nations  
Nations UniesInternational Criminal Tribunal  
for the former Yugoslavia  
Tribunal Pénal International  
pour l'ex-Yugoslavie

(IT-02-54-R77.5)

# FLORENCE HARTMANN

**FLORENCE  
HARTMANN**
*Convicted of contempt of the Tribunal in connection with the Prosecutor v. Slobodan Milošević case: knowingly and willingly disclosing information in knowing violation of an order of a Chamber*


Journalist

- Sentenced to a fine of 7,000 euros

### *Crimes convicted of:*

#### **Contempt of the Tribunal (Rule 77(A)(ii) of the Rules of Procedure and Evidence)**

- Florence Hartmann knowingly and wilfully interfered with the administration of justice by disclosing information in violation of an order of the Appeals Chamber dated 20 September 2005 and an order of the Appeals Chamber dated 6 April 2006, through means of authoring for publication a book entitled *Paix et Châtiment* ("Book"), published by Flammarion on 10 September 2007, and by authoring for publication an article entitled *Vital Genocide Documents Concealed* ("Article"), published by the Bosnian Institute on 21 January 2008.

<b>Order (in lieu of indictment)</b>	27 August 2008; amended: 27 October 2008
<b>Initial and further appearance(s)</b>	27 October 2008, did not enter a plea; 14 November 2008, did not enter a plea; a plea of not guilty was entered on her behalf
<b>Trial Chamber Judgement</b>	14 September 2009, sentenced to pay a fine of 7,000 euros

## STATISTICS

Trial days	5
Witnesses called by <i>Amicus Curiae</i> Prosecutor	2
<i>Amicus Curiae</i> Prosecution exhibits	11
Witnesses called by Defence	2
Defence exhibits	67

TRIAL	
Commenced	15 June 2009
Closing arguments	3 July 2009
Specially Appointed Trial Chamber	Judge Bakon Justice Moloto (presiding), Judge Mehmet Güney, Judge Liu Daqun
<i>Amicus Curiae</i> Prosecutor	Bruce MacFarlane
Counsel for the Defence	Karim A. A. Khan, Guénaël Mettraux
Judgement	14 September 2009

APPEAL	
Appeals Chamber	Judge Patrick Robinson (Presiding), Judge Andréia Vaz, Judge Theodor Meron, Judge Burton Hall and Judge Howard Morrison
<i>Amicus Curiae</i> Prosecutor	Bruce MacFarlane
Counsel for the Defence	Karim A. A. Khan, Guénaël Mettraux

RELATED CASES by geographical area
MILOŠEVIĆ (IT-02-54) "KOSOVO, CROATIA & BOSNIA"

## INDICTMENT AND CHARGES

In accordance with Rule 77 of its Rules of Procedure and Evidence, the Tribunal can conduct proceedings for contempt of court. The ICTY's jurisdiction in respect of contempt is not expressly outlined in the Statute. However, it is firmly established that the Tribunal possesses an inherent jurisdiction, deriving from its judicial function, to ensure that its exercise of the jurisdiction expressly given to it by the Statute is not frustrated and that its basic judicial functions are safeguarded. As an international criminal court, the Tribunal possesses this inherent power to deal with conduct interfering with its administration of justice. Such interference may be by way of conduct which obstructs, prejudices or abuses the Tribunal's administration of justice. Those who knowingly and wilfully interfere with the Tribunal's administration of justice in such a way may, therefore, be held in contempt of the Tribunal.

Florence Hartmann was employed as Spokesperson for the Prosecutor of the Tribunal from 2000 to 2006.

On 10 September 2007, a book entitled *Paix et Châtiment*, authored for publication by Florence Hartmann, was published by *Flammarion*. Pages 120-122 of the book *Paix et Châtiment* in particular disclose information related to the decisions of the Appeals Chamber dated 20 September 2005 and 6 April 2006, including the contents and purported effect of these decisions, as well as specific reference to the confidential nature of these decisions.

On 21 January 2008, an article authored for publication by Florence Hartmann entitled "Vital Genocide Documents Concealed" was published by the *Bosnian Institute*. The article discloses information relating to the two confidential decisions of the Appeals Chamber dated 20 September 2005 and 6 April 2006, including the contents and purported effect of these decisions.

Florence Hartmann knew that the information was confidential at the time disclosure was made, that the decisions from which the information was drawn were ordered to be filed confidentially, and that by her disclosure she was revealing confidential information to the public.

The order in lieu of an indictment against Florence Hartmann was filed on 27 August 2008. On 27 October 2008, an amended order in lieu of indictment was filed containing minor corrections to the text.

Florence Hartmann was charged with:

- Two counts of Contempt of the Tribunal (Rule 77(A)(ii) of the Rules of Procedure and Evidence)

## TRIAL

On 28 November 2008, the Specially Appointed Chamber scheduled the trial for 5 and 6 February 2009.

On 3 February 2009, however, the Chamber issued an order postponing the trial *sine die*, following the filing, earlier on the same day, of a “Defence Motion for Disqualification of Two Members of the Trial Chamber and of Senior Legal Officer in Charge of the Case.”

On 2 April 2009, the ICTY President assigned Judge Mehmet Güney and Judge Liu Daqun to replace Judge Carmel Agius and Judge Alphons Orie in this case.

The trial commenced on 15 June 2009 and the *Amicus Curiae* Prosecutor completed its case on the same day. Subsequently, the Defence presented its case on 16-17 June and again on 1 July 2009. The closing arguments were held on 3 July 2009.

## TRIAL CHAMBER JUDGEMENT

The Chamber found that the accused, in her Book, had disclosed confidential information contained in the Appeals Chamber decisions. The information contained in the relevant pages of her Book was also contained in the article authored by the accused, which, in her own words, was an English version of passages in the Book. The Chamber found that the Appeals Chamber decisions that were the subject of the charges against the accused were confidential at the time of the accused’s publication and indeed remained so currently. While the Chamber found that some information disclosed by the accused in her publications was indeed in the public domain, this fact did not in and of itself negate the *actus reus* of the charges against the accused. The Chamber, having thoroughly reviewed the available evidence, was satisfied beyond reasonable doubt that by writing and publishing the Book and the Article, the accused revealed confidential information contained in the Appeals Chamber decisions and thereby disclosed information in violation of an order of the Chamber.

With respect to *mens rea*, the Prosecution submitted that the accused possessed actual knowledge with respect to both counts, on the basis that 1) she made express reference to the confidential nature of the Appeals Chamber decisions in her Book; 2) she received a letter from the Registrar of the Tribunal after the publication of her Book but prior to her publication of the Article which “fixed [her] with knowledge” that there was an issue concerning the improper disclosure of confidential information; and 3) there was contextual information which supports such a finding.

The Defence submitted that the Prosecution failed to prove that the accused had the specific intent to interfere with the administration of justice. The Defence further asserted that the accused might have been mistaken in fact and/or in law when publishing the alleged information. The Chamber found that this argument must fail on the basis of the accused’s own words and deeds. The Chamber also considered the fact that the accused, in her capacity as spokesperson from 2000 to 2006 for the former Prosecutor of the Tribunal Carla del Ponte, was well aware what the confidentiality of a decision entailed. In sum, the Chamber was satisfied beyond reasonable doubt that the accused had the requisite *mens rea* for the form

of contempt she was charged with, namely that she revealed confidential information in knowing violation of a court order.

As a result, the Chamber was satisfied that the Prosecution proved beyond a reasonable doubt that the accused knowingly and wilfully interfered with the administration of justice, and thereby committed the crime of contempt of the Tribunal on both counts as charged in the indictment.

The Chamber took into account several factors in its determination of the appropriate penalty for the accused. In particular, the Chamber assessed the risk of interference with the Tribunal's administration caused by the accused's conduct. It found that this risk was real, and that it was serious. The Chamber found the accused's conduct may deter sovereign states from cooperating with the Tribunal where the provision of evidentiary material was concerned. This in turn necessarily impacted upon the Tribunal's ability to exercise its jurisdiction to prosecute and punish serious violations of humanitarian law as prescribed by its mandate. The Chamber stated that public confidence in the effectiveness of protective measures, orders and decisions was vital to the success of the work of the Tribunal. In the determination of the appropriate penalty, the Chamber also considered the need to deter future wrongful disclosure of confidential information by the Accused or any other person.

However, the Chamber also considered the fact that some of the information published by the accused was already in the public domain. It also took into account that the accused's Book had not been a commercial success and that she was indebted to her publisher Flammarion for approximately 10,000 euros. The accused cooperated with the Tribunal throughout the investigation and trial and did not, to the knowledge of the Chamber, have a previous criminal record. The Prosecution submitted that a term of imprisonment would not be justified in the circumstances of this case and recommended a fine between 7,000 and 15,000 euros. The Defence submitted that should the accused be convicted, she could be ordered to "keep the peace and be of good behaviour", and not "to publicly discuss the Appeals Chamber decisions or their content".

On 14 September 2009, Trial Chamber rendered its judgement, convicting Florence Hartmann of:

- Count 1, knowingly and wilfully interfering with the Tribunal's administration of justice by disclosing information in violation of an Order of the Appeals Chamber dated 20 September 2005 and an order of the Appeals Chamber dated 6 April 2006 by means of authoring for publication a book entitled *Paix et Châtiment* published by Flammarion on 10 September 2007; and
- Count 2, knowingly and wilfully interfering with the Tribunal's administration of justice by disclosing information in violation of an Order of the Appeals Chamber dated 20 September 2005 and an order of the Appeals Chamber dated 6 April 2006 by means of authoring for publication an article entitled *Vital Genocide Documents Concealed*, published by the Bosnian Institute on 21 January 2008.

Sentence: Fine of 7,000 euros, to be paid by two instalments of 3,500 euros each, the first to be paid by 14 October 2009 and the second to be paid by 14 November 2009.

## APPEALS PROCEEDINGS

On 24 September and 9 October 2009 respectively, the Defence filed its notice of appeal and its appeal brief.

The appeal brief was refiled on 23 November 2009, and was refiled again on 15 January 2010.