



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-PT  
Date: 3 April 2009  
Original: English

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**THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL**

**Before:** Judge O-Gon Kwon, Vice-President  
**Registrar:** Mr. John Hocking, Acting Registrar  
**Submission date:** 3 April 2009

**PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

***PUBLIC***

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**REGISTRY SUBMISSION  
REGARDING THE REQUEST FOR REVERSAL OF  
LIMITATIONS OF CONTACT WITH JOURNALIST**

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**The Accused:**  
Radovan Karadžić

## I. INTRODUCTION

1. Pursuant to Rule 33(B) of the Rules of Procedure and Evidence ("Rules") of the International Criminal Tribunal for the former Yugoslavia ("Tribunal"), the Registry respectfully makes this submission in relation to the "Request for Reversal of Limitations of Contact with Journalist", filed by the Accused Radovan Karadžić ("Accused") on 20 March 2009 ("Second Request for Reversal").<sup>1</sup>
2. On 26 March 2009, by his "Order Setting a Deadline for Registry Submission in Relation to 'Request for Reversal of Limitations of Contact with Journalist'", the Vice-President invited the Registry to file any submission it wished to be considered in response to the Second Request for Reversal no later than Friday, 3 April 2009.<sup>2</sup> The Registry hereby complies with the order.

## II. PROCEDURAL HISTORY

3. On 16 October 2008, the Accused wrote to the Registrar seeking permission to meet, in person, Ms. Zvezdana Vukojević, journalist of the Dutch publication Revu.
4. On 10 November 2008, the Registrar denied this request ("First Registry Decision"), basing his decision on Rule 64*bis* 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").<sup>3</sup>
5. On 18 November 2008, the Accused filed his "Request for Reversal of Denial of Contact with Journalist" before the President of the Tribunal requesting that the First Registry Decision be reversed ("First Request for Reversal").<sup>4</sup>
6. On 24 December 2008, the Registrar responded to the First Request for Reversal by filing the confidential "Registrar's Submission pursuant to Rule 33(B) of the Rules regarding Radovan Karadžić's Request for Reversal of Denial of Contact with

<sup>1</sup> *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Request for Reversal of Limitations of Contact with Journalist, filed on 20 March 2009.

<sup>2</sup> *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Order Setting a Deadline for Registry Submission in Relation to "Request for Reversal of Limitations of Contact with Journalist", filed on 26 March 2009.

<sup>3</sup> Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal, Rev. 9, 21 July 2005.

<sup>4</sup> *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, "Request for Reversal of Denial of Contact with Journalist", filed on 18 November 2009.

Journalist” (“First Registry Submission”).<sup>5</sup> In the First Registry Submission, the Registrar maintained that the decision to deny the interview request was reasonable.

7. On 12 February 2009, the Vice-President of the Tribunal, in lieu of the President,<sup>6</sup> ruled on the First Request for Reversal in the “Decision on Radovan Karadžić’s Request for Reversal of Denial of Contact with Journalist” and, *inter alia*, permitted the Accused to contact Ms. Vukojević “remotely via written correspondence, telephone calls, or whatever other means the Registrar deems appropriate” (“Vice-President’s Decision”).<sup>7</sup>
8. Following the Vice-President’s Decision, on 11 March 2009, the Registrar issued a second decision granting contact by written communication (“Impugned Decision”).<sup>8</sup>
9. On 20 March 2009, the Accused filed the Second Request for Reversal whereby he requests the President to reverse the Impugned Decision which restricts contact between him and Ms. Vukojević to written communication.<sup>9</sup>

### III. ARGUMENTS OF THE ACCUSED

10. The Accused develops two sets of arguments to support the Second Request for Reversal. The first set of arguments purports that written communication lacks the spontaneity of oral communication and the ability to follow-up and clarify answers. Further, the Accused asserts that there would be little media interest in such “canned” exchanges.<sup>10</sup>
11. The second set of arguments relies on the proportionality test which according to the Accused requires the Registrar to allow telephone contact as the least restrictive measure.<sup>11</sup>

<sup>5</sup> *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Confidential Registrar’s Submission pursuant to Rule 33(B) of the Rules regarding Radovan Karadžić’s Request for Reversal of Denial of Contact with Journalist, filed on 24 December 2008.

<sup>6</sup> See *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Order on Request for Reversal of Denial of Contact with Journalist, filed on 25 November 2008.

<sup>7</sup> *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Radovan Karadžić’s Request for Reversal of Denial of Contact with Journalist, filed on 12 February 2009.

<sup>8</sup> The Impugned Decision was issued on 11 March 2009 and is attached to the Second Request for Reversal as Annex A.

<sup>9</sup> Second Request for Reversal, paragraph 1.

<sup>10</sup> Second Request for Reversal, paragraph 5.

<sup>11</sup> Second Request for Reversal, paragraph 5 and further developed in paragraphs 6 to 18.

12. The Accused asserts that the Registrar failed to provide reasons for choosing the most restrictive form of communication and that the Registrar, without citing any concrete elements, concluded that any form of communication other than in writing would disturb the good order of the UNDU.<sup>12</sup>

### III. LAW ON JUDICIAL REVIEW

13. The jurisprudence of the Tribunal establishes that a judicial review of a Registry administrative decision is limited to a four-prong standard for proper administrative decision-making process as established in the *Kvočka et al.* case. A judicial organ examining an administrative decision needs to establish whether the following four prongs of this standard are satisfied: (1) compliance with the relevant legal requirements; (2) observance of basic rules of natural justice and procedural fairness; (3) consideration of relevant material and non-consideration of irrelevant material; and (4) reasonableness of the conclusions reached.<sup>13</sup>
14. The Registry submits, as elaborated *infra*, that the Impugned Decision constitutes full compliance with the standard established in the *Kvočka et al.* case.

### IV. SUBMISSION

15. The Accused bases his Second Request for Reversal on Rule 64*bis* of the Rules of Detention.<sup>14</sup> This Rule and the Rules of Detention, in general, are silent with respect to the possible modalities of contacting the media. Rule 64*bis* provides that the use of communication facilities available at the United Nations Detention Unit ("UNDU"), by a detainee, with the sole purpose of contacting the media directly or indirectly, shall be subject to the approval of the Registrar. In his decision, the Registrar shall have regard to whether such contact with the media could disturb the good order of the UNDU or interfere with the administration of justice or otherwise undermine the Tribunal's mandate.<sup>15</sup>

<sup>12</sup> Second Request for Reversal, paragraphs 14 and 16.

<sup>13</sup> *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, "Decision on Review of Registrar's Decision to Withdraw Legal Aid from Goran Žigić", filed on 7 February 2003, paragraph 13. See also the First Registry Submission, paragraphs 10 and 11 and references cited therein.

<sup>14</sup> Second Request for Reversal, paragraphs 1 and 2.

<sup>15</sup> Rule 64*bis* of the Rules of Detention provides:

16. The Registry submits that the Impugned Decision, allowing written correspondence, is in keeping with Rule 64*bis* of the Rules of Detention and the spirit of the Vice-President's Decision. The Vice-President, when assessing the First Registry Decision in light of Rule 64*bis* of the Rules of Detention, held that the Accused is permitted to contact Ms. Vukojević "remotely via written correspondence, telephone calls, or whatever other means the Registrar deems appropriate".<sup>16</sup> Hence, it is within the Registrar's discretion to decide which form of contact is the most appropriate in the present case.
17. In deciding on the most appropriate form of contact, the Registrar was guided by the Vice-President's Decision, especially by the need to protect confidential information pertaining to witnesses.<sup>17</sup> In this respect, the Vice-President concluded that two safeguards should be put in place to ensure that the administration of justice is not compromised. He ordered the Registry to monitor the communications between the Accused and the journalist and to warn the journalist of her obligations and her exposure to contempt proceedings.<sup>18</sup> In order to implement the Vice-President's Decision, the Registrar took into account the following two factors: 1) the monitoring facilities available at the UNDU; and 2) the type of media for which the interview is intended (that is, print or broadcast media).
18. First, although the Vice-President's Decision envisages contact via telephone calls, the monitoring facilities currently available at the UNDU would not allow for the effective protection of confidential information as required. There is a risk that confidential information could be divulged, not only to the journalist, but also to the public at large. This is due to the nature of telephone conversations as being

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(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.

<sup>16</sup> Vice-President's Decision, paragraph 24(a).

<sup>17</sup> Vice-President's Decision, paragraph 21.

<sup>18</sup> Vice-President's Decision, paragraphs 21 and 24.

“spontaneous”, as raised by the Accused. Although the UNDU facilities enable calls to be monitored and recorded, there is not a possibility to delay the transmission and the receipt of the spoken word. Furthermore, it cannot be guaranteed that the detainee’s interlocutor will not live-broadcast or tape-record the conversation.

19. The Accused submits that the media would have little interest in written correspondence. The Registry submits that even if this were a factor to be taken into consideration when deciding on the request to contact the media, it would be outweighed by the need to protect confidential information. Furthermore, a detention facility is not expected to permit unrestricted access to its detainees. The freedom of expression is not an unfettered freedom and should not be gauged against the media interest.
20. Secondly, bearing in mind that the Revu magazine, designated as the carrier of the interview, is a print publication, the Registrar deemed that granting written communication would be the most suitable method for conducting the interview.
21. Finally, with respect to the Accused’s submission that the Registrar failed to provide reasons for choosing the most restrictive form of communication,<sup>19</sup> the Registry notes that the Impugned Decision, which was provided to both the Accused and to Ms. Vukojević, expressly invokes the discretion granted by the Vice-President in setting out the appropriate modalities for the contact. Additionally, in reaching the Impugned Decision, the Registrar assessed the logistical arrangements necessary for facilitating contact and duly considered the importance of the security, safety and good order of the UNDU. Finally, the Impugned Decision specifically indicates that the practical arrangements to facilitate the contact with the journalist would be detailed separately in writing. The Registry stayed the process of facilitating this contact, pending a decision on the Second Request for Reversal by the Vice-President.<sup>20</sup>
22. The Accused submits that the Registrar was required to allow telephone contact as the least restrictive measure. This submission is, in essence, a repetition of the First Request for Reversal<sup>21</sup> and was taken into account in the Vice-President’s Decision.

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<sup>19</sup> Second Request for Reversal, paragraphs 14 and 16.

<sup>20</sup> On 1 April 2009, the Registry sent a letter to the Accused to this effect.

<sup>21</sup> There is a significant overlap of cited cases and related submissions. See paragraph 6 of the Second Request for Reversal against paragraph 9 of the First Request for Reversal; paragraph 7 of the Second Request for

The Registry submits that allowing contact via written correspondence is the only measure which guarantees the Accused's right to freedom of expression whilst adequately protecting the good order of the UNDU and the administration of justice. The Registry further notes that the Accused himself had suggested written communication as an alternative to his initial request for a face-to-face interview with the journalist, while he now requests the Vice-President to reverse the Impugned Decision which grants precisely this type of contact.<sup>22</sup>

## V. CONCLUSION

23. The Registry submits that all four prongs of the standard for proper administrative decision-making were adhered to in reaching the Impugned Decision. More specifically: (1) the Registrar complied with the relevant legal requirements, in particular with the Vice-President's Decision and the Rules of Detention; (2) the Registrar observed basic rules of natural justice and procedural fairness by properly applying the relevant rules to the case at hand and informing the Accused of the modality of contact and the basis for such a decision; (3) the Registrar considered the relevant material – monitoring facilities at the UNDU and the type of media the interview is intended for; the Registrar did not consider irrelevant material, such as the interest of the media; (4) finally, after applying the relevant rules and the findings of the Vice-President to the facts, the Impugned Decision was reasonable.

24. For these reasons, the Registry respectfully submits that the Second Request for Reversal should be dismissed and the Impugned Decision upheld.


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Reversal against paragraphs 21, 22 and 23 of the First Request for Reversal; paragraphs 8 and 9 of the Second Request for Reversal against paragraphs 25 and 26 of the First Request for Reversal; paragraph 11 of the Second Request for Reversal against paragraph 27 of the First Request for Reversal; paragraph 13 of the Second Request for Reversal against paragraph 30 of the First Request for Reversal. Some of the arguments in the Second Request for Reversal are a verbatim reproduction of the First Request for Reversal.


<sup>22</sup> In the First Request for Reversal, at paragraph 13, the Accused quotes a decision by the Supreme Court of the United States, which upheld a regulation that prohibited face-to-face contact with the news media on the basis that the prisoner had other alternative means of communicating with the news media, "One such alternative available to California prison inmates is communication by mail" (*Pell v. Procunier*, 417 U.S. 817 (1974)). Similarly, in paragraph 16, he cites *Johnson v. Stephan*, 6 F.3d 691, 692 (10<sup>th</sup> Cir. 1993). In paragraph 35 he objects to the Registrar's failure to consider other alternatives such as allowing the interview by video link, in writing, or by telephone. The Accused also refers to "any alternatives" in paragraph 38.

25. The Registry remains available to provide the Vice-President with any further information that may be required.

Respectfully submitted,



John Hocking  
Acting Registrar



Dated this third day of April 2009

At The Hague,

The Netherlands.