



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: 11 October 2010
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President

Registrar: Mr. John Hocking

Decision: 11 October 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON REQUEST FOR REVERSAL OF LIMITATIONS
OF CONTACT WITH JOURNALIST: PROFIL MAGAZINE**

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadžić

Stand-by Counsel:

Mr. Richard Harvey

1. **I, 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”), render the following decision in relation to the “Request for Reversal of Limitations of Contact with Journalist: Profil Magazine” filed publicly with confidential annexes on 17 August 2010 (“Request for Reversal”) by Radovan Karadžić (“Karadžić”).

I. BACKGROUND

2. In a request submitted by Karadžić to the Registrar of the Tribunal through the United Nations Detention Unit (“Detention Unit”) on 14 May 2010, Karadžić sought permission to contact, by way of written correspondence, Mr. Robert Treichler (“Mr. Treichler”), a journalist and editor of the Austrian magazine *Profil* (“Request for Media Contact”). Annexed to the Request for Media Contact were Karadžić’s written responses to four questions submitted to him by Mr. Treichler (“Four Questions”). In a letter to Karadžić dated 13 August 2010 the Registrar issued a decision on the Request for Media Contact (“Impugned Decision”), wherein he granted the Request for Media Contact in part, subject to the condition that Karadžić either omit or rephrase his respective responses to the second and third of the Four Questions.¹

3. With regard to Karadžić’s response to the second of the Four Questions (“Second Response”), the Registrar stated that Karadžić inaccurately summarizes the Tribunal’s decisions on the Holbrooke agreement.² The Deputy Registrar thus denied the publication of the Second Response pursuant to Rule 64 *bis*(B)(ii) of the Rules of Detention,³ and invited Karadžić to either omit or rephrase the offending portion of the Second Response.⁴ With regard to Karadžić’s response to the third of the Four Questions (“Third Response”), the Registrar denied publication pursuant to Rule 64 *bis*(B)(ii) of the Rules of Detention, and invited Karadžić to either omit or rephrase the response on the basis that it “unfairly and incorrectly misrepresents the work of the Office of the Prosecutor of the ICTY”.⁵

4. Karadžić subsequently filed the Request for Reversal. On 25 August 2010, the Registrar filed a submission, pursuant to Rule 33(B) of the Rules of Procedure and Evidence of the Tribunal,

¹ Impugned Decision, p. 1.

² *Ibid.*

³ Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal, IT38/Rev.9, 21 July 2005 (“Rules of Detention”).

⁴ Impugned Decision, p. 1.

⁵ *Ibid.*

in response to the Request for Reversal.⁶ On 30 August 2010, Karadžić filed a request for leave to reply and a reply to the Rule 33(B) Submission.⁷

II. SUBMISSIONS

A. Request for Reversal

5. Karadžić states that the Registrar “withheld” a decision on the Request for Media Contact for three months.⁸ He submits that this amounted to an unreasonable delay and a failure on the part of the Registrar “to observe basic rules of natural justice and procedural fairness towards a detainee”.⁹ Karadžić further contends that the unreasonable delay in issuing a decision on the matter constituted a waiver by the Registrar of his right to object to the contents of the communication, and thus provided a basis for quashing the Impugned Decision.¹⁰ Karadžić thereby requests that I order the answers to the Four Questions to “be transmitted to the journalist as written, and forthwith”.¹¹ He also requests that I direct the Registrar to complete the review of requests for media contact generally, within five days of the receipt thereof.¹²

6. Karadžić further states while he agrees to revise his Response to the Second Question, he objects to the Deputy Registrar’s decision barring the communication of the Third Response to Mr. Treichler, on the basis that the said decision is unreasonable.¹³ Karadžić submits that the Third Response accurately represents his perception of the conduct of the Office of the Prosecutor of the Tribunal (“OTP”). He argues that the Registrar is not entitled to censor the answers of detainees merely on the basis that he disagrees with them.¹⁴ Karadžić states that in press conferences since 1995, the OTP has made statements concerning him with which he disagrees, however “[n]o one has suggested that these communications with the news media by the prosecution should be halted”.¹⁵ Karadžić states that the Deputy Registrar’s decision with regard to the Third Response is thus tantamount to censorship and constitutes a violation of his right to free speech.¹⁶

⁶ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Registrar’s Submission Pursuant to Rule 33(B) of the Rules Regarding Radovan Karadžić’s Request for Reversal of Limitations of Contact with Journalist, filed publicly with confidential annexes on 25 August 2010 (“Rule 33(B) Submission”).

⁷ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Motion for Leave to Reply and Reply Brief: Request for Reversal of Limitations of Contact with Journalist: Profil Magazine, 30 August 2010 (“Reply”).

⁸ Request for Reversal, para. 11.

⁹ *Ibid.*, paras 12-13.

¹⁰ *Id.*, para. 14.

¹¹ *Id.*

¹² *Id.*, para. 15.

¹³ *Id.*, paras 16-17 and 20.

¹⁴ *Id.*, para. 20-21.

¹⁵ *Id.*, para. 21.

¹⁶ *Id.*, paras 20-21.

7. Karadžić also contends that as the Third Response did not reveal confidential information or affect the good order of the Detention Unit, the Registrar went beyond his mandate prescribed under Rule 64 *bis*(B)(ii) by denying the communication of the Third Response “for reasons other than confidentiality and security”.¹⁷ Karadžić thus submits that the Deputy Registrar factored into account irrelevant considerations in arriving the decision to deny communication of the Third Response to Mr. Treichler, and that the decision was therefore unreasonable.¹⁸

B. Rule 33(B) Submission

8. With regard to Karadžić’s submission that there was an unreasonable delay in the issuance of the Impugned Decision, the Registrar states that requests for media contact are as a general rule, processed “as expeditiously as possible”, and that “limited Registry resources require that such requests be considered within the framework of the overall Registry workload and balanced against competing priorities”.¹⁹ The Registrar acknowledges that the length of time taken in responding to the Request for Media Contact was “unusually long”, however, he states that Karadžić’s requests for media access are normally expeditiously resolved.²⁰ In this regard the Registrar notes that of the 22 requests for media contact submitted as at the date of the Rule 33(B) Submission, 17 were processed within two weeks of receipt. It is argued that these figures reflect “a consistently conscientious treatment of the Accused’s requests”.²¹ The Registrar also submits that Karadžić did not suffer any prejudice as a result of the aforementioned delay, as he still intends to submit his responses to Mr. Treichler for publication.²²

9. The Registrar also submits that there is no basis to Karadžić’s argument that the delay in processing the Request for Media Contact amounted to a waiver by the Registrar of his right to object to the contents of the Karadžić’s responses to the Four Questions. It is argued that “balancing the need to respond to the request with other competing priorities can in no way be construed as any form of waiver of the right to review the request”.²³ With regard to Karadžić’s request that a time limit of five days be established for the processing of requests for media contact generally, the Registrar further submits that such a limit “would be overly burdensome given the time required for a coordinated review and response on behalf of the various Registry sections implicated”.²⁴ The Registrar also states that the proposed time limit would compromise the Registry’s ability to

¹⁷ *Id.*, para. 23.

¹⁸ *Id.*, paras 22-23.

¹⁹ Rule 33(B) Submission, para. 9.

²⁰ *Ibid.*, para. 10.

²¹ *Id.*

²² *Id.*, para. 11.

²³ *Id.*, para. 12.

²⁴ *Id.*, para. 13.

address more urgent, trial-related priorities.²⁵ The Registrar further submits that the Registry “is currently reviewing its procedures to ensure maximum efficiency” with regard to any future requests.²⁶

10. In response to Karadžić’s allegation of unreasonable censorship, the Registrar contends that the Impugned Decision is compliant with Rule 64*bis* of the Rules of Detention. He asserts that Karadžić’s Third Response misrepresented the work of an organ of the Tribunal, and “thus could potentially undermine the mandate of the Tribunal and/or interfere with the administration of justice”.²⁷ The Registrar argues that he was obliged to request that the Third Response either be omitted or rephrased, and contends that the fact that Karadžić may consider the statements made in the offending response to be true, does not diminish the Registrar’s duty to abide by the provisions of Rule 64 *bis* of the Rules of Detention.²⁸ The Registrar also asserts that Karadžić’s submission to the effect that the decision denying the communication of the Third Response to Mr. Treichler was unwarranted as the response did not disclose confidential information or affect the good order of the Detention Unit, was irrelevant as it did not form the basis of the Impugned Decision.²⁹

11. With regard to Karadžić’s contention that the decision concerning the Third Response infringed his right to freedom of expression, the Registrar submits that various international and regional legal instruments recognise the necessity for restrictions on the right of detainees to freedom of expression in certain circumstances.³⁰ The Registrar thus submits that Impugned Decision was compliant with accepted human rights standards.³¹

12. The Registrar accordingly therefore contends that the Impugned Decision was compliant with Rule 64*bis* of the Rules of Detention, that in arriving at the said decision only relevant material was factored into consideration, and that the conclusion arrived at therein was “entirely reasonable in the context of the Rules of Detention”.³²

²⁵ *Id.*

²⁶ *Id.*, para. 14.

²⁷ *Id.*, para. 18.

²⁸ *Id.*

²⁹ *Id.*, para. 20.

³⁰ *Id.*, para. 21. The Registrar cites at footnote 16 of the Rule 33(B) Submission, Article 19 of the International Covenant on Civil and Political Rights (“ICCPR”), Article 10 of the European Convention on Human Rights (“ECHR”), and Article 24.2 of the European Prison Rules (“EPR”). With regard to Article 19 of the ICCPR and Article 10 of the ECHR, the Registrar notes that both provisions allow for restrictions on the right to freedom of expression where safety and security considerations are in issue. The Registrar further notes that Article 24.2 of the EPR provides that “appropriate restrictions may be put in place to facilitate the maintenance of good order, among other reasonable objectives”.

³¹ Rule 33(B) Submission, para. 21.

³² *Id.*, para. 22.

C. Reply

13. Karadžić requests leave to reply to the Rule 33(B) Submission.³³ In his Reply, Karadžić contends, *inter alia*, that the Registrar's objection to the proposed five-day limit for consideration of requests for media contact on the basis of its potential burdensomeness on Registry resources is nonsensical in view of the fact that "Karadžić's two page answers to journalists' questions can be read in about two minutes".³⁴ Karadžić also states that that since the commencement of "the evidence phase of the trial in April", he has submitted only one other request for media contact aside from the Request for Media Contact.³⁵

14. With regard to the Registrar's submissions concerning Karadžić's allegations of unreasonable censorship, Karadžić argues, *inter alia*, that the Registrar fails to specifically demonstrate how the Third Response undermines the mandate of the Tribunal or interferes with the administration of justice.³⁶

III. RELEVANT PROVISIONS OF THE RULES OF DETENTION

15. Rule 64*bis* of the Rules of Detention, which governs the procedure by which a detainee at the Detention Unit may seek to contact the media, provides as follows:

- (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 in the right of the accused to be tried fairly, refer the request to the Trial Chamber to determine.

IV. STANDARD OF REVIEW

16. The following standard has been set for the review of administrative decisions made by the Registrar:

³³ Reply, para. 3.

³⁴ *Id.*, para. 5.

³⁵ *Id.*

³⁶ *Id.*, paras 7-9.

A judicial review of [...] an administrative decision is not a rehearing. Nor is it an appeal, or in any way similar to the review which a Chamber may undertake of its own judgement in accordance with Rule 119 of the Rules of Procedure and Evidence. A judicial review of an administrative decision made by the Registrar [...] 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.³⁷

Accordingly, an administrative decision will be quashed if the Registrar: failed to comply with the relevant legal requirements; failed to observe any basic rules of natural justice or procedural fairness; took into account irrelevant material or failed to consider relevant material; or reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached (the 'unreasonableness' test).³⁸

V. DISCUSSION

17. As a preliminary issue, Karadžić's request for leave to reply to the Rule 33(B) Submission is granted.

18. I also note at the outset that Karadžić has agreed to revise his Second Response ("Revised Response"), a copy of which is annexed to the Request for Reversal.³⁹ As the Revised Response was not available for consideration by the Registrar at the time the Impugned Decision was issued, has yet to be reviewed by the Registrar, and a decision issued thereon by the Registrar pursuant to Rules 64bis(A) and 64bis(B) of the Rules of Detention, I do not consider myself competent pursuant Rule 64bis(C) of the Rules of Detention, to issue a decision on the Revised Response at present. Accordingly, the Revised Response will not be further addressed in the instant decision.

19. With regard to Karadžić's assertion that there was an unreasonable delay by the Registrar in issuing the Impugned Decision, I indeed consider that the three months taken by the Registry to

³⁷ *Prosecutor v. Miroslav Kvočka et al*, Case No. IT-98-30/I-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. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Appeal of OLAD Decision in Relation to Additional Pre-Trial Funds, 17 December 2009 ("Karadžić Decision of 17 December 2009"), para. 18; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Radovan Karadžić's Request for Reversal of Limitations of Contact with Journalist: Russia Today, 6 November 2009 ("Karadžić Decision of 6 November 2009"), para. 22; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Radovan Karadžić's Request for Reversal of Limitations of Contact with Journalist: Le Monde, 28 October 2009 ("Karadžić Decision of 28 October 2009"), para. 14; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.2, Decision on Interlocutory Appeal of the Trial Chamber's Decision on Adequate Facilities, 7 May 2009 ("Karadžić Decision of 7 May 2009"), para. 10; *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, 12 February 2009 ("Karadžić Decision of 12 February 2009"), para. 17; *Prosecutor v. Vesselin Šljivančanin*, Case No. IT-95-13/1-PT, Decision on Assignment of Defence Counsel, 20 August 2003 ("Šljivančanin Decision"), para. 22.

³⁸ Kvočka Decision, para. 13. See also Karadžić Decision of 17 December 2009, para. 18; Karadžić Decision of 6 November 2009, para. 22; Karadžić Decision of 7 May 2009, para. 10; Karadžić Decision of 28 October 2009, para. 14; Karadžić Decision of 12 February 2009, para. 17; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on Krajišnik Request and on Prosecution Motion, 11 September 2007 ("Krajišnik Decision"), para. 30; Šljivančanin Decision, para. 22.

³⁹ Request for Reversal, para. 17.

process the Request for Media Contact constituted an inordinate delay. I note however, Karadžić's contention that "by unreasonably delaying his review, the Registrar waived his right to object to the contents of the communication".⁴⁰ I consider this submission to be erroneous. A delay by the Registry in processing requests for media contact does not divest the Registrar of his official duty under Rule 64bis(A) of the Rules of Detention, to assess whether contact by a detainee with the media could either disturb the good order of the Detention Unit, or interfere with the administration of justice or otherwise undermine the Tribunal's mandate, pursuant to Rule 64bis(B) of the Rules of Detention. Accordingly, in the instant case, the three-month delay by the Registrar in reviewing the Request for Media Contact does not translate into a waiver on his part of his professional obligation to review the said request, and issue a decision thereon, regardless of whether the decision rejects the contents of the communication submitted for approval along with the request.

20. Furthermore, I note the Registrar's submission that the delay in issuing the Impugned Decision on the Request for Media Contact is uncharacteristic of the Registry's general response in processing such requests, and that "limited Registry resources" and "competing priorities" impeded its ability on this specific occasion, to issue a timely response to the Request for Media Contact.⁴¹ I also note the Registrar's submission that the creation of a five-day deadline for the processing of requests for media contact in general, could interfere with the Registry's ability to effectively manage competing, trial-related priorities, particularly considering the need for "a coordinated review and response on behalf of the various Registry sections implicated" in processing such requests.⁴² I further note the Registrar's assurance that the Registry will in future address such requests as promptly as possible, and that the Registry is "currently reviewing its procedures to ensure maximum efficiency".⁴³ I nonetheless urge the Registry to ensure that requests for media contact from detainees at the Detention Unit are processed within 10 days of their receipt by the Registry or as early as possible thereafter.

21. I now turn to Karadžić's contention that the decision denying communication of the Third Response to Mr. Treichler constitutes unreasonable restriction of his right to freedom of expression.⁴⁴ At this juncture I note that in assessing whether a detainee's request for access to the media can be accommodated pursuant to Rule 64bis of the Rules of Detention, the Registrar is

⁴⁰ Request for Reversal, para. 14.

⁴¹ Rule 33(B) Submission, paras 9-10.

⁴² *Ibid.*, para. 13.

⁴³ *Id.*, para. 14.

⁴⁴ Request for Reversal, paras 16-23.

obliged to respect the detainee's right to freedom of expression, and to carefully balance it against the interests of the prison authorities.⁴⁵

22. Having reviewed the Third Response, I note that it in essence comprises Karadžić's personal opinion alleging bias on the part of the OTP. I am unable to appreciate how this opinion as stated, falls within the scope of Rule 64bis(B)(ii) of the Rules of Detention. Indeed, both the Impugned Decision, and Rule 33(B) Submission fail to specify how the Third Response could either interfere with the administration of justice or otherwise undermine the mandate of the Tribunal.

23. The Deputy Registrar denied communication of the Third Response to Mr. Treichler on the basis that it is an unfair and incorrect representation of the work of the OTP.⁴⁶ This appears however, to be no more than the Deputy Registrar's statement of his own personal disagreement with the opinion expressed by Karadžić in the Third Response. The mere fact that the Deputy Registrar disagrees with the opinion conveyed by the said response, without more, does not provide an adequate basis for curtailing Karadžić's right to freedom of expression in the absence of some indication as to how the response could, if publicised, result in the kind of prejudice to the Tribunal's operations envisioned under Rule 64bis(B)(ii) of the Rules of Detention. Contact with the media which, for example, threatens to result in the public disclosure of confidential information could clearly result in the prejudicial consequences stated under Rule 64bis(B)(ii) of the Rules of Detention. However, I consider that no reasonable person who has properly applied his mind to the current issue, could arrive at the conclusion that the publication of Karadžić's subjective view, as stated in the Third Response, alleging bias on the part of the OTP and a general lack of impartiality in its conduct of investigations, could interfere with the administration of justice or otherwise undermine the Tribunal's mandate.

24. Accordingly, the denial of the Request for Media Contact in the present circumstances does not serve the legitimate interests of the Tribunal, as provided under Rule 64bis(B)(ii) of the Rules of Detention. I therefore consider the Deputy Registrar's decision denying the Request for Media Contact with regard to the Third Response is unreasonable and thus amounts to an unjustified restriction of Karadžić's right to freedom of expression in the instant circumstances.

VI. DISPOSITION

25. For the foregoing reasons, pursuant to Rule 64bis of the Rules of Detention I:

- (a) **GRANT** the Request for Reversal **IN PART**;

⁴⁵ Karadžić Decision of 6 November 2009, para. 23.

- (b) **DIRECT** the Registrar to allow the communication of the Third Response to Mr. Treichler; and
- (c) **DENY** the Request for Reversal in all other respects.

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



Judge Patrick Robinson
President

Dated this 11th day of October 2010,
At The Hague,
The Netherlands

[Seal of the Tribunal]

⁴⁶ Impugned Decision, p. 1.