



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: 15 April 2011
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President

Registrar: Mr. John Hocking

Decision of: 15 April 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON MOTION FOR ACCESS TO CONFIDENTIAL
EX PARTE ANNEX**

The Accused:

Radovan Karadžić

Stand-by Counsel:

Mr. Richard Harvey

I, JUDGE PATRICK ROBINSON, President 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”);

BEING SEISED of the “Motion for Access to Confidential Ex Parte Annex” filed on 22 February 2011 (“Motion”) by Radovan Karadžić (“Karadžić”);

RECALLING the “Request for Reversal of Decision to Monitor Telephone Calls” filed on 28 January 2011 (“Request for Reversal”) by Karadžić, in which he requests, *inter alia*, the reversal of the decision of the Registrar of the Tribunal (“Registrar”) to monitor Karadžić’s telephone calls at the United Nations Detention Unit;¹

RECALLING the “Registrar’s Submission Pursuant to Rule 33(B) Regarding Radovan Karadžić’s Request for Reversal of Decision to Monitor Telephone Calls” filed publicly with a confidential and *ex parte* annex on 17 February 2011 (“Registrar’s Submission”) by the Registrar;

NOTING that in the Motion, Karadžić requests that the confidential and *ex parte* annex to the Registrar’s Submission (“Annex”) either be disclosed to Karadžić (“Disclosure Request”), or returned to the Registrar and not considered by me at all in arriving at my decision on the Request for Reversal;²

NOTING that Karadžić further requests an extension of time to file his reply to the Registrar’s Submission until four days after Karadžić “has received the Annex or been informed that it has been returned to the Registrar”;³

NOTING that, with regard to the Disclosure Request, Karadžić states that the Registrar’s Submission describes the Annex as comprising “the relevant exchange of memoranda” concerning the amendment of Regulation 20 of the Regulations to Govern the Supervision of Visits to and Communications with Detainees” (“Regulations on Detainee Communications”);⁴

NOTING Karadžić’s submission that the Registrar’s confidential and *ex parte* filing of the Annex “violates the principle of *audi alteram partem*” and “is akin to one party having access to the legislative history of a statute, or *travaux préparatoires* of a treaty” to the exclusion of the other party;⁵

¹ Request for Reversal, paras 8-9, 16-27.

² Motion, para. 5.

³ *Ibid.*, para. 6.

⁴ *Ibid.*, para. 2, citing footnote 14 of the Registrar’s Submission.

⁵ Motion, para. 3.

NOTING Karadžić's submission that the contents of the Annex could be disclosed to him on a confidential basis;⁶

CONSIDERING however that the Annex comprises internal Tribunal correspondence that addresses various issues not restricted to those concerning the amendment of Regulation 20 of the Regulations on Detainee Communications;

CONSIDERING therefore that it is inappropriate for such information to be disclosed to unauthorised third parties;

CONSIDERING that, in any event, consideration of the information contained in the Annex is unnecessary for the determination of the issues raised by the Request for Review;

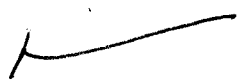
PURSUANT TO Rule 19(A) of the Rules of Procedure and Evidence, and Regulation 22 of the Regulations on Detainee Communications;

GRANT the Motion **IN PART** insofar as:

- (1) the contents of the Annex will not be factored into account in determining the Request for Reversal; and
- (2) Karadžić may file a reply to the Registrar's Submission, no later than four days from the date of this decision, specifically, no later than 20 April 2011;

DENY the Motion in all other respects.

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



Judge Patrick Robinson
Presiding Judge

Dated this 15th day of April 2011,
At The Hague,
The Netherlands.

[Seal of the Tribunal]

⁶ *Ibid.*, para. 4.