



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: 28 October 2009

Original: English

**ACTING PRESIDENT OF THE INTERNATIONAL TRIBUNAL**

**Before:** Judge Mehmet Güney  
**Registrar:** John Hocking  
**Decision of:** 28 October 2009

**THE PROSECUTOR**  
v.  
**RADOVAN KARADŽIĆ**

***PUBLIC***

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

**The Office of the Prosecutor**

Mr. Alan Tieger  
Ms. Hildegard Uertz-Retzlaff

**The Accused**

Radovan Karadžić

*037*

1. I, MEHMET GÜNEY, a 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: *Le Monde*” (“Motion”), filed by the self-represented accused Radovan Karadžić (“Karadžić”) on 16 September 2009 before the President of the Tribunal (“President”).<sup>1</sup>

2. On 22 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.<sup>2</sup> He was further advised by Vice-President Judge O-Gon Kwon that the latter’s current role as Presiding and Pre-Trial Judge in the present case<sup>3</sup> likewise gives rise to a conflict of interest and that Judge Kwon therefore must also withdraw from considering the Motion.<sup>4</sup> 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.<sup>5</sup>

## I. BACKGROUND

3. A journalist of the French newspaper *Le Monde* submitted a series of questions to Karadžić, to which he responded by letter addressed to the Registrar of the Tribunal of 2 September 2009. In his letter, Karadžić requested that the Registrar allow the written interview, review the responses attached to the letter and transmit them to the journalist. On 11 September 2009, the Registrar decided, after review of the answers provided by Karadžić to the journalist, to permit the written interview, with the exception of one answer formulated in response to question number four,<sup>6</sup> which reads:

In your requests to the Tribunal, you said that UNPROFOR was used by individuals and entities to provide arms and ammunitions to the Bosnian side. Do you consider this can be diminishing argument concerning the responsibility of the Serbian parts in the slaughter of the civilian populations?[sic].

<sup>1</sup> *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Request for Reversal of Limitations of Contact with Journalist: *Le Monde*, 16 September 2009.

<sup>2</sup> *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.

<sup>3</sup> *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.

<sup>4</sup> *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Order Assigning Motion, 22 September 2009, p. 2.

<sup>5</sup> *Ibid.*

<sup>6</sup> Letter from the Registrar to Karadžić Re: Contact with a Journalist – *Le Monde*, 11 September 2009 (“Registrar’s Decision”), attached to the Motion as Annex “A”.

4. On the basis of Rule 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"),<sup>7</sup> the Registrar found that the proposed response to question number four of the journalist provided by Karadžić ("Proposed Answer")<sup>8</sup> denigrated UNPROFOR and the United Nations ("UN") in general and that it could consequently undermine the Tribunal's mandate.<sup>9</sup> The Registrar therefore denied the publication of this portion of the correspondence. The Registrar further invited Karadžić to rephrase and re-submit his response.<sup>10</sup>

5. On 16 September 2009, Karadžić filed the Motion.

## II. KARADŽIĆ'S SUBMISSIONS

6. Karadžić requests the reversal of the Registrar's Decision<sup>11</sup> on the basis of Regulation 10 of the Regulations to Govern Supervision of Visits to and Communications with Detainees<sup>12</sup> and Rule 64bis of the Rules of Detention. Karadžić argues that nothing in his Proposed Answer is denigrating or disrespectful, and that therefore the Registrar's Decision is unreasonable.<sup>13</sup>

7. Karadžić points to related allegations that he has made previously in several motions filed as public documents in this case, and which allegedly demonstrate that the Registrar's position is untenable.<sup>14</sup> He argues that it is incongruous for the Registrar to prevent him from making his allegations in a written form since it would not be improper for him to express the content of his answer to the journalist's question number four at a status conference or during his trial.<sup>15</sup>

8. Karadžić submits that the Registrar's Decision infringes upon his fundamental right of freedom of expression.<sup>16</sup> 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").<sup>17</sup> Karadžić

<sup>7</sup> 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.

<sup>8</sup> The Proposed Answer is attached as *confidential* Annex B to the Motion.

<sup>9</sup> Registrar's Decision.

<sup>10</sup> *Ibid.*

<sup>11</sup> Motion, para. 1.

<sup>12</sup> Regulations to Govern Supervision of Visits to and Communications with Detainees, Rev. 3, 22 July 1999 ("Regulations").

<sup>13</sup> Motion, paras 9, 22.

<sup>14</sup> Motion, paras 10-12, quoting *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Motion for Binding Order: Government of the United States of America, 11 September 2009; Motion for Binding Order: Government of the United Kingdom, 11 September 2009; Motion for Binding Order: Government of Croatia, 11 September 2009; Motion for Binding Order: Government of the Netherlands, 11 September 2009; Motion for Binding Order: Government of Malta, 31 August 2009; Motion for Binding Order: Government of Malaysia, 10 August 2009; Motion for Binding Order: Government of Italy, 3 August 2009; Motion for Binding Order: Government of Bangladesh, 5 August 2009; and Motion for Binding Order: Government of Belgium, 20 July 2009.

<sup>15</sup> Motion, para. 13.

<sup>16</sup> Motion, para. 14.

<sup>17</sup> Motion, paras 15-16, 18-21. 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

further cites the commentary to Rule 24(12) which allegedly provides that the term “public interest” as a means to limit the freedom of expression must be interpreted narrowly, and argues that the Registrar’s position does not correspond with such a narrow interpretation.<sup>18</sup>

9. On the basis of the ECtHR’s jurisprudence, Karadžić submits that the freedom of expression as an essential foundation of the democratic society also applies to shocking, offending or disturbing information and not only to information or ideas that are considered to be inoffensive;<sup>19</sup> that exceptions to the right to freedom of expression must be “convincingly established”;<sup>20</sup> that the press has the right to impart information while the public has a right to receive them;<sup>21</sup> and that interference with the freedom of expression must correspond to a “pressing social need”.<sup>22</sup>

### III. APPLICABLE LAW

10. Regulation 9(A) of the United Nations Detention Unit Regulations to Govern the Supervision of Visits to and Communications with Detainees (“Regulations”)<sup>23</sup> provides:

A) If the Registrar, or a person authorised by him, finds there to have been a breach of the Rules of Detention, these Regulations or an order of the Tribunal, an offending item of:

(i) outgoing mail shall be returned to the detainee together with a note from the Registrar, in a language the detainee understands, giving the reasons for refusal to post the offending item; [...]

11. Further, Regulation 10 provides that:

A detainee may at any time request the President to reverse any decision taken under Regulation 9(A).

12. 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.

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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.

<sup>18</sup> Motion, para. 15.

<sup>19</sup> Motion, para. 16.

<sup>20</sup> Motion, para. 17.

<sup>21</sup> Motion, paras 18, 20.

<sup>22</sup> Motion, para. 19.

<sup>23</sup> IT/98/Rev. 4, August 2009.

(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.

13. Pursuant to Rules 15(A), 22(A) and 64(C) of the Rules of Detention, I am competent to entertain the Motion to review the Registrar's Decision.

#### IV. STANDARD OF REVIEW

14. 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 propriety of the procedure by which the Registrar reached the particular decision and the manner in which he reached it".<sup>24</sup> 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.<sup>25</sup>

#### V. DISCUSSION

15. The Registrar denied transmission of the Proposed Answer provided by Karadžić to the fourth question asked by the journalist as he found that it "denigrates UNPROFOR and the United Nations in general" and in consequence to potentially undermine the Tribunal's mandate.<sup>26</sup>

16. Karadžić argues that the same type of allegations as made in the Proposed Answer were already made publicly in several of his filings,<sup>27</sup> or could be made in the courtroom. However, this argument does not demonstrate that the Registrar's Decision was unreasonable. In reviewing the administrative decision made by the Registrar in this case, I shall merely assess "the propriety of the procedure by which the Registrar reached the particular decision and the manner in which he reached it" as well as the above-mentioned<sup>28</sup> conditions set up in the *Kvočka* case. Considerations such as the propriety of allegations made in filings before the Trial Chamber, during status conferences or within the courtroom at trial are of the designated Chamber's competence, which has control over the proceedings.<sup>29</sup>

<sup>24</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 Zoran Žigić, 7 February 2003 ("*Kvočka* Decision"), 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.

<sup>25</sup> *Ibid.*

<sup>26</sup> Registrar's Decision.

<sup>27</sup> Motion, paras 10-12.

<sup>28</sup> See *supra*, para. 15.

<sup>29</sup> Rule 80(B) of the Rules provides: "The Trial Chamber may order the removal of an accused from the courtroom and continue the proceedings in the absence of the accused if the accused has persisted in disruptive conduct following a warning that such conduct may warrant the removal of the accused from the courtroom".

17. Further, I observe that Karadžić's Proposed Answer contains grave accusations, which could have a detrimental impact on the reputation of UNPROFOR and the United Nations ("UN") in general. Karadžić's contention, while blunt and unspecific in his Proposed Answer, will most probably form part of the contentious facts to be discussed at trial. I note that, as a general rule, the courtroom is the only appropriate place where to discuss any contentious case-related matters amongst the parties, and to give all parties to the proceedings the proper means to rebut the other party's contentions. The right of an accused to access the media shall not be abused as a parallel forum to publicly discuss contentious issues central to the charges against him. Such conduct strips the adverse party in the proceedings of the possibility to immediately react to these contentions. Further, the public discussion of contentious issues *sub iudice* does *per se* obstruct the smooth conduct of court proceedings and can undermine that court's mandate. It is therefore not unreasonable to prohibit an accusatory statement that could likely thwart the mission and objective of UNPROFOR and the UN in general as submitted by Karadžić in his Proposed Answer. Indeed, such a statement may, on the face of it, be capable of undermining the Tribunal's mandate if not assessed by all parties in court.

18. As regards Karadžić's argument that the Registrar's Decision is impeding on his right to freedom of expression,<sup>30</sup> I note that the Registrar has not prohibited the entire communication to the media but merely a minor portion of it. While also a partial prohibition of communication requires to be based on reasonable grounds, I note that these grounds have been appropriately established by the Registry in the present case. The Registrar's reasoning that Karadžić's Proposed Answer in its current formulation contains denigrating contentions fit to undermine the Tribunal's mandate would not appear to require further specification.

19. Further, the Registrar invited Karadžić to re-submit his response and to omit or rephrase the offensive parts of it, in accordance with Regulation 9(B) of the Regulations. To date, Karadžić has not reacted to this invitation.

20. I note Karadžić's contention that individuals should be entitled "to comment on and criticize the administration of justice and the officials involved in it".<sup>31</sup> While such finding may be true for many issues of a general nature, it cannot be strictly applied on contentions of facts *sub iudice* in ongoing court proceedings for the reasons outlined above.<sup>32</sup>

21. Finally, I reiterate 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 the

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<sup>30</sup> Motion, paras 14-21.

<sup>31</sup> Motion, para. 21, citing ECtHR, *Yankov v. Bulgaria*, Judgement of 11 December 2003, Application No. 39084/97, para. 129.

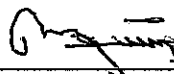
Decision of 12 February 2009.<sup>33</sup> This includes the censorship of written communication where appropriate.

22. 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 interests in Rule 64bis of the Rules of Detention while at the same time respecting the basic rules of natural justice and procedural fairness. The restriction imposed on Karadžić regarding his Proposed Answer to the fourth question of the journalist is therefore reasonable and proportionate with his freedom of expression.

## VI. DISPOSITION

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

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



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Judge Mehmet Güney

Dated this 28<sup>th</sup> day of October 2009  
At The Hague,  
The Netherlands.

[Seal of the Tribunal]

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<sup>32</sup> See *supra*, para. 19.

<sup>33</sup> *Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Decision on Radovan Karadžić's Request for Reversal of Limitations of Contact with Journalist, 12 February 2009, para. 24(a).