

Dunja Mijatovic,
Representative on Freedom of the Media,
Organization for Security and Co-operation
in Europe

Paris, 14 December 2011

Dear Madam,

Support for referral petition by Ms Florence Hartmann

Reporters Without Borders, an organization that campaigns for freedom of the press and freedom of expression, wishes to express its full support for the petition submitted recently by Ms Florence Hartmann referring her case to you.

Ms Hartmann, an investigative journalist and former spokeswoman for the International Criminal Tribunal for the Former Yugoslavia, was fined 7,000 euros for “contempt of the Tribunal” according to a ruling on 14 September 2009 upheld on 19 July this year, for disclosing the Tribunal’s legal reasoning in her book “Peace and Punishment: The Secret Wars of Politics and International Justice”.

On 16 November this year, the Tribunal issued a warrant for the journalist’s arrest, even though the amount of the fine had been deposited in a bank account.

Ms Hartmann has no legal recourse to contest either the decision itself or the warrant. She lives under the threat of arrest, is unable to travel and can no longer practise her profession as a journalist.

The Tribunal accuses Ms Hartmann of having mentioned two decisions by the appeals chamber as part of the trial of former Serbian President Slobodan Milosevic, which allegedly implicate the Serbian government in the 1995 Srebrenica massacre.

However, by investigating this matter of public interest, which is of particular importance for the victims of the massacre and the search for historical truth, the journalist was only carrying out her duty to inform.

It is the duty of the press to highlight how this internationally created system of justice works, to question its procedures and to stimulate public discussion.

The procedure used by the Tribunal, like its final decision, are unworthy of an international court – which must act in an exemplary fashion as far as fundamental rights are concerned -- and requires swift intervention on your part.

Ms. Hartmann’s appeal submission alleged the judgment was not consistent with the principles of freedom of expression as recognized by the European Court of Human rights.

However, the Tribunal referred to its own standards regarding freedom of expression and, quoting the case of Croatian journalist Josip Jovic as a precedent, said the appeals chamber was not bound by decisions of the European Court of Human rights.

The judges in The Hague did not seek to balance the subject dealt with by Ms. Hartmann, which is indisputably of public interest, against the reasonable grounds of defending the work and independence of the legal system.

Furthermore, the penalty in the form of a 7,000-euro fine converted into a seven-day prison term, is entirely disproportionate. The issuance of an arrest warrant for alleged abuse of freedom of expression, in this case contempt of court, is particularly disgraceful and inappropriate.

Beyond the Hartmann case itself, the decision to penalise criticism of an international tribunal is a dangerous precedent for all those working in the media.

The Tribunal's 2002 ruling in the case of former *Washington Post* journalist Jonathan Randal – a landmark decision protecting the confidentiality of a war reporter's sources – showed that a precedent set by an international tribunal can be a source of inspiration for courts, and indeed for national legislators.

The court's reasoning is intended to justify that, in certain individual cases, a journalist's right of scrutiny may be disregarded. The ruling could be used as a legal basis by countries wishing to silence journalists deemed to have too much curiosity where sensitive judicial inquiries are concerned.

Reporters Without Borders fears that this backward step in the history of freedom of expression will have permanent repercussions. This danger is all the greater since it is not the first time that the International Criminal Tribunal for the Former Yugoslavia has singled out journalists.

In 2006 and 2007, our organization criticized legal proceedings against Croatian journalists, some of whom were sentenced to fines and imprisonment.

A halt must be called to these dangerous actions against journalists.

For the reasons given above, Reporters Without Borders asks you and your United Nations colleague to take an official position and undertake the following:

- Issue a reminder that journalists are legitimately entitled to protection when they contribute to the discussion of a matter of public interest. It must be stressed that this protection should be even greater where this concerns international justice, even if confidential documents are used.
- Remind international courts that they are subject to international norms, especially those concerning freedom of expression.
- Condemn the contempt of court procedure, set up by the court itself (rule 77a of the regulations of the International Criminal Tribunal for the Former Yugoslavia), as a violation of article 10 of the European Court of Human rights and article 19 of the Universal Declaration of Human Rights.
- Ask the president of the Tribunal to review its decision based on international standards and to ensure the court's composition guarantees its impartiality and independence.
- Condemn the use of an arrest warrant to penalize a matter arising from the exercise of freedom of expression and freedom of information.
- Ask OSCE member states not to apply the ruling.

Thank you for your consideration of this matter.

Please accept my sincere good wishes.



Jean-François Julliard
Secretary-General, Reporters Without Borders

Attachments:

- Reporters Without Borders press releases on the Hartmann case:

<http://en.rsf.org/pages-from-journalist-s-book-that-09-06-2009,33360.html>

<http://en.rsf.org/netherlands-free-expression-hangs-on-outcome-08-07-2009,33748.html>

<http://en.rsf.org/netherlands-by-convicting-former-journalist-15-09-2009,34456.html>

<http://en.rsf.org/arrest-warrant-against-ex-17-11-2011,41415.html>

- Reporters Without Borders press releases on the proceedings against Croatian journalists:

<http://en.rsf.org/croatia-hague-court-to-question-eight-09-11-2007,24315.html>

<http://en.rsf.org/croatia-disturbing-precedent-seen-in-20-06-2007,22625.html>

<http://en.rsf.org/croatia-journalist-is-freed-flies-to-the-14-10-2005,15230.html>

- Note for Reporters Without Borders by Thierry Cruvellier on contempt of court published on 10 July 2006:

http://www.rsf.org/IMG/pdf/rapport_gb.pdf

<http://en.rsf.org/croatia-report-on-rwanda-tribunal-s-31-08-2006,18730.html>