

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-A

Date: 12 June 2017

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President
Registrar: Mr. Olufemi Elias
Order of: 12 June 2017

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

ORDER FOR SUBMISSIONS

Counsel for Mr. Radovan Karadžić

Mr. Peter Robinson

Ms. Kate Gibson

I, THEODOR MERON, President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”);

NOTING the Status Conference held in the case of Mr. Radovan Karadžić (“Karadžić”) on 15 November 2016, pursuant to Rule 69(B) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), in which I requested, in my capacity as Pre-Appeal Judge in Karadžić’s case before the Appeals Chamber of the Mechanism (“Appeals Chamber”),¹ the Registrar of the Mechanism (“Registrar”) to provide information concerning certain issues raised by Karadžić related to the conditions of his detention, including the possibility, subject to security and overriding considerations, of the use of “Skype”;²

NOTING the “Registrar’s Submission in Relation to Matters Raised at the Status Conference Held on 15 November 2016”, filed on 24 November 2016 (“Registrar’s Submission of 24 November 2016”), in which the Registrar provided information regarding the possibility of the use of “Skype” at the United Nations Detention Unit (“UNDU”);³

RECALLING the “Order Relating to Matters Raised at the Status Conference”, filed on 14 December 2016 (“Order of 14 December 2016”), in which I, in my capacity as Pre-Appeal Judge in Karadžić’s case before the Appeals Chamber, directed Karadžić to utilize the procedures provided under the Rules of Detention⁴ and Complaints Procedure⁵ with respect to issues relating to the conditions of his detention and invited the Registrar to provide information on any new development related to the potential establishment of secure video communication at the UNDU;⁶

NOTING that additional information regarding the possibility of the use of “Skype” at the UNDU was presented both by the Registrar pursuant to the Order of 14 December 2016 and, in response, by Karadžić during the Status Conference held on 6 March 2017;⁷

¹ See Order Assigning a Pre-Appeal Judge, 21 April 2016.

² Status Conference, T. 15 November 2016 pp. 2, 7, 8. I note that, for the purposes of the present Order, “Skype” refers to video communication applications.

³ Registrar’s Submission of 24 November 2016, para. 3. See also Registrar’s Further Submission in Relation to Matters Raised at the Status Conference Held on 15 November 2016, 6 December 2016; Reply to Registrar’s Submission on Availability of Skype, 25 November 2016.

⁴ See 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.10, 15 November 2016 (“Rules of Detention”). I note that the Rules of Detention apply *mutatis mutandis* to persons under the authority of the Mechanism who are being detained at the UNDU.

⁵ See United Nations Detention Unit Complaints Procedure for Detainees, IT/96/Rev.1, 14 December 2016 (“Complaints Procedure”). I note that the Complaints Procedure applies *mutatis mutandis* to persons under the authority of the Mechanism who are being detained at the UNDU.

⁶ Order of 14 December 2016, p. 3.

⁷ Status Conference, T. 6 March 2017 (“Status Conference of 6 March 2017”) pp. 23-26; Registrar’s Submission Pursuant to the Order of 14 December 2016, 2 March 2017, paras. 2, 3.

NOTING that, on 11 April 2017, Karadžić submitted a letter to the Commanding Officer of the UNDU, in which he requested access to “Skype” or an equivalent means of communicating with his family;⁸

NOTING that the Acting Commanding Officer of the UNDU denied Karadžić’s request by a letter dated 19 April 2017;⁹

NOTING that, on 25 April 2017, Karadžić requested that the Registrar reverse the decision of the Acting Commanding Officer of the UNDU;¹⁰

NOTING that the Registrar denied Karadžić’s request by a letter dated 8 May 2017 (“Impugned Decision”)¹¹ on the basis that, *inter alia*: (i) the UNDU management and the Registry of the Mechanism (“Registry”) are required to ensure that the addition of secure video communication at the UNDU poses no risk to the administration of justice and the security and good order of the UNDU;¹² (ii) the introduction of secure video communication at the UNDU would entail a policy change, as well as regulatory amendments, that would affect all detainees at the UNDU, including those under the authority of the Mechanism as well as those under the authority of the International Criminal Tribunal for the former Yugoslavia (“ICTY”);¹³ and (iii) given the steps necessary to make such a policy change,¹⁴ the Complaint was not justified “at this point in time” due to the “current regulatory framework and since the matter is still under consideration and the Registry is currently exploring the possibility of offering secure video communication for detainees”;¹⁵

BEING SEISED OF the Complaint, filed by Karadžić on 12 May 2017, in which he seeks review of the Impugned Decision, pursuant to Rule 83 of the Rules of Detention and Regulation 3 of the Complaints Procedure, because, *inter alia*, it is “procedurally unfair, takes into account irrelevant considerations, fails to take into account relevant considerations, and is unreasonable”, and in which

⁸ Appeal of Registrar’s Decision on Skype, 12 May 2017 (“Complaint”), para. 14; Complaint, Annex D, pp. 5176-5178 (Registry pagination).

⁹ See Complaint, para. 15; Complaint, Annex E, p. 5174 (Registry pagination).

¹⁰ Complaint, para. 16; Complaint, Annex F, pp. 5170-5172 (Registry pagination).

¹¹ I note that the Impugned Decision is attached to the Complaint as Annex H. All references herein to the “Impugned Decision” are to Annex H of the Complaint.

¹² Impugned Decision, p. 5164 (Registry pagination).

¹³ Impugned Decision, p. 5164 (Registry pagination). See also Complaint, para. 18.

¹⁴ Impugned Decision, p. 5164 (Registry pagination).

¹⁵ Impugned Decision, p. 5164 (Registry pagination). In the Impugned Decision, the Registrar informs that the UNDU management is in regular contact with the Dutch Custodial Institutions Agency of the Ministry of Security and Justice (“DJI”) regarding the development of a nationwide secure platform that would allow detainees in Dutch prisons the opportunity to use secure video communication with persons outside detention facilities and that the Registry is also making efforts to engage in discussions with Norwegian authorities about video communication facilities offered in Norderhagen prison that may serve as a useful model for secure video communications at the UNDU. See Impugned Decision, p. 5165 (Registry pagination).

Karadžić further requests that I issue an order to the Registrar to make “Skype” available at the UNDU by 1 October 2017;¹⁶

NOTING the “Registrar’s Submission Regarding Mr. Karadžić’s Appeal of the Registrar’s Decision on Skype”, filed on 23 May 2017 (“Registrar’s Submission of 23 May 2017”),¹⁷ in which the Registrar submits that he has sought further information about, and undertaken an analysis of, “relevant matters” that need to be considered in any policy decision to provide a secure video communication system to detainees in the UNDU, which include: (i) possible changes to the applicable legal and regulatory framework;¹⁸ (ii) procedural requirements to adopt a new policy;¹⁹ (iii) different possible platforms for secure video communication;²⁰ (iv) supervision and monitoring requirements;²¹ and (v) budgetary and resource implications;²²

RECALLING that, during the Status Conference held on 6 March 2017, I noted that the possibility of establishing a nationwide secure platform that would allow detainees in Dutch prisons the opportunity to use secure video communications, which is currently being explored by the DJI, and, according to the Registrar, is not expected to be operational before 2020, does not represent a satisfactory resolution of the problem;²³

RECALLING FURTHER that, as I expressed during the Status Conference held on 6 March 2017, in principle, I believe that “Skype” should be available to detainees at the UNDU and that, during that Status Conference, I informed the Registry of my desire to see some progress made in relation to this issue and further requested that the Registry representatives at the Status Conference held on 6 March 2017 communicate my views in this regard to the Registrar;²⁴

OBSERVING that, while this matter has been on-going for a significant period of time, the Registry has stated that it is addressing the various legal, technical and security-related issues that would allow it to provide secure video communication to the detainees in the UNDU,²⁵ which it

¹⁶ Complaint, paras. 1, 29, 30. *See also* Complaint, paras. 20-28.

¹⁷ I note that the Registrar’s Submission of 23 May 2017 was filed pursuant to Rule 31(B) of the Rules and in accordance with Regulation 3(C) of the Complaints Procedure, which states that the Registrar “shall transmit to the President all relevant information obtained in the course of the investigation of the complaint”. *See* Registrar’s Submission of 23 May 2017, para. 1.

¹⁸ Registrar’s Submission of 23 May 2017, para. 4(a).

¹⁹ Registrar’s Submission of 23 May 2017, para. 4(b).

²⁰ Registrar’s Submission of 23 May 2017, paras. 4(c) and (e).

²¹ Registrar’s Submission of 23 May 2017, para. 4(d).

²² Registrar’s Submission of 23 May 2017, para. 4(e).

²³ Status Conference of 6 March 2017, p. 29. *See also* Registrar’s Submission of 23 May 2017, para. 3.

²⁴ Status Conference of 6 March 2017, p. 29.

²⁵ Registrar’s Submission of 23 May 2017, para. 5.

supports, in principle, so long as such secure video communication can be used in a manner consistent with the applicable rules and regulations;²⁶

NOTING, specifically, that the Registry: (i) has scheduled additional consultations with the Norwegian authorities to discuss their trial video communication programme; and (ii) is in dialogue with the International Committee of the Red Cross regarding the possibility of secure video communication for detainees at the UNDU;²⁷

NOTING the various concerns raised by the Registrar, including those related to the safety and security of the UNDU as well as issues related to policy matters that may impact both the Mechanism and the ICTY;

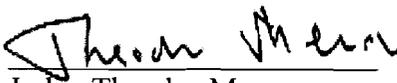
CONSIDERING accordingly that, before deciding on the Complaint, it is appropriate to solicit additional submissions from the Registrar on various aspects of the Registrar's Submission of 23 May 2017 and, in doing so, to provide the Registrar with further time to address the issue of "Skype" at the UNDU with a view to seeing progress made in this respect at the time of his next submission;

RECALLING Rule 83(A) of the Rules of Detention and Regulation 3 of the Complaints Procedure,

HEREBY ORDER the Registrar to provide updated information on any new development related to the potential establishment of secure video communication at the UNDU in writing within sixty (60) days of the issuance of the present Order, which should include updates on all the various avenues being explored by the Registrar to provide secure video communication at the UNDU as well as on the consultations referenced in the Registrar's Submission of 23 May 2017.

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

Done this 12th day of June 2017,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Mechanism]

²⁶ See Impugned Decision, p. 5165 (Registry pagination).

²⁷ Registrar's Submission of 23 May 2017, para. 4(c).