

IT-02-54-R77-5
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**International Tribunal for the
Prosecution of Persons Responsible for
Serious Violations of International
Humanitarian Law Committed in the
Territory of the Former Yugoslavia
since 1991**

Case No. IT-02-54-R77.5
Date: 27 October 2008
Original: English

IN A SPECIALLY APPOINTED CHAMBER

**Before: Judge Carmel Agius, Presiding
Judge Alphons Orié
Judge Christine van den Wyngaert**

Registrar: Mr Hans Holthuis

Order of: 27 October 2008

**IN THE CASE AGAINST
FLORENCE HARTMANN**

PUBLIC

AMENDED ORDER IN LIEU OF AN INDICTMENT ON CONTEMPT

Amicus Curiae Prosecutor

Mr Bruce MacFarlane

Counsel of the Accused

Mr William Bourdon

THIS TRIAL CHAMBER 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 (“Tribunal”), issues this order in lieu of an indictment on charges of contempt concerning Ms. Florence Hartmann.

A. Introduction

1. On 1 February 2008, pursuant to Rule 77(C)(ii) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), this Trial Chamber ordered the Registrar to appoint an *amicus curiae* to investigate the alleged knowing disclosure of information contained in certain confidential decisions of the Appeals Chamber in the case of *Prosecutor v. Slobodan Milošević* (IT-02-54-AR108bis.2) by Ms. Hartmann, former spokesperson for the Prosecutor, in her book titled “*Paix et Châtiment*” (“Peace and Punishment”) and in her public statements made subsequent to the publication of the book.¹ Pursuant to the Order, the *amicus curiae* was to report back to the Trial Chamber as to whether sufficient grounds exist for instigating contempt proceedings against Ms. Hartmann or any other person identified in the course of such investigation. On 12 June 2008, the *amicus curiae* reported back to the Trial Chamber, detailing the results of his investigation.

B. Contempt of the Tribunal

2. Pursuant to Rule 77(A) of the Rules, the Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who discloses information relating to those proceedings in knowing violation of an order of a Chamber.² Accordingly, pursuant to Rule 77(D)(ii), “If the Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber may [...] in circumstances described in paragraph (C)(ii) or (iii)” of Rule 77 of the Rules, “issue an order in lieu of an indictment and either direct *amicus curiae* to prosecute the matter or prosecute the matter itself.”³

3. On the basis of the factual findings contained in the *amicus curiae*’s investigation pursuant to the Order, the Trial Chamber has reason to believe that pursuant to Rule 77(D)(ii)

¹ *Prosecutor v Slobodan Milošević*, IT-02-54-Misc.2, Order to the Registrar to appoint an *Amicus Curiae* to investigate a contempt matter, 1 February 2008, (“the Order”).

² Rule 77 (A)(ii).

³ Rule 77 (D)(ii).

there is a *prima facie* case of contempt and that there are sufficient grounds to issue an order in lieu of an indictment. The factual allegations supporting the order in lieu of indictment are set forth in the attached annex containing the charges of contempt against Ms Hartmann.

C. Disposition

Accordingly the Trial Chamber pursuant to Rule 77 of the Rules hereby:

(i) **ORDERS** the prosecution of **FLORENCE HARTMANN** on two counts of **CONTEMPT OF THE TRIBUNAL**, punishable under Rule 77(A)(ii) of the Rules, for knowingly and wilfully disclosing information in knowing violation of an order of a Chamber; and

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



Judge Carmel Agius
Presiding Judge

Dated this 27th day of October 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

ANNEX TO ORDER IN LIEU OF AN INDICTMENT

FLORENCE HARTMANN, born in 1963 in France, and formerly employed as Spokesperson of the Prosecutor of the Tribunal, is charged with two counts of Contempt of the Tribunal pursuant to Rule 77(A)(ii) of the Rules, as detailed below:

FACTUAL ALLEGATIONS

1. The Appeals Chamber in the case of *Prosecutor v Slobodan Milošević* (IT-02-54-AR108bis.2 and .3), issued and filed confidentially:

(a) A decision on the request for review of the Trial Chamber's oral decision of 18 July 2005, on 20 September 2005 [Case No.: IT-02-54-AR108bis.2]; and

(b) A decision on the request for review of the Trial Chamber's decision of 6 December 2005, on 6 April 2006 [Case No.: IT-02-54-AR108bis.3]

The caption page of each decision indicated its status as confidential. The motions which gave rise to each of the decisions were filed confidentially.

2. 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.

3. 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.

4. **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.

CHARGES

By her acts or omissions, **FLORENCE HARTMANN** committed:

COUNT 1: Contempt of the Tribunal, punishable under this Tribunal's inherent power and Rule 77(A)(ii) of the Rules, for knowingly and wilfully interfering 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*, published by *Flammarion* on 10 September 2007;

COUNT 2: Contempt of the Tribunal, punishable under this Tribunal's inherent power and Rule 77(A)(ii) of the Rules, for knowingly and wilfully interfering 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 an article entitled "Vital Genocide Documents Concealed", published by the *Bosnian Institute* on 21 January 2008.

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



Judge Carmel Agius
Presiding Judge

Dated this 27th day of October 2008
At The Hague
The Netherlands

[Seal of the Tribunal]