



United Nations
Nations Unies



International
Criminal Tribunal
for the Former
Yugoslavia

Court
Management and
Support Services
Section

Tribunal Pénal
International pour
l'ex-Yougoslavie

Section des
Services
d'administration et
d'appui judiciaire

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CASE/AFFAIRE NO. IT-95-5/18-PT		DATE D 15275 01 May 2009
FROM/DE RAM DORAISWAMY, COURT OFFICER <i>Aljaska</i>		
TO/A		
<input checked="" type="checkbox"/> President/Président (1)	<input checked="" type="checkbox"/> Prosecutor/Procureur	<input checked="" type="checkbox"/> Defense Counsel/Conseil de la Défense Legal Associates
<input checked="" type="checkbox"/> Vice President/Vice-Président		
0 Appeals Chamber/ Chambre d'appel	<input checked="" type="checkbox"/> Case Manager/ Commis aux affaires	MR. P. ROBINSON MR. G. PETRONJEVIĆ
0 Trial Chamber I/ Chambre de 1ère instance I	0 Chief of Investigations/ Chef des enquêtes	
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<input checked="" type="checkbox"/> Other/Autre MR. R. KARADŽIĆ		
<input checked="" type="checkbox"/> Registrar/Deputy Registrar/Greffier/Greffier adjoint MS. T. MAIKOWSKI / MS. S. FOFANA	0 VWS Coordinator/Coordinateur de la SVT	
<input checked="" type="checkbox"/> Senior Legal Officer/Juriste hors-classe MS. Y. FEATHERSTONE / MS. L. DAVIDSON	0 UNDU Commanding Officer/Commandant du QPNU	
<input checked="" type="checkbox"/> Communications Service/Service Communication	<input checked="" type="checkbox"/> OLAD	

PLEASE FIND ATTACHED/VEUILLEZ TROUVER CI-JOINT

0 Order/Warrant/decision issued by Appeals Chamber or Trial Chamber or a Judge on/ Ordonnance/Mandat/Décision émis(e) par la Chambre d'appel ou les Chambres de 1ère instance ou un Juge le ___/___/___
0 Order/Decision issued by the President on/Ordonnance/Décision émise par le Président le ___/___/___
<input checked="" type="checkbox"/> Motion/Request/Application submitted by Prosecution/Defence Counsel/Accused on/ Motion/Requête/Demande présentée par l'Accusation/le Conseil de la défense le <u>01/05/2009</u>
0 Response/reply/brief submitted by Prosecution/Defence Counsel/Accused on/ Réponse/Réplique/Mémoire présenté(e) par l'Accusation/le Conseil de la défense le ___/___/___
0 Decision of the Registrar on/Décision du Greffier le ___/___/___
0 Other/Autre

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Article 27.2- Directive for the Registry: A party anticipating a late filing will call the Registry during office hours to request permission of the Registrar and instruction for after hour filing.

Article 27.2-Directive pour le Greffe: une partie prévoyant un dépôt hors des heures ouvrables se mettra en rapport avec le personnel du Greffe durant les heures de bureau pour solliciter l'autorisation du Greffier et les instructions nécessaires.

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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-05/18-PT

IN TRIAL CHAMBER No. 3

Before: Judge Iain Bonomy, Presiding
Judge Christoph Flügge
Judge Michèle Picard

Acting Registrar: Mr. John Hocking

Date: 1 May 2009

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR EQUALITY OF ARMS IN
CONTACT WITH NEWS MEDIA

The Office of the Prosecutor:
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves for an order (1) restricting the communications between the Office of the Prosecutor and the news media to written communications; (2) limiting the questions of the news media to 500 words and the responses of the Office of the Prosecutor to 2000 words; (3) that the Office of the Prosecutor not address any issues which (a) amount to a disclosure of confidential information; (b) aim to influence the political situation in the former Yugoslavia; or (c) may have the effect of influencing or interfering with present or prospective witnesses before the ICTY; and (4) that the Office of the Prosecutor not make political statements, false or defamatory statements about ICTY Judges and staff members or statements regarding Judges and staff members outside their official capacity; any statement concerning obscene or otherwise offensive language; statements aiming to influence the Judges or staff members of the ICTY or the outcome of the proceedings.

2. If these conditions seem ridiculous, they are the very conditions that the Registrar has imposed upon Dr. Karadzic's contact with the news media.

3. In his *Decision on Request for Reversal of Limitations on Contact With Journalist* (21 April 2009), the Vice President held that "given the relatively large number of protected witnesses appearing in proceedings before the International Tribunal, as well as the high volume of confidential information generated in those proceedings, there is a considerable risk that confidential information could be inadvertently disclosed during a telephone conversation..." Therefore, Dr. Karadzic is limited to communicating with the news media in writing.

4. Thereafter, on 27 April 2009, the Acting Registrar promulgated the additional conditions on the written communication listed in paragraph 1 of this motion, including a word limit and restrictions on the content of the communication.¹

5. In his Decision, the Vice President recognized that Dr. Karadzic has a clean record--he has never disclosed any confidential information. On the other hand, the prosecution has a record of a prior offence in the disclosure of confidential information by its personnel.²

¹ A copy of the Acting Registrar's letter is Annex A to this motion.

² *In the Case Against Florence Hartmann*, No. IT-02-54-R77.5, *Amended Order in Lieu of Indictment on Contempt* (27 October 2008)

6. Principles of fairness and equality of arms dictate that the prosecution and the defence play by the same rules. Therefore, the prosecution should have to obey the same restrictions on contact with the news media that Dr. Karadzic has to obey.

7. The Appeals Chamber has held that the principle of equality of arms between the accused and the prosecution is a component of the right to a fair trial. This principle obligates a judicial body to ensure that neither party is put at a disadvantage when presenting its case.³

8. The disparity in contact between the prosecution and the news media and Dr. Karadzic and the news media puts Dr. Karadzic at a significant disadvantage. While the prosecution holds weekly press conferences on the premises of the Tribunal to explain its case against Dr. Karadzic to the public, and the Prosecutor himself travels all over the world commenting on Dr. Karadzic's case, Dr. Karadzic is confined to answering written questions of no more than 500 words, restricted by subject, and censored by the Registry.

9. In the *Tadic* case, the Appeals Chamber held that:

Under the Statute of the International Tribunal the principle of equality of arms must be given a more liberal interpretation than that normally upheld with regard to proceedings before domestic courts. This principle means that the Prosecution and the Defence must be equal before the Trial Chamber. It follows that the Chamber shall provide every practicable facility it is capable of granting under the Rules and Statute when faced with a request by a party for assistance in presenting its case.⁴

10. The only facility that the Tribunal is willing to provide Dr. Karadzic to communicate with the news media is highly restricted written communication. The principle of equality of arms requires that the same restrictions apply to the prosecution—or that the restrictions on Dr. Karadzic be altered to conform to those under which the prosecution operates.

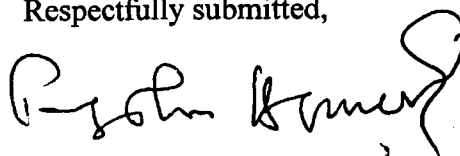
11. Therefore, it is respectfully requested that the Trial Chamber enforce the equality of arms guarantee of the Tribunal's Statute and order that the prosecution's contact with the news media be subject to the same restrictions as those placed upon Dr. Karadzic.

³ *Prosecutor v Kordic & Cerkez*, No. IT-65-14/2-A, *Judgement* (17 December 2004) at paras 175-76; *Prosecutor v Milutinovic et al*, No. IT-99-37-AR73.2, *Decision on Interlocutory Appeal on Motion for Additional Funds* (13 November 2003) at para. 23

⁴ *Prosecutor v. Tadic*, No. IT-94-1-A, *Judgement* (15 July 1999) at para 52.

Word count: 861

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', written in a cursive style.

Radovan Karadzic

ANNEX A

27 April 2009



United Nations
Nations Unies



International
Criminal Tribunal
for the former
Yugoslavia

Registry

Tribunal Pénal
International pour
l'ex-Yougoslavie

Greffe

Dear Mr. Karadžić,

Re. Contact with a journalist

Further to the Registry's letter of 11 March 2009 to you, and pursuant to the Vice-President's "Decision on Radovan Karadžić's Request for Reversal of Denial of Contact with Journalist," dated 12 February 2009, and "Decision on Request for Reversal of Limitations of Contact with Journalist," dated 21 April 2009, I write to further specify the conditions under which your contact with Ms. Vukojević has been granted.

As confirmed by the Vice-President, the contact will be allowed by way of written correspondence. The correspondence will be focused on the topic of the so-called "Holbrooke agreement" and is intended solely for publication in the *Revu* magazine, as indicated in your initial Request for Reversal of Denial of Contact with Journalist, of 18 November 2008 and considered by the Vice-President in his first decision. Ms. Vukojević's correspondence to you, including the questions that she wishes to ask you, shall not exceed 500 words and shall be accompanied with an English or French translation, if it is not written in one of them. Your reply to Ms. Vukojević shall not exceed 2000 words and may be written in your native language. Further exchange of correspondence and/or an enlargement of the word-limit may be allowed in exceptional circumstances, detailed in a reasoned request.

Furthermore, in order to ensure compliance with the conditions set out in this decision and the protection of confidential information, you are required to sign the attached undertaking and return it to my office at the earliest opportunity. The Registry will inform Ms. Vukojević of the above conditions in a separate letter, and will ask her to sign a similar undertaking. After these formalities have been completed, the contact between Ms. Vukojević and you can take place.

I take this opportunity to remind you that in line with the Vice-President's decisions, the correspondence between you and Ms. Vukojević will be monitored in accordance with UNDU Regulations to Govern Supervision of Visits to and Communication with Detainees.

Should you have any questions regarding the above, please do not hesitate to contact the *Pro Se* Office.

Yours sincerely,

John Hocking,
Acting Registrar

Attachment: Undertaking for Detainee

To: Mr. Radovan Karadžić
UNDU
Cc: Mr. Peter Robinson
(per email)
Mr. Goran Petronijević
(per email)
Mr. Marko Sladojević
(per email)

UNDERTAKING
For Detainee

- 1) I, _____, understand that I have been authorised to contact (name of media representative and media organization) ("Media Representative") by way of (specify the modalities) in accordance with Rule 64bis(A) of the *Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal* of the International Criminal Tribunal for the former Yugoslavia ("ICTY").
- 2) During my contact with the Media Representative, I undertake not to address any issues that:
 - a) would amount to a disclosure of confidential information;
 - b) aim to influence the political situation in the former Yugoslavia;
 - c) may have the effect of influencing or interfering with present or prospective witnesses before the ICTY.
- 3) I further undertake not to comment upon or disclose in any form in the media matters outside the topic for which the Registrar granted the contact. Such matters include, but are not limited to: political statements; false or defamatory statements about ICTY Judges and staff members or statements regarding Judges and staff members outside their official capacity; any statement containing obscene or otherwise offensive language; statements aiming to influence the Judges or staff members of the ICTY or the outcome of the proceedings.
- 4) I understand and accept that I shall not disclose in any form:
 - a) the layout, configuration or physical description of the United Nations Detention Unit ("UNDU"), including the locations of detainees within the UNDU;
 - b) any other information relating to the UNDU or any other detainee which is not in the public domain.
- 5) I undertake to fully comply with the conditions for the contact, as set out in the Registrar's decision.

I acknowledge that any breach of this undertaking may lead to the imposition of sanctions such as, but not limited to, restrictions of my right to contact with the media and/or the instigation of contempt proceedings against me under Rule 77 of the Rules of Procedure and Evidence where applicable.

Signature: _____

Done this _____ day of _____
Month/Year

The Hague,
The Netherlands.