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CASE/AFFAIRE NO. IT-95-5/18-T (R. KARADŽIĆ) **DATE** 06 November 2009

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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-95-5/18-T

Date: 06 November 2009

Original: English

ACTING PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Mehmet Güney
Registrar: Mr. John Hocking
Decision of: 06 November 2009

THE PROSECUTOR
v.
RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON RADOVAN KARADŽIĆ'S REQUEST FOR REVERSAL OF
LIMITATIONS OF CONTACT WITH JOURNALIST: RUSSIA TODAY**

The Office of the Prosecutor

Mr. Alan Tieger

Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić (*pro se*)

1. I, MEHMET GÜNEY, Judge 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”), render the following decision in relation to the “Request for Reversal of Limitations of Contact with Journalist: Russia Today” (“Motion”), filed by the self-represented accused Radovan Karadžić (“Karadžić”) on 9 September 2009 before the President of the Tribunal (“President”).¹

2. On 15 September 2009, the President withdrew from considering the Motion pursuant to Rule 15(A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), owing to a conflict of interest arising from his prior role as Presiding Judge on the Pre-Trial Bench in the present case.² He was further advised by Vice-President Judge O-Gon Kwon that the latter’s current role as Presiding Judge in the present case³ likewise gives rise to a conflict of interest and that Judge Kwon therefore must also withdraw from considering the Motion.⁴ Consequently, and pursuant to Rule 22(A) of the Rules, I was assigned as the senior permanent Judge to replace the President and the Vice-President in entertaining this Motion.⁵

3. On 9 October 2009, the Registrar filed the “Registry Submission Re Media Contact – Russia Today” (“Submission”).⁶

I. BACKGROUND

4. On 7 August 2009, Karadžić requested the Registrar to allow an interview by a journalist of the television broadcast network *Russia Today* via telephone communication.

5. On 17 August 2009, the Registrar partially denied Karadžić’s request, limiting communication with the journalist to written correspondence as the monitoring facilities in the United Nations Detention Unit (“UNDU”) “could not effectively protect confidential information should the interview be conducted over the telephone”.⁷ The Registrar based his decision on Rule

¹ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Request for Reversal of Limitations of Contact with Journalist: Russia Today, 9 September 2009.

² *Prosecutor v. Karadžić*, Case No. IT-95-5/18-I, Order on Composition of Pre-Trial Bench, 22 August 2008; *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Order Replacing a Judge in a Case Before a Trial Chamber, 18 November 2008.

³ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Order Regarding Composition of a Bench of the Trial Chamber, 4 September 2009, p. 2.

⁴ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Order Assigning Motion, 15 September 2009, p. 2.

⁵ *Ibid.*

⁶ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Registry Submission Re Media Contact – Russia Today, 9 October 2009.

⁷ Motion, Annex B.

64bis of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal (“Rules of Detention”).⁸

6. On 24 August 2009, Karadžić requested permission to record his answers to the journalist’s questions “on a video file or cassette and provide that recording to the Registry for [its] review and onward transmission to *Russia Today*” in order to meet the Registrar’s concerns regarding the disclosure of confidential or otherwise inappropriate information (“Second Request”).⁹

7. The Registrar denied Karadžić’s Second Request by letter of 3 September 2009 (“Impugned Decision”), arguing that the import of recording devices into the UNDU is not permitted and that there are no in-house audio-visual recording devices which could be provided to Karadžić for this purpose.¹⁰ The Registrar further informed Karadžić that the review of such material would be more time-consuming than the assessment of written submissions and thus delay his requests for media contact.¹¹

II. SUBMISSIONS

A. Karadžić’s Motion

8. Karadžić requests that the Impugned Decision, restricting contact between him and a journalist of the TV broadcast media *Russia Today* to written communication, be reversed.¹² He argues that the Registrar’s denial of recorded communication as suggested by Karadžić in his Second Request is without foundation and unreasonable.¹³

9. Karadžić claims that the argument that no recording equipment can be brought into the UNDU is without merit, as lawyers visiting their clients are permitted to introduce their laptop computers into the UNDU and that these computers are usually equipped with a microphone and a visual recording device (web cam).¹⁴ Karadžić asserts that in addition, the Registrar has not demonstrated why official Tribunal recording equipment cannot be deployed in the UNDU to record his answers.¹⁵

⁸ Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal (IT/38/REV.9), 21 July 2005. See Motion, Annex B.

⁹ Motion, para. 5.

¹⁰ The Registrar’s Impugned Decision is attached to the Motion as Annex C.

¹¹ *Ibid.*

¹² Motion, paras 1, 33.

¹³ Motion, paras 12, 17.

¹⁴ Motion, para. 12. In the Impugned Decision, the Registrar informed Karadžić that the import of recording devices to the UNDU is not allowed for reasons of security, safety and good order of the UNDU.

¹⁵ Motion, para. 13.

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10. Karadžić also challenges the Registrar's argument that a review of the video or audio recordings would take too much time. He submits that *Russia Today* posed only seven questions on its request for an interview and that an audio or video file of his answers would be no longer than five to ten minutes, requiring a minimal amount of time for the Registrar to review.¹⁶ He asserts that if it is considered reasonable for him to spend "extra months to review video or audio material", it is also reasonable for the Registrar to conduct the review of a video or audio file instead of written submissions to the journalist.¹⁷

11. Karadžić further claims that the Impugned Decision is inconsistent with human rights norms in that it violates his right to freedom of expression. In support of his argument, Karadžić cites Rule 24(12) of the European Prison Rules and the jurisprudence of the European Court of Human Rights ("ECtHR").¹⁸ He argues that audio-visual media have specific qualities "in respect to outreach and power of persuasion".

12. It is his submission that the Registrar's "blanket prohibition on all audio-visual broadcast material" violates the principles of proportionality and least intrusiveness – two principles which the Registrar, according to Karadžić, must take into consideration when making an administrative decision.¹⁹ Further, he cites various legal texts and jurisprudence of the ECtHR underlining that accused persons in pre-trial detention enjoy the presumption of innocence until the final verdict and shall be treated appropriately by the prison authorities.²⁰

13. Finally, he asserts that the Registrar's refusal to provide resources to review his audio or video material violates Rule 4 of the European Prison Rules which stipulates that "[p]rison conditions that infringe prisoner's human rights are not justified by lack of human resources".²¹

¹⁶ Motion, para. 15.

¹⁷ Motion, para. 16; previously, the Chamber had found it sufficient that Karadžić receive B/C/S transcripts of witness testimonies in the format of video or audio files rather than written B/C/S transcripts, *see Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Decision on Prosecution's Motion Seeking Determination that the Accused Understands English for the Purpose of the Statute and the Rules of Procedure and Evidence, 26 March 2009 ("Decision on Prosecution Motion"), para. 23. Karadžić adduces that this amounts to "more than 300 days of video and audio material", Motion, para. 16. I note, however, that Karadžić does receive all transcripts of witness statements as written transcripts in the English language, *see* Decision on Prosecution Motion, para. 23.

¹⁸ Motion, para. 22. Pursuant to Rule 24(12) of the European Prison Rules, "[p]risoners shall be allowed to communicate with the media unless there are compelling reasons to forbid this for the maintenance of safety and security, in the public interest or in order to protect the integrity of victims, other prisoners or staff."; *see* Council of Europe, Recommendation Rec(2006)2, of the Committee of Ministers to member states on the European Prison Rules, adopted on 11 January 2006.

¹⁹ Motion, paras 23-28. Karadžić cites jurisprudence of the International Tribunals, the Special Court of Sierra Leone as well as Rule 3 of the European Prison Rules and Dutch legislation regarding the proportionality of restrictions imposed on detainees; Motion, paras 24-28.

²⁰ Motion, paras 29-30.

²¹ Motion, para. 32.

B. Registrar's Submission

14. The Registrar submits that in rendering the Impugned Decision, he fully complied with the provision of Rule 64bis of the Rules of Detention and the standard established in the Tribunal's jurisprudence for administrative decision-making.²² The Registrar asserts that by limiting the contact to written communication, he identified within his discretion a form of contact that would facilitate the exercise of the Accused's right to freedom of expression while at the same time respecting the obligation to take all precautions necessary to protect the good order of the UNDU and the administration of justice.²³

15. The Registrar furthermore observes that all 17 requests submitted by Karadžić to date for contact with the media have been granted, some with minor modifications.²⁴ This has been time-consuming and involved a considerable number of staff members who had to entertain these requests aside from their primary tasks and responsibilities.²⁵ In the Registrar's submission, a comparison of the time taken to listen to the oral recording of a message and the review of its written text demonstrates that the former is more time-consuming and therefore more burdensome.²⁶

16. The Registrar reiterates that the importation of recording devices into the UNDU is not allowed for reasons of security, safety, and good order of the UNDU.²⁷ The Registrar acknowledges that laptop computers fitted with integrated cameras or recording devices have already been imported into the UNDU. The Registrar argues that this, however, "can in no way be interpreted to encompass the use of recording devices".²⁸

17. The Registrar further reiterates that Karadžić has not sufficiently justified why it is of importance for the broadcast media *Russia Today* that the interview be given orally. While a TV station may have a preference for audio or visual footage of an oral statement, the Registrar submits that Karadžić is not dependent on an oral recording to exercise his right of freedom of expression.²⁹ The Registrar adds that statements from officials are often broadcast by TV stations in form of

²² Submission, para. 12.

²³ Submission, para. 13.

²⁴ The Registrar adds that two requests are currently under consideration, Submission, p. 5 fn. 12.

²⁵ Submission, para. 14.

²⁶ The Registrar further asserts that Karadžić has previously made that same argument, citing *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Decision on the Accused's Request that All Materials, Including Transcripts, Be Disclosed to Him in Serbian and Cyrillic Script, 25 September 2008 ("Decision on the Accused's Request"), para. 2; *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Appeal against the Registry Decision to Provide Me with Transcripts in the English Language Only, or as Audio Recordings, 19 August 2008.

²⁷ Submission, para. 16.

²⁸ Submission, para. 17. The Registrar further submits that, as a consequence of the previous entry of laptop computers with recording devices into the UNDU, the Registry is currently reviewing its policy allowing the importation of such computers into the UNDU, *ibid.*



reported speech, supplemented with archive images, whenever audio or video recordings of the statements are not available.³⁰

18. Finally, the Registrar states that the Rules of Detention were drafted with full respect for human rights provisions and that the Impugned Decision correctly applied all relevant legal requirements.³¹

19. The Registrar concludes that the right to freedom of expression is not unfettered and that it must be weighed against the need to safeguard the administration of justice.³² He submits that he did not abuse his discretion and reasonably concluded that written contact with the media was the most appropriate way to preserve Karadžić's right to freedom of expression as well as the protection of good order of the UNDU and the administration of justice.³³

III. APPLICABLE LAW

20. Rule 64*bis* of the Rules of Detention provides:

(A) Without prejudice to the foregoing provisions on communications and visits, the use of communication facilities available at the Detention Unit, by a detainee, with the sole purpose of contacting the media directly or indirectly, shall be subject to the approval of the Registrar.

(B) In his decision, the Registrar may consult with the Commanding Officer and shall have regard to whether such contact with the media:

i. could disturb the good order of the Detention Unit; or

ii. could interfere with the administration of justice or otherwise undermine the Tribunal's mandate.

(C) A detainee may at any time request the President to reverse a denial of contact made by the Registrar under this Rule. The President may decide to review the Registrar's decision, or if the President determines that the denial of contact constitutes an infringement on the right of the accused to be tried fairly, refer the request to the Trial Chamber to determine.

21. Pursuant to Rules 15(A), 22(A) of the Rules and 64(C) of the Rules of Detention, I am competent to entertain the Motion to review the Impugned Decision.

IV. STANDARD OF REVIEW

22. I recall the Appeals Chamber's finding in the *Kvočka* case that "judicial review of [...] an administrative decision is not a rehearing. Nor is it an appeal [...]. [It] is concerned initially with the

²⁹ Submission, paras 20, 21.

³⁰ Submission, para. 19. The Registrar adds that Karadžić's limitation to written communication in the past has not had any remarkable negative impact on the (print) media's interest in written correspondence with him. Submission, para. 20.

³¹ Submission, para. 22.

³² Submission, paras 13, 21.

propriety of the procedure by which the Registrar reached the particular decision and the manner in which he reached it".³⁴ In deciding upon the Motion, the Registrar must have regard to the conditions set out in *Kvočka*, namely compliance with laws, compliance with the rules of natural justice and procedural fairness, consideration of only relevant material and compliance with basic standards of reasonableness.³⁵

V. DISCUSSION

23. At the outset I note that when assessing whether a detainee's request for access to the media can be accommodated pursuant to Rule 64bis of the Rules of Detention, the Registrar has to respect the detainee's right to freedom of expression and balance it carefully against the interests of the prison authorities. Any decision of the Registrar limiting a detainee's right must follow the general provisions of proportionality.³⁶ The limited resources available to the Registry may be one of the determining factors.

24. I recall Karadžić's contention that an audio-visual recording of his answers would be possible with the technical equipment which is being brought by counsel into the UNDU, and that a review of such recording would not be excessively time-consuming and in any case reasonable.

25. I note, however, that the importation of recording devices into the UNDU is not allowed due to security and safety concerns. I also note that while portable computers with inbuilt audio-visual recording devices have previously been admitted in the UNDU, such occurrences do not imply the permission to use such devices.

26. While I acknowledge the appropriateness to provide Karadžić with the necessary facilities to establish some contact with the media pursuant to his right to freedom of expression, I reiterate that this right is not unfettered. In particular, the Registrar's obligation to adequately protect the security and good order of the UNDU and the administration of justice, and his obligation to use his limited resources in an appropriate manner, may impact upon the exercise of this right.

27. In light of these restrictions, I note the Registrar's contention that the review of audio-video material as such is more time-consuming than an assessment of written submissions³⁷ and that a review of such recordings may lead to a significant delay of Karadžić's current and future requests

³³ Submission, paras 13, 23.

³⁴ *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003, para. 13. See also *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Decision on Request for Reversal of Limitations of Contact with Journalist, 21 April 2009, para. 19.

³⁵ *Ibid.*

³⁶ *Prosecutor v. Blagojević et al.*, Case No. IT-02-60-PT, Decision on Vidoje Blagojević's Application for Provisional Release, 22 July 2002, para. 29.

³⁷ Submission, para. 14. See also Motion, para. 16.

for contact with the media. A significant amount of resources has already been directed to the revision and facilitation of Karadžić's numerous prior requests of contact with the media. The Registrar has established guidelines for such requests by way of a protocol.³⁸ In light of the established ongoing efforts and use of Registry resources to accommodate Karadžić's requests for written correspondence, the additional review of audio-visual recordings and related administrative efforts are likely to put an undue burden upon the Registrar and may furthermore lead to a delay of the outcome of any such request, contrary to Karadžić's interest.

28. In this context, I note Karadžić's contention that since the Trial Chamber decided that he would have to review audio recordings in B/C/S for the purposes of preparing his case, the Registrar should also be ordered to entertain that medium.³⁹ I recall, however, the ruling of the Trial Chamber in which it concluded that Karadžić was capable of working in the English language, and that he was in fact provided with transcripts in the English language in addition to the B/C/S audio recordings.⁴⁰ Karadžić is therefore not required to listen to any of the audio recordings he receives. His argument of comparable treatment of the Registry in this respect therefore fails.

29. I note Karadžić's assertion that audio-visual media have "their own specific qualities in respect to outreach and power of persuasion" and that thus a blanket prohibition of such broadcast material would be inappropriate.⁴¹ However, the preference of a particular broadcast media regarding the format of the information received cannot define or qualify a detainee's right to freedom of expression. Similarly, the detainee's own preference of the format of media contact is subject to legitimate restriction by the Registrar pursuant to Rule 64bis (B) of the Rules of Detention when assessing such a request.⁴² While a detainee is generally allowed to communicate with the media, this right does not as such comprise the form in which the communication takes place.⁴³ It has previously been established that a live audio or visual recording is not permissible due to concerns related to the administration of justice, notably the risk of (inadvertent) disclosure of confidential information.⁴⁴ I further note that audio-visual broadcast media often broadcast statements of officials, correspondents or other individuals in the form of reported speech where a direct audio or visual recording is unavailable, supplementing the lack of footage with archive

³⁸ Submission, paras 14, 17.

³⁹ Motion, para. 16.

⁴⁰ Decision on Prosecution's Motion, para. 23, as affirmed by *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.3, Decision on Interlocutory Appeal of the Trial Chamber's Decision on Prosecution Motion Seeking Determination that the Accused Understands English, 4 June 2009. *See also* Decision on the Accused's Request, para. 2.

⁴¹ Motion, para. 23.

⁴² Vice-President's Decision on the Request for Reversal of Limitations of Contact with Journalist, Case No. IT-95-5/18-PT, 21 April 2009 ("Decision of 21 April 2009"), para. 21, quoting his own Decision on Karadžić's Request for Reversal of Denial of Contact with Journalist, 12 February 2009 ("Decision of 12 February 2009"), para. 21.

⁴³ Cf. Rule 24(12) of the European Prison Rules.

images. Hence, I observe that a prohibition of an audio and/or video recording by the Registrar does in no way jeopardize the purpose of the particular broadcast media's interview request.⁴⁵ In light of this, I fail to see any unreasonableness of the Registrar's partial prohibition of Karadžić's Motion pertaining to the format of the submission of his answers to *Russia Today*.

30. Further, I note Karadžić's contention that the Registrar's refusal to provide resources to record and review audio or video footage violates Rule 4 of the European Prison Rules. Rule 4 of the European Prison Rules stipulates that "[p]rison conditions that infringe prisoner's human rights are not justified by lack of human resources". I note, however, that the Registrar's limitation of Karadžić's contact with the media to written communication has previously been found to be generally within the ambit of the reasonable and not *per se* an infringement of Karadžić's human rights.⁴⁶ While a complete denial of a detained accused's right to freedom of expression shall not be justified by the authority's lack of (human) resources, it may well serve as one reason among others for a partial restriction of that person's right to access the media. Such is the case here.

31. In sum, I note the existing burden on the Registry to facilitate all of Karadžić's numerous requests for access to the media while at the same time facilitating the court proceedings and ensuring the smooth daily operations of the UNDU, notably in light of its limited resources. I further note the additional burden to the Registry to provide for the required equipment to accommodate Karadžić's request while he is able to submit his answers to the questions posed by the journalist of *Russia Today* to the Registrar in writing for review and transmission.⁴⁷ I recall that it is within the Registrar's discretion to determine the most appropriate modality of communication within the parameters the Vice-President set forth in his Decision of 12 February 2009.⁴⁸

32. For the reasons outlined above, I consider that the Registrar properly applied the rules of proportionality in concluding that resource constraints and further considerations of the proper administration of justice outweighed Karadžić's preference for oral recording of his answers while offering to facilitate any written communication.

33. Consequently, I find that the Registrar has, in reaching the Impugned Decision, properly applied the basic standards of reasonableness, considering all viable means of communication which would allow the preservation of Karadžić's rights under Rule 64*bis* of the Rules of Detention

⁴⁴ *Ibid.*

⁴⁵ Further, I note that Karadžić has not submitted that the broadcast media *Russia Today* particularly *insisted* on the interview to be conducted in an audio-visual format as a necessary precondition. The Interview Request, attached as Annex A to the Motion, merely requests a telephone interview, while submitting its questions in the same correspondence.

⁴⁶ Decision of 21 April 2009, para. 21.

⁴⁷ Impugned Decision, para. 7.


⁴⁸ Decision of 12 February 2009, para. 24(a): "The Applicant is permitted to contact [the journalist] remotely via written correspondence, telephone calls, or whatever other means the Registrar deems appropriate".

while at the same time respecting the basic rules of natural justice and procedural fairness. The restriction imposed on Karadžić regarding the use of audio-visual recordings is therefore reasonable and proportionate with his freedom of expression.

VI. DISPOSITION

For these reasons, pursuant to Rules 15(A) and 22(A) of the Rules and Rule 64*bis* of the Rules of Detention, I hereby **DENY** the Motion.

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



Judge Mehmet Güney

Dated this sixth day of November 2009
At The Hague,
The Netherlands.