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Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

(Exclusively for the use of the media. Not an official document)

CHAMBERS

The Hague, 14 September 2009

Judgement Summary For Florence Hartmann

Please find below the summary of the Judgement read out today by Judge Moloto:

The Specially Appointed Chamber sits today to deliver its Judgement in the case against Florence Hartmann. For this purpose, it will briefly summarize the procedural history of the case, the applicable law, the main submissions of the parties, and finally, the Chamber's findings. The Chamber emphasizes that the authoritative account of its findings in this case is the written Judgement, which will be made available at the close of this session.

I will start with the procedural history and the Indictment.

The operative order in lieu of an Indictment was filed on 27 October 2008. It alleges that Florence Hartmann, the Accused, knowingly and wilfully interfered with the administration of justice by disclosing the contents, purported effect and confidential nature of two Appeals Chamber Decisions from the Slobodan Milošević case in a Book as well as in an Article authored by her. Based on the foregoing, the Accused has been charged with two counts of contempt punishable under Rule 77(A)(ii) of the Rules of Procedure and Evidence of this Tribunal.

The trial was conducted on 15 to 17 June and concluded on 1 July 2009. The parties submitted final briefs on 2 July and Closing Arguments were heard on the 3 July 2009. The Chamber has heard the live testimony of two Prosecution witnesses and two Defence witnesses. A statement of one Prosecution witness was submitted as part of a joint filing.

I will now summarize the relevant law applicable to this case.

It has been firmly established that the Tribunal possesses an inherent jurisdiction to prosecute and punish contemptuous conduct. This inherent jurisdiction derives from the Tribunal's judicial power to ensure that it is not frustrated in the exercise of the jurisdiction in accordance with its Statute, and that its basic judicial functions are safeguarded. The Accused is charged pursuant to Rule 77(A)(ii) of the Rules, which provides that "[t]he Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with the administration of justice, including any person who (ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber."

The elements of this form of contempt are the revelation of confidential information to a third party or to the public in breach of an order of the Tribunal. The person responsible for revealing such information must have done so in knowing violation of a Chamber's order.

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I shall now move to the parties' submissions and the Chamber's discussion as to whether the requisite elements have been met in this case.

The Defence has argued that the factual allegations in this case are not serious enough to warrant the initiation of criminal proceedings pursuant to Rule 77 of the Rules. It has also asserted that the Tribunal has no jurisdiction to proceed under Rule 77 unless a "real risk" to the administration of justice exists. The Chamber has found, however, that any knowing and wilful conduct which interferes with the administration of justice may properly be tried as contempt. As discussed in more detail in the written Judgement, the Chamber has found that these are factors that are more appropriately considered in the context of sentencing.

Turning now to the actus reus, it is an agreed fact between the parties that the Accused was the sole author of both the Book and the Article which are the subject of the charges against her.

The Prosecution has submitted that the actus reus has been established in this case for both counts. The Defence has submitted, inter alia, that the actus reus cannot be established because the Tribunal as well as the Applicant for the protective measures subject to the two Appeals Chamber Decisions had already made public the same information the Accused is alleged to have disclosed. Supported by the jurisprudence of this Tribunal, the Chamber has emphasised that a decision remains confidential until a Chamber explicitly decides otherwise. As discussed in further detail in the written Judgement, the Chamber has thus found that the Defence argument that the confidentiality of the two Appeals Chamber Decisions was lifted either by an actus contrarius of the Tribunal or by the Applicant's waiver of confidentiality, lacks merit. Moreover, many of the Defence's arguments in this respect are premised on a misconceived interpretation of the scope of the charges against the Accused by limiting them to four facts, namely (i) the existence and date of the Appeals Chamber Decisions; (ii) the confidential character of the Appeals Chamber Decisions; (iii) the identity of the Applicant for protective measures for specific documents; and (iv) the fact that the protective measures requested by the Applicant were granted with respect to those documents. The Defence further argued that the Accused is not charged with disclosing the legal reasoning contained in the text of the two Appeals Chamber Decisions, arguing in this respect that there is no valid legal basis upon which to punish disclosure of the Chamber's legal reasoning. The wording of the Indictment however is clear - the Accused is charged with disclosing the contents, purported effect and confidential nature of the two Appeals Chamber Decisions. This does not, as discussed in detail in the written Judgement, exclude the legal reasoning of the Appeals Chamber. In addition, the Chamber found that the Accused published more than just the Four Facts which the Defence alleges the Indictment is limited to.

The Chamber has found that the Accused, in her Book, has disclosed confidential information contained in the Appeals Chamber Decisions. The information contained in the relevant pages of her Book is 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 has found that the Appeals Chamber Decisions that are the subject of the charges against the Accused were confidential at the time of the Accused's publication and indeed remain so currently. While the Chamber has found that some information disclosed by the Accused in her publications was indeed in the public domain, this fact does 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 has 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 is contextual information which supports such a finding.

The Defence has submitted that the Prosecution has failed to prove that the Accused had the specific intent to interfere with the administration of justice. As discussed in greater detail in the Judgement, the Chamber has rejected the definition of mens rea proposed by the Defence. The Defence has further asserted that the Accused may have been mistaken in fact and/or in law when publishing the alleged information. For reasons set out in the written Judgement, the Chamber has found that this argument must fail on the basis of the Accused’s own words and deeds. The Chamber has also considered the fact that the Accused, in her capacity as spokesperson for the former Prosecutor of the Tribunal Carla del Ponte from 2000 to 2006, 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 is charged with, namely that she revealed confidential information in knowing violation of a court order.

As a result, the Chamber is 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.

I will now turn to considerations relevant to sentencing. Pursuant to Article 24 of the Statute and Rule 101 of the Rules, the Chamber took into account several factors in its determination of the appropriate penalty for the Accused, as set out in greater detail in the written Judgment. In particular, the Chamber has assessed the risk of interference with the Tribunal’s administration caused by the Accused’s conduct. It has found that this risk is real, and that it is serious. The Chamber has found the Accused’s conduct may deter sovereign states from cooperating with the Tribunal where the provision of evidentiary material is concerned. This in turn necessarily impacts upon the Tribunal’s ability to exercise its jurisdiction to prosecute and punish serious violations of humanitarian law as prescribed by its mandate. Public confidence in the effectiveness of protective measures, orders and decisions is vital to the success of the work of the Tribunal. In the determination of the appropriate penalty, the Chamber has also considered the need to deter future wrongful disclosure of confidential information by the Accused or any other person.

However, the Chamber has 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 has not been a commercial success and that she is indebted to her publisher Flammarion for approximately 10,000 Euro. The Accused has cooperated with the Tribunal throughout the investigation and trial and does not, to the knowledge of the Chamber, have a previous criminal record.

The Prosecution has submitted that a term of imprisonment would not be justified in the circumstances of this case and recommends a fine between 7,000 and 15,000 Euro. The Defence has 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”.

Pursuant to Rule 77 (G) of the Rules, the maximum penalty that may be imposed on a person found to be in contempt of the Tribunal shall be a term of imprisonment for seven years, a fine of 100,000 Euros, or both.

Ms Hartmann, please stand up.

For the foregoing reasons, having considered all of the evidence and the arguments of the parties, the Chamber, pursuant to the Statute of the Tribunal and Rules 77 and 77 bis of the Rules, finds the Accused guilty 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.

The Accused is hereby sentenced to pay a fine of 7000 Euros, to be paid by two instalments of 3500 Euros each, the first to be paid by 14 October 2009 and the second to be paid by 14 November 2009.
