HAGUE CASE LAW – LATEST DEVELOPMENTS[1]

International Criminal Tribunal for the Former Yugoslavia

(1) *The Prosecutor* v. *Hartmann (Appeals Chamber)*

On 19 July 2011, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) affirmed the conviction of Hartmann for contempt of court. Hartmann served as a spokesperson for the former Chief Prosecutor of the ICTY, Carla del Ponte, for six years. She was convicted by the Trial Chamber on 14 September 2009 and fined EUR 7,000 for disclosing the contents, purported effect and confidential nature of two Appeals Chamber decisions from the *Milošević* case in her publications, which included a book and an article. The Appeals Chamber rejected Hartmann's appeal that the information that she had disclosed in her writings had already been made public by the ICTY, since she was convicted of disclosing the legal reasoning contained within these decisions (which had not been disclosed by the ICTY) and not the existence of the decisions themselves. Further the Appeals Chamber held that Hartmann's right to freedom of expression had not been impermissibly restricted.

(2) *The Prosecutor* v. *Perišić*

On 6 September 2011, Trial Chamber I of the ICTY convicted Perišić of crimes against humanity (murder, inhuman acts (injuring and wounding civilians, forcible transfer) and persecution) and war crimes (murder and attacks on civilians) committed in Bosnia and Herzegovina (Sarajevo and Srebrenica) and Croatia (Zagreb) between 1993 and 1995. The Trial Chamber sentenced him to 27 years' imprisonment. Between 1993 and 1998 Perišić was Chief of the General Staff (the most senior officer) of the Yugoslav Army. According to the Trial Chamber (Judge Moloto dissenting), Perišić aided and abetted crimes against humanity and war crimes committed by the Bosnian Serb Army in Sarajevo and Srebrenica between 1993 and 1995 by, among other things, providing comprehensive logistical and personnel support. The Trial Chamber found that the crimes committed by the Bosnian Serb Army were not perpetrated by rogue soldiers but were part of a military campaign overseen by officers who were on the Yugoslav Army's payroll. Further, Perišić was found guilty by the Trial Chamber (Judge Moloto dissenting) as a superior for failing to punish subordinates for crimes against

1. See: <www.icj-cij.org/>; <www.icty.org>; <www.unictr.org>; <www.pca-cpa.org/>; and <www.haguejusticeportal.net/>.

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humanity and war crimes committed by the Serbian Army of the Krajina in Zagreb on 2 and 3 May 1995 (rocket attacks). According to the Trial Chamber, Perišić had effective control over the Serbian Army of the Krajina (the Trial Chamber found no such control in relation to the Bosnian Serb Army) but failed to take necessary and reasonable measures to punish the perpetrators of these crimes. Perišić was found not guilty of extermination as a crime against humanity in relation to the crimes committed in Srebrenica.

(3) *The Prosecutor* v. *Kabashi*

On 16 September 2011, Trial Chamber I of the ICTY convicted Kabashi of contempt of court and sentenced him to two months' imprisonment. Kabashi is a former member of the Kosovo Liberation Army and a key witness in the trial and retrial of Haradinaj et al. According to the Trial Chamber, Kabashi knowingly and wilfully interfered with the administration of justice by contumaciously refusing to answer questions as a witness. Kabashi refused to appear before the court in June 2007 and subsequently refused to testify by a video-conference link from the United States in November 2007. By doing so, Kabashi deprived the Court in the Haradinaj et al. proceedings of evidence relevant for an effective ascertainment of the truth in the adjudication of that case. Kabashi pleaded guilty on 26 August 2011, which was accepted by the Trial Chamber, which made a trial unnecessary. The Trial Chamber considered Kabashi's family situation and his suffering from Post-Traumatic Stress syndrome as mitigating circumstances.

(4) *The Prosecutor* v. *Šešelj*

On 31 October 2011, Trial Chamber II of the ICTY convicted Šešelj of contempt of court and sentenced him to 18 months' imprisonment. Šešelj is the former leader of the Serbian Radical Party and was a prominent political figure in the former Federal Republic of Yugoslavia. He is accused of war crimes and crimes against humanity committed in Bosnia and Herzegovina, Croatia and Serbia between 1991 and 1994. According to the Trial Chamber, Šešelj wilfully disclosed confidential information pertaining to protected witnesses in a book he authored and published in the course of 2008, in violation of the Trial Chamber's orders. The Trial Chamber considered the scope of the disclosure (the book was published on his website) and Šešelj's lack of remorse as aggravating circumstances. Šešelj was previously sentenced to 15 months' imprisonment for disclosing confidential information, a sentence which was affirmed by the Appeals Chamber on 19 May 2010.

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International Criminal Tribunal for Rwanda

(1) *The Prosecutor* v. *Munyakazi (Appeals Chamber)*

On 28 September 2011, the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) affirmed the Trial Chamber's conviction of Munyakazi for genocide and crimes against humanity (extermination) on 30 June 2010 and upheld his sentence of 25 years' imprisonment. Manyakazi used to be a wealthy landowner and farmer in Bugarama Commune, Cyangugu Prefecture. He was convicted of his leading role (he was the *de facto* leader of the Bugarama Interahamwe) in relation to the killing of Tutsis at Shangi and Mibilizi Parishes on 29 and 30 April 1994. The Appeals Chamber dismissed both Manyakazi's and the Prosecutor's appeal in their entirety.

(2) *The Prosecutor* v. *Setako (Appeals Chamber)*

On 28 September 2011, the Appeals Chamber of the ICTR affirmed the Trial Chamber's conviction of Setako for genocide, crimes against humanity (extermination) and war crimes (murder) on 25 February 2010 and upheld his sentence of 25 years' imprisonment. Setako is a former military officer in the Rwandan Army and the former head of the Division of Legal Affairs of the Rwandan Ministry of Defence. He was convicted of ordering the killing of 30 to 40 Tutsis on 25 April 1994 at Mukamira Military Camp and nine or ten Tutsis on 11 May 1994 at the same place. The Appeals Chamber partly granted the Prosecutor's appeal (Judge Pocar dissenting) by convicting Setako of an additional count of murder as a war crime, but this did not warrant an increase in Setako's sentence.

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