

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

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

THE PRESIDENT

Before: Judge Patrick Robinson

Registrar: Mr. John Hocking

Date Filed: 17 August 2010

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/Confidential Annexes (Removed)

REQUEST FOR REVERSAL OF
LIMITATIONS OF CONTACT WITH JOURNALIST:
PROFIL MAGAZINE

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic hereby requests, pursuant to Rule 64 *bis* of the ICTY Rules of Detention, that the President reverse the decision of the Registrar, rendered after inordinate delay, for denial of contact between him and journalist Robert Treichler of the Austrian news magazine *Profil* by refusing to transmit a written answer which was critical of the Office of the Prosecutor.

2. Rule 64 *bis* provides that:

- 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.

Statement of Facts

3. On 14 May 2010, Dr. Radovan Karadzic submitted to the Registrar written answers to questions which had been posed to him by journalist Robert Treichler of the Austrian magazine, *Profil* and requested that the answers be communicated to the journalist.¹

4. Despite repeated inquiries by Dr. Karadzic's defence team, the Registrar did not act on the request for three months.

5. Finally, on 13 August 2010, the Deputy Registrar informed Dr. Karadzic that the communication as written would be denied. Among the reasons given was that one of Dr. Karadzic's proposed answers "unfairly and incorrectly misrepresents the work of the Office of the Prosecutor of the ICTY."²

¹ The questions and answers are attached as Confidential Annex A.

² This letter is attached as Confidential Annex B.

Argument

Background

6. In his *Decision on Radovan Karadzic's Request for Reversal of Denial of Contact with Journalist* (12 February 2009), the Vice President authorized Dr. Karadzic to contact a journalist "remotely via written correspondence, telephone calls, or whatever means the Registrar deems appropriate."³

7. The Registrar subsequently refused to authorize telephone communication with journalists. The Vice President upheld that decision, citing the UNDU's inability to ensure the protection of confidential information conveyed over the telephone.⁴

8. Dr. Karadzic thereafter requested that the Registrar approve telephone communication with *Russia Today*, since it was a broadcast media, rather than a print media. The Registrar again denied the contact, citing the lack of ability to delay transmission of telephone communication.

9. Dr. Karadzic then sought to overcome the Registrar's objection to the inability to delay transmission of live telephone communication by proposing that he record his answers. That way the Registrar could review them, just as it does written communication, before deciding if it can be disseminated to a journalist. Nevertheless, the Registrar denied this form of communication. His decision was upheld.⁵

10. Therefore, Dr. Karadzic's communications with journalists are limited to providing written answers to written questions submitted by the journalist.

Unreasonable Delay

11. In the present case, the Registrar withheld a decision on whether to release the written answers for three months—a death sentence for newsworthiness. Dr. Karadzic requests that the President review the propriety of the Registrar's delay.

12. The standard of review for appeals from decisions of the Registrar is that the decision of the Registrar will be quashed if (1) he failed to comply with the requirements of the relevant legal authorities; or (2) he failed to observe basic rules of natural justice and procedural fairness towards the person affected by the decision; or (3) he has taken

³ *Decision* at para. 24(a)

⁴ *Decision on Request for Reversal of Limitations of Contact with Journalist* (21 April 2009) at para. 21

⁵ *Decision on Radovan Karadzic's Request for Reversal of Limitations on Contact with Journalist: Russia Today* (6 November 2009)

into account irrelevant material or failed take into account relevant material; or (4) he reached a conclusion that is unreasonable, in the sense that it is a conclusion that no sensible person who has properly applied his mind to the issue could have reached.⁶

13. Dr. Karadzic contends that by delaying his decision for three months, the Registrar failed to observe procedural fairness towards a detainee. News gathering is a dynamic and fast paced world in which timeliness is measured in minutes rather than months. To fail to review written answers to a journalist for three months is unfair and unreasonable.

14. Therefore, the decision of the Registrar should be quashed on this ground. The President should hold that by unreasonably delaying his review, the Registrar waived his right to object to the contents of the communication. The President is respectfully requested to order that the answers be transmitted to the journalist as written, and forthwith.

15. It is further requested that the President direct the Registrar that in the future, his review of such communications be completed and communicated to the accused within five days of receipt to ensure that this situation is not repeated.

Unreasonable Censorship

16. When the Registrar did finally get around to deciding whether the communication from Dr. Karadzic could be released to the journalist, he made an unreasonable decision.

17. The Registrar decided that he would not allow the contact with the journalist unless Dr. Karadzic changed two of his answers. Dr. Karadzic agrees to revise his answer to question 2,⁷ but appeals from the denial of his communication on question 3.

18. Question 3 asked:

“Were you trying to hide until the ICTY would have been closed? Or were you thinking you could hide forever?”

19. In answering that question, Dr. Karadzic explained why he had not voluntarily appeared at the ICTY. Part of his answer dealt with his 1997-98 contact with the Office of the Prosecutor. The Registrar refused to communicate the answer, finding that “it

⁶ *Prosecutor v Kvočka et al*, No. IT-98-30/1-A, *Decision on Review of Registrar’s Decision to Withdraw Legal Aid from Zoran Zigic* (7 February 2003) at para. 13

⁷ A copy of his revised answer is attached as Confidential Annex “C”

unfairly and incorrectly misrepresents the work of the Office of the Prosecutor of the ICTY.”

20. This decision is unreasonable on several grounds.⁸ First, the answer accurately represents my perception of the conduct of the Office of the Prosecutor. Whether it is true or not is irrelevant, since it formed one of the reasons for why I did not appear voluntarily at the ICTY. The Registrar has no business censoring the answers of a detainee simply because he does not agree with them. This is censorship of the worst form and is a violation of my right to free speech.

21. The Office of the Prosecutor has accused me of the most serious crimes contained in the Statute of the Tribunal. It has held press conferences since 1995 making accusations and allegations which I do not agree with. No one has suggested that these communications with the news media by the prosecution should be halted. Similarly, I have the right to present my point of view without censorship because the Registrar does not agree with them.

22. Therefore, the Registrar took into account irrelevant material when taking it upon himself to decide whether what was in the communication was true, and made an unreasonable decision to deny contact with the journalist on that basis.

23. Second, the answer to the journalist’s question does not reveal confidential information or affect the good order of the United Nations Detention Unit. These are the bases upon which contact between a detainee and the news media have been restricted. The Registrar went beyond his mandate when denying contact with a journalist for reasons other than confidentiality and security. He therefore took into consideration irrelevant material and made an unreasonable decision when going beyond these factors in his review.

Conclusion

24. For all of the above reasons, the decision of the Registrar denying contact with the journalist from *Profil* magazine should be reversed. The Registrar should be ordered to transmit the answers of Dr. Karadzic to the journalist forthwith, and to decide all requests for contact with the news media within five days.

⁸ Because this appeal is filed publicly, Dr. Karadzic has avoided revealing the contents of his response, which is found in Annex “B”, filed confidentially.

25. Such a decision would be consistent with the balance between Dr. Karadzic's presumption of innocence and freedom of expression on the one hand, and the Tribunal's need to protect confidentiality and maintain security.

Word count: 1553

Respectfully submitted,

Radovan Karadzic