

DER BOTSCHAFTER
DER BUNDESREPUBLIK DEUTSCHLAND
THE AMBASSADOR
OF THE FEDERAL REPUBLIC OF GERMANY

Den Haag, June 16, 2011

Re 502.40 E Tarculovski

To the Registrar
of the International Criminal Tribunal
for the former Yugoslavia
Mr. John Hocking
Administration Building ICTY
Eisenhowerlaan 126- 128
2528 JR The Hague

Dear Mr Hocking,

I have the honour to confirm receipt of your Note of 1st November 2010 proposing on behalf of the International Criminal Tribunal for the former Yugoslavia the conclusion of an Agreement between the International Criminal Tribunal for the former Yugoslavia and the Government of the Federal Republic of Germany concerning the conditions under which Mr Johan Tarculovski's prison sentence shall be enforced.

Your Note reads as follows:

"I have the honour to refer to my letter of 10 December 2009 in which I expressed my gratitude on behalf of the International Criminal Tribunal for the former Yugoslavia ("ICTY") for the willingness of the Government of the Federal Republic of Germany ("Germany") to enforce Mr. Johan Tarculovski's prison sentence, as imposed by the Appeals Chamber of the ICTY in its Judgement of 19 May 2010 ("Judgement").

I thus have the honour to propose that an Agreement between the ICTY and Germany be concluded concerning the conditions under which Mr. Johan Tarculovski's prison sentence shall be enforced, to read as follows:

1. Mr. Tarčulovski's prison sentence

The Appeals Chamber of the ICTY sentenced Mr. Tarčulovski to 12 years imprisonment. Subject to the conditions of the Judgement (Annex 1) and this Note, Mr. Tarčulovski's prison sentence shall be enforced in Germany.

2. Enforcement

1. In enforcing Mr. Tarčulovski's sentence as pronounced by the Appeals Chamber of the ICTY, the competent national authorities of Germany shall be bound by the duration of the sentence.
2. The conditions of imprisonment shall be governed by the law of Germany, subject to the supervision of the ICTY, as provided for in Sections 5 to 7 and paragraphs 2 and 3 of Section 8 below.
3. If, pursuant to the applicable national law of Germany, especially according to section 57 of the German Criminal Code, Mr. Tarčulovski is eligible for early release, Germany shall notify the Registrar of the ICTY ("Registrar") accordingly.
4. If the President of the ICTY, in consultation with the Judges of the ICTY, does not consider that the application of the early release is appropriate, the Registrar shall immediately notify the competent national authorities.
5. The conditions of imprisonment shall be in accordance with relevant human rights standards, which Germany is obliged under international law to respect.

3. Transfer of Mr. Tarčulovski

The Registrar shall make appropriate arrangements for the transfer of Mr. Tarčulovski from the ICTY to the competent authorities of Germany. Prior to his transfer, Mr. Tarčulovski will be informed by the Registrar of the contents of this Note.

4. Non-bis-in-idem

Mr. Tarčulovski shall not be tried before a court of Germany for acts constituting serious violations of international humanitarian law under the Statute of the ICTY for which he has already been tried by the ICTY.

5. Visits

1. The competent authorities of Germany shall allow visits to Mr. Tarčulovski by representatives of the ICTY, in accordance with Article 27 of the Statute of the ICTY. The competent authorities shall allow visits at any time and on a periodic basis, the frequency of visits to be decided by the ICTY. Reports on the conditions of detention and the treatment of Mr. Tarčulovski, based on the findings of the visits, will be prepared, as appropriate.

2. The competent authorities of Germany acknowledge the right of the International Committee of the Red Cross ("ICRC") to inspect the conditions of detention and treatment of the prisoner at any time and on a periodic basis, the frequency of visits to be determined by the ICRC. The ICRC will submit a confidential report based on the findings of these inspections to Germany and to the President of the ICTY.

3. The competent authorities of Germany and the President of the ICTY shall consult each other on the findings of the reports referred to in paragraph 1 and 2. The President of the ICTY may thereafter request Germany to report to him or her any changes in the conditions of detention of Mr. Tarčulovski suggested in the reports.

6. Information

1. Germany shall immediately notify the Registrar:
 - a) two months prior to the completion of the sentence;
 - b) if Mr. Tarčulovski has escaped from custody before the sentence has been completed;
 - c) if Mr. Tarčulovski has deceased.

2. Notwithstanding the previous paragraph, the Registrar and the competent authorities of Germany shall consult each other on all matters relating to the enforcement of the sentence upon the request of either party.

7. Pardon and commutation of sentence

1. If, pursuant to the applicable national law of Germany, Mr. Tarčulovski is eligible for pardon or commutation of the sentence, Germany shall notify the Registrar accordingly.

2. The President of the ICTY shall determine, in consultation with the Judges of the ICTY, whether pardon or commutation of the sentence is appropriate. The Registrar shall inform Germany of the President's determination. If the President determines that a pardon or commutation of the sentence is not appropriate, Germany shall act accordingly.

8. Termination of enforcement

1. The enforcement of the sentence shall cease:

- a) when the sentence has been completed;
- b) upon the demise of Mr. Tarčulovski;
- c) upon the pardon of Mr. Tarčulovski;
- d) following a decision of the ICTY as referred to in paragraph 2 below.

2. The ICTY may at any time decide to request the termination of the enforcement in Germany and transfer Mr. Tarčulovski to another State or to the ICTY.

3. The competent authorities of Germany shall terminate the enforcement of the sentence as soon as it is informed by the Registrar of any decision or measure as a result of which the sentence ceases to be enforceable.

9. Impossibility to enforce sentence

If, at any time after the decision has been taken to enforce the sentence, for any legal or practical reasons, further enforcement has become impossible, Germany shall promptly inform the Registrar. The Registrar shall make the appropriate arrangements for the transfer of Mr. Tarčulovski as soon as possible. The competent authorities of Germany shall allow for at least thirty days following the notification to the Registrar before taking other measures on the matter.

10. Costs

The ICTY shall bear the expenses related to the transfer of Mr. Tarčulovski to and from Germany, unless the parties agree otherwise. Germany shall pay all other expenses incurred by the enforcement of the sentence.

11. Languages

This Agreement shall be concluded in the German and English languages, both texts being equally authentic.

I would be grateful if you would confirm that the above is also the understanding of the Government of Germany.

In such event, this Note and Your Excellency's Note in reply thereto expressing your Government's agreement shall constitute an Agreement between the ICTY and Germany, which shall enter into force on the date of your Note in reply.

Please accept, Excellency, the assurances of my highest consideration.

John Hocking

Registrar"

I have the honour to inform you that my Government agrees to the proposals contained in your Note. Your Note and this Note in reply thereto shall thus constitute an Agreement between the International Criminal Tribunal for the former Yugoslavia and the Government of the Federal Republic of Germany, which shall enter into force on the date of this Note.

Please accept, Mr Hocking, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'H. P. Behr', written in a cursive style.

Dr. Heinz-Peter Behr

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Mr. John Hocking
Administration Building ICTY
Eisenhowerlaan 126- 128
2528 JR The Hague

Dear Mr Hocking,

I have the honour to confirm receipt of your side letter of 1st November 2010 proposing on behalf of the International Criminal Tribunal for the former Yugoslavia certain understandings about the Agreement between the International Criminal Tribunal for the former Yugoslavia and the Government of the Federal Republic of Germany concerning the conditions under which Mr Johan Tarculovski's prison sentence shall be enforced.

Your letter reads as follows:

"Excellency,

I am writing to you to set forth certain understandings of the International Criminal Tribunal for the former Yugoslavia ("ICTY") relating to the Exchange of Notes between the United Nations and the Government of the Federal Republic of Germany regarding the enforcement of Mr. Johan Tarčulovski's prison sentence. The intention of this letter is to provide clarification of certain matters in the Exchange of Notes and is not intended for any other purpose nor does it modify or change any of the terms or understandings contained in the Exchange of Notes.

The term "enforcement" of Mr. Tarčulovski's sentence in the Exchange of Notes, particularly in section 2 thereof, is intended to have precisely the same meaning as it does in Article 27 of the Statute of the ICTY. We understand that this meaning may differ from the use of the term under German law. In the ICTY's view, as long as Mr. Tarčulovski is in the custody of German prison authorities the sentence is being enforced within the meaning of the Exchange of Notes. Moreover, the ICTY understands that Germany will apply its law in carrying out the sentence. Thus, in the ICTY's view, Germany may take steps to hospitalise Mr. Tarčulovski, if necessary, or take other measures in relation to him under German law, provided that it retains custody of him in accordance with Article 27 of the Statute of the ICTY.

With regard to section 2(3) of the Exchange of Notes, the term "early release" is understood to include parole and any other measure that would result in the actual release of Mr. Tarčulovski from custody.

In the ICTY's view, Section 5(1) of the Exchange of Notes should be understood in the following way. The "representatives of the ICTY" will be persons under the authority of the ICTY. Thus they are individuals and not organisations. For administrative convenience, the representatives of the ICTY will normally notify the German prison authorities before conducting a visit. However, such a courtesy notification is without prejudice to the ICTY's right to conduct unannounced visits. The ICTY expects that it will not exercise its right to conduct visits more than twice per year, unless special circumstances occur.

With regard to Section 5(2) it is understood that the International Committee of the Red Cross ("ICRC") is entitled to perform such visits on the basis of the willingness of the State of Rhineland-Palatinate to grant access to the ICRC to the prison facility where Mr. Tarčulovski will be held. The ICRC will carry out this task in accordance with the terms of the Exchange of Letters, dated 26 June, 12 August, 26 August, 1 October and 17 October 1997, between the ICTY and the ICRC.

With regard to Section 5(3) of the Exchange of Notes, it is understood that the reports and other recommendations on the conditions of detention and the treatment of Mr. Tarčulovski shall be treated confidentially by the German authorities and the United Nations.

The provision contained in Section 8(2) of the Exchange of Notes applies at all times while the Exchange of Notes is in force. Thus, in the event that the enforcement is terminated and Mr. Tarčulovski is transferred in accordance with Section 8(2), Germany

has no further responsibilities to enforce Mr. Tarčulovski's sentence under the Exchange of Notes.

The purpose of Section 9 of the Exchange of Notes is to cover unforeseeable events. For example, there may be a change in German law that makes the sentence impossible to enforce, and this provision would thus apply. For a transfer to the ICTY in matters of early release (Section 2.3 of the Exchange of Notes) the applicable provision is Section 2.4, not Section 9. In the view of the ICTY, in the event that Germany's obligations under the Exchange of Notes are, or become, incompatible with German law, the provisions of Section 9 shall apply. That is, the German authorities transfer Mr. Tarčulovski in accordance with the provisions of section 9. It is understood that in such a case that, if exceptional circumstances exist, the Registrar would use his or her best efforts to act immediately.

The ICTY and Germany take note that the ICTY had been urged to take all possible measures to complete its work expeditiously. Further they take note that it is not yet established to which body the Security Council will transfer the competences and functions of the ICTY in enforcement of sentences matters after the completion of all trials and appeals. As soon as the ICTY is informed of a decision in this regard, the ICTY will inform Germany to enable the ICTY and Germany to promptly start negotiations over any required adjustments of the Exchange of Notes.

I hope that the above is of assistance to you.

Please accept, Excellency, the assurances of my highest consideration.

John Hocking
Registrar"

I have the honour to inform you that my Government agrees to the proposed understandings contained in your letter.

Please accept, Mr Hocking, the assurances of my highest consideration.


Dr. Heinz-Peter Behr