

**UNITED
NATIONS**



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: 16 November 2011
Original: English

IN THE APPEALS CHAMBER

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

Registrar: Mr. John Hocking, Registrar

Order: 16 November 2011

IN THE CASE AGAINST FLORENCE HARTMANN

PUBLIC

SECOND ORDER ON PAYMENT OF FINE PURSUANT TO RULE 77 *BIS*

AND

WARRANT OF ARREST

Amicus Curiae Prosecutor

Mr. Bruce MacFarlane

The Kingdom of The Netherlands

The French Republic

via the Embassy of the French Republic to The Netherlands, The Hague

Counsel for Ms. Florence Hartmann

Mr. Karim A. A. Kahn, Lead Counsel
Mr. Guénaél Mettraux, Co-Counsel

1. **THE APPEALS 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 (“Appeals Chamber” and “Tribunal,” respectively) is in receipt of a “Registry Notice Pursuant to Rule 33(B) Concerning Non-Receipt of Funds”, filed on 25 August 2011 (“First Registry Submission”); a “Registry Notice Pursuant to Rule 33(B) Concerning Non-Receipt of Funds”, filed on 27 September 2011 (“Second Registry Submission”); and a “Registry Notice Pursuant to Rule 33(B) Concerning Non-Receipt of Funds”, filed on 28 October 2011 (“Third Registry Submission”).

2. On 19 July 2011, the Appeals Chamber issued its Judgement in this case, in which it dismissed all the grounds of appeal advanced by Ms. Florence Hartmann and affirmed the imposition of a fine of €7,000, payable to the Registrar of the Tribunal in two instalments of €3,500 on 18 August 2011 and 19 September 2011.¹

3. On 16 August 2011, Ms. Hartmann sent a letter to Judge Patrick Robinson, in his capacity as the President of the Tribunal. This letter was not filed on the record of these proceedings, but was distributed to the Appeals Chamber by the President. In the letter, Ms. Hartmann states that she is unable to pay the fine and recalls that she was determined indigent by the Registry on 13 November 2008. She also states that “[p]ersons who have supported me throughout this proceeding have collected the funds required to pay this fine. To this end, they have deposited these funds in a French bank account”. She then provides details of the account. Ms. Hartmann states that a copy of her letter is being forwarded to the French authorities with jurisdiction to address this matter in order to alert them that the Tribunal may ask them to collect these funds for purposes of paying the fine. Ms. Hartmann copies the following on her letter: Mr. Alain Juppé, Minister of Foreign and European Affairs; Mr. Michel Mercier, Keeper of the Seals, Minister of Justice and Liberties; Mr. François Zimeray, Ambassador for Human Rights; and Mr. Jean-François Blarel, Ambassador of France to The Netherlands.

4. In the First Registry Submission, the Deputy Registrar confirms that Ms. Hartmann’s counsel received the Judgement as of the date of its filing. The Deputy Registrar informs the Appeals Chamber that, by letter dated 28 July 2011, which attached a copy of the Judgement, the Registrar informed Ms. Hartmann of the appropriate manner in which to transfer the funds payable to the Tribunal as a result of her fine. The Deputy Registrar finally informs the Appeals Chamber

¹ Judgement, 19 July 2011, para. 172.

that, as of 25 August 2011, the Tribunal's Finance Department had not received the first instalment from Ms. Hartmann in accordance with the Judgement.²

5. On 19 September 2011, Ms. Hartmann sent another letter to Judge Patrick Robinson, in his capacity as the President of the Tribunal. This letter was not filed on the record of these proceedings, but was distributed to the Appeals Chamber by the President. In the letter, Ms. Hartmann states that "the funds corresponding to the fine that [she] was sentenced to pay ... were deposited within the deadline set by the judgement in a French bank account". She provides details of the account. She further states that the funds "were collected by persons who supported [her] throughout these proceedings" and "will remain at the Tribunal's disposal". Ms. Hartmann states that a copy of her letter is being forwarded to the "relevant French authorities".

6. In the Second Registry Submission, the Acting Deputy Registrar confirms that, as of 26 September 2011, the Tribunal's Finance Department has not received the first or second instalment from Ms. Hartmann in accordance with the Judgement.³

7. On 11 October 2011, the Appeals Chamber, recounting all of the above, issued its "Order on Payment of Fine Pursuant to Rule 77 bis" ("Order of 11 October"), in which it: (a) reiterated Ms. Hartmann's obligation to pay the fine in the exact manner prescribed by the Registry; (b) required, recalling paragraphs (C)(iv) and (E) of Rule 77 bis of the Rules of Procedure and Evidence ("Rules"), that Ms. Hartmann, or an agent acting on her behalf, transfer the funds to pay the fine in the exact manner prescribed by the Registry no later than 25 October 2011; and (c) ordered Ms. Hartmann to file, by no later than 26 October 2011, a written response under the procedure laid out in Rule 77 bis (B) of the Rules, in the event that the fine has not been paid in accordance with the foregoing paragraph.⁴

8. On 20 October 2011, Ms. Hartmann sent a letter in which she reiterated the points raised in her two previous letters.⁵

9. In the Third Registry Submission, the Registry informed the Appeals Chamber that, through a letter dated 14 October 2011, it transmitted a copy of the Order of 11 October to Ms. Hartmann and her counsel and again indicated the appropriate manner in which to transfer the funds payable to the Tribunal as a result of the fine.⁶ The Registry also stated that, as of 28 October 2011, it had

² First Registry Submission, paras 3-4.

³ Second Registry Submission, para. 4.

⁴ Order of 11 October, para. 9.

⁵ The letter was sent to the President. It was subsequently circulated to the other Judges of the Bench and filed on the record of the proceedings. See letter of Ms. Hartmann, 14 November 2011.

⁶ Third Registry Submission, para. 4.

not received any payments from Ms. Hartmann in accordance with the Judgement or the Order of 11 October, nor had Ms. Hartmann filed a written response with the Registry.⁷

10. The Appeals Chamber notes that paragraph (B) of Rule 77 *bis* of the Rules provides that, “[w]here a fine imposed under Rule 77 or Rule 91 is not paid within the time specified, the Chamber imposing the fine may issue an order requiring the person on whom the fine is imposed to appear before, or to respond in writing to, the Tribunal to explain why the fine has not been paid.” Paragraph (C) of Rule 77 *bis* of the Rules provides that, “[a]fter affording the person on whom the fine is imposed an opportunity to be heard, the Chamber may make a decision that appropriate measures be taken, including: (i) extending the time for payment of the fine; (ii) requiring the payment of the fine to be made in instalments; ... (iv) converting the whole or part of the fine to a term of imprisonment not exceeding twelve months.” Paragraph (D) of the Rule provides that, “[i]n addition to a decision under paragraph (C), the Chamber may find the person in contempt of the Tribunal and impose a new penalty applying Rule 77 (G), if that person was able to pay the fine within the specified time and has wilfully failed to do so. This penalty for contempt of the Tribunal shall be additional to the original fine imposed.” Paragraph (E) provides that “[t]he Chamber may, if necessary, issue an arrest warrant to secure the person’s presence where he or she fails to appear before or respond in writing pursuant to an order under paragraph (B). A State or authority to whom such a warrant is addressed, in accordance with Article 29 of the Statute, shall act promptly and with all due diligence to ensure proper and effective execution thereof.”

11. Based upon the information contained within the Registry’s Submissions and according to the procedure laid out in Rule 77 *bis* of the Rules, the Appeals Chamber finds that the first and second instalments of the fine imposed under Rule 77 of the Rules have not been paid within the time specified. The Appeals Chamber therefore has decided to convert the whole of the fine to a term of imprisonment of seven days.

12. Pursuant to Articles 21 and 29 of the Statute of the Tribunal and Rules 42, 43, 54, 55, 56, 57, 58, 59, 59 *bis*, 77 *bis*, and 107 of the Rules,

THE APPEALS CHAMBER HEREBY ORDERS AS FOLLOWS:

- (a) The Appeals Chamber hereby **CONVERTS** the whole of the fine of Ms. Florence Hartmann to a term of seven days of imprisonment.

⁷ Third Registry Submission, para. 5.

- (b) The French Republic is hereby **DIRECTED** and **AUTHORISED** to search for, arrest, detain, and surrender promptly to the Tribunal

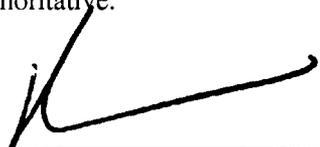
FLORENCE HARTMANN

whose fine of €7,000 has been converted to a term of seven days of imprisonment.

- (c) The French Republic is hereby **REQUESTED** to advise Ms. Hartmann, at the time of her arrest and in a language that she understands, of her rights set forth in Article 21 of the Statute and in Rules 42 and 43 of the Rules, which are annexed hereto in English and French, and of her right to remain silent, and to caution her that any statement she makes shall be recorded and may be used in evidence.
- (d) The French Republic, the authorities of the Kingdom of The Netherlands (“The Netherlands”), and the Registrar of the Tribunal (“Registrar”) are hereby **REQUESTED** to communicate with each other to facilitate the orderly transfer of Ms. Hartmann to the United Nations Detention Unit (“UNDU”).
- a. The French Republic is hereby **REQUESTED** to deliver Ms. Hartmann into the custody of a security officer of the Tribunal designated by the Registrar.
- b. The French Republic is hereby **REQUESTED** to ensure the personal security and safety of Ms. Hartmann until she is delivered into the custody of the Tribunal’s security officer.
- c. The Registrar is hereby **DIRECTED** to follow the procedures set forth in Rule 59 *bis* of the Rules.
- d. The Netherlands is hereby **REQUESTED** to take Ms. Hartmann into custody upon her arrival in The Netherlands and to escort her to the UNDU.
- (e) The authorities of all States through whose territory Ms. Hartmann may travel are hereby **REQUESTED** to
- a. hold Ms. Hartmann in custody for any time that she will spend in transit; and
- b. arrest and detain Ms. Hartmann, should she attempt to escape during her transfer to the UNDU.

- (f) The French Republic and The Netherlands are hereby **DIRECTED** to execute this arrest warrant as soon as possible and to notify the Registrar as soon as possible once the arrest warrant has been executed.
- (g) The French Republic is hereby **DIRECTED** immediately to report to the Registrar if it is unable to execute this warrant of arrest and to indicate the reasons for such non-execution.

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



Judge Patrick Robinson
Presiding

Dated this sixteenth day of November 2011,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

ANNEX (IN ENGLISH)

STATUTE OF THE TRIBUNAL

Article 21

Rights of the accused

1. All persons shall be equal before the International Tribunal.
2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
 - (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) to be tried without undue delay;
 - (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

- (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;
- (g) not to be compelled to testify against himself or to confess guilt.

RULES OF PROCEDURE AND EVIDENCE OF THE TRIBUNAL**Rule 42****Rights of Suspects during Investigation**

- (A) A suspect who is to be questioned by the Prosecutor shall have the following rights, of which the Prosecutor shall inform the suspect prior to questioning, in a language the suspect understands:
- (i) the right to be assisted by counsel of the suspect's choice or to be assigned legal assistance without payment if the suspect does not have sufficient means to pay for it;
 - (ii) the right to have the free assistance of an interpreter if the suspect cannot understand or speak the language to be used for questioning; and
 - (iii) the right to remain silent, and to be cautioned that any statement the suspect makes shall be recorded and may be used in evidence.
- (B) Questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived the right to counsel. In case of waiver, if the suspect subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the suspect has obtained or has been assigned counsel.

Rule 43**Recording Questioning of Suspects**

Whenever the Prosecutor questions a suspect, the questioning shall be audiorecorded or video-recorded, in accordance with the following procedure:

- (i) the suspect shall be informed in a language the suspect understands that the questioning is being audio-recorded or video-recorded;
- (ii) in the event of a break in the course of the questioning, the fact and the time of the break shall be recorded before audio-recording or videorecording ends and the time of resumption of the questioning shall also be recorded;

- (iii) at the conclusion of the questioning the suspect shall be offered the opportunity to clarify anything the suspect has said, and to add anything the suspect may wish, and the time of conclusion shall be recorded;
- (iv) a copy of the recorded tape will be supplied to the suspect or, if multiple recording apparatus was used, one of the original recorded tapes;
- (v) after a copy has been made, if necessary, of the recorded tape, the original recorded tape or one of the original tapes shall be sealed in the presence of the suspect under the signature of the Prosecutor and the suspect; and
- (vi) the tape shall be transcribed if the suspect becomes an accused.

ANNEXE (EN FRANÇAIS)

STATUT DU TRIBUNAL

Article 21

Les droits de l'accusé

1. Tous sont égaux devant le Tribunal international.

2. Toute personne contre laquelle des accusations sont portées a droit à ce que sa cause soit entendue équitablement et publiquement, sous réserve des dispositions de l'article 22 du statut.

3. Toute personne accusée est présumée innocente jusqu'à ce que sa culpabilité ait été établie conformément aux dispositions du présent statut.

4. Toute personne contre laquelle une accusation est portée en vertu du présent statut a droit, en pleine égalité, au moins aux garanties suivantes :
 - a) à être informée, dans le plus court délai, dans une langue qu'elle comprend et de façon détaillée, de la nature et des motifs de l'accusation portée contre elle ;
 - b) à disposer du temps et des facilités nécessaires à la préparation de sa défense et à communiquer avec le conseil de son choix ;
 - c) à être jugée sans retard excessif ;
 - d) à être présente au procès et à se défendre elle-même ou à avoir l'assistance d'un défenseur de son choix ; si elle n'a pas de défenseur, à être informée de son droit d'en avoir un, et, chaque fois que l'intérêt de la justice l'exige, à se voir attribuer d'office un défenseur, sans frais, si elle n'a pas les moyens de le rémunérer ;
 - e) à interroger ou faire interroger les témoins à charge et à obtenir la comparution et l'interrogatoire des témoins à décharge dans les mêmes conditions que les témoins à charge ;
 - f) à se faire assister gratuitement d'un interprète si elle ne comprend pas ou ne parle pas la langue employée à l'audience ;
 - g) à ne pas être forcée de témoigner contre elle-même ou de s'avouer coupable.

RÈGLEMENT DE PROCÉDURE ET DE PREUVE

Article 42

Droits du suspect pendant l'enquête

- A) Avant d'être interrogé par le Procureur, le suspect est informé de ses droits dans une langue qu'il comprend, à savoir:
- i) son droit à l'assistance d'un conseil de son choix ou, s'il est indigent, à la commission d'office d'un conseil à titre gratuit;
 - ii) son droit à l'assistance gratuite d'un interprète s'il ne comprend pas ou ne parle pas la langue utilisée lors de l'interrogatoire et;
 - iii) son droit de garder le silence et d'être averti que chacune de ses déclarations sera enregistrée et pourra être utilisée comme moyen de preuve.
- B) L'interrogatoire d'un suspect ne peut avoir lieu qu'en présence de son conseil, à moins que le suspect n'ait renoncé volontairement à son droit à l'assistance d'un conseil. L'interrogatoire doit néanmoins cesser si un suspect qui a initialement renoncé à son droit à l'assistance d'un conseil, s'en prévaut ultérieurement; l'interrogatoire ne doit reprendre que lorsque le suspect a obtenu de son chef ou d'office l'assistance d'un conseil.

Article 43

Enregistrement des interrogatoires des suspects

Le Procureur ne peut interroger un suspect que si l'interrogatoire est consigné sous forme d'enregistrement sonore ou vidéo selon les modalités suivantes:

- i) le suspect est informé, dans une langue qu'il comprend, que l'interrogatoire est consigné sous forme d'enregistrement sonore ou vidéo;
- ii) si l'interrogatoire est suspendu, l'heure de la suspension et celle de la reprise de l'interrogatoire sont respectivement mentionnées dans l'enregistrement avant qu'il n'y soit procédé;

- iii) à la fin de l'interrogatoire, il est donné au suspect la possibilité de préciser ou de compléter toutes ses déclarations; l'heure de la fin de l'interrogatoire est alors mentionnée dans l'enregistrement;
- iv) une copie de l'enregistrement ou, s'il a été utilisé un appareil d'enregistrements multiples, l'une des bandes originales, est remise au suspect;
- v) s'il a été nécessaire de faire une copie de l'enregistrement, la bande originale de l'enregistrement ou l'une des bandes originales est placée, en présence du suspect, sous scellés contresignés par lui-même et par le Procureur; et
- vi) la teneur de l'enregistrement est transcrite si le suspect devient accusé.