

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-55-A

Date: 29 August 2017

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr. Olufemi Elias

Decision of: 29 August 2017

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON REQUEST FOR REVIEW OF REGISTRAR'S
DECISION**

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 that, on 11 April 2017, Karadžić submitted a letter to the Commanding Officer of the United Nations Detention Unit (“UNDU”), in which he requested access to “Skype” or an equivalent means of communicating with his family;¹

NOTING that the Acting Commanding Officer of the UNDU denied Karadžić’s request by a letter dated 19 April 2017;²

NOTING that, on 25 April 2017, Karadžić requested that the Registrar of the Mechanism (“Registrar”) reverse the decision of the Acting Commanding Officer of the UNDU;³

NOTING that the Registrar denied Karadžić’s request by a letter dated 8 May 2017 (“Impugned Decision”)⁴ 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;⁵ (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”);⁶ and (iii) given the steps necessary to make such a policy change,⁷ 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”;⁸

¹ Appeal of Registrar’s Decision on Skype, 12 May 2017 (“Complaint”), para. 14; Complaint, Annex D, pp. 5176-5178 (Registry pagination). I note that in my “Order for Submissions”, filed on 12 June 2017 (“Order for Submissions”), I provided a detailed account of the procedural history related to Karadžić’s request for the use of “Skype”. I note that, for the purposes of the present Order, “Skype” refers to video communication applications.

² See Complaint, para. 15; Complaint, Annex E, p. 5174 (Registry pagination).

³ Complaint, para. 16; Complaint, Annex F, pp. 5170-5172 (Registry pagination).

⁴ 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.

⁵ Impugned Decision, p. 5164 (Registry pagination).

⁶ Impugned Decision, p. 5164 (Registry pagination). See also Complaint, para. 18.

⁷ Impugned Decision, p. 5164 (Registry pagination).

⁸ 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).

BEING SEISED OF the “Appeal of Registrar’s Decision on Skype”, filed on 12 May 2107 by Karadžić (“Complaint”), in which he seeks review of the Impugned Decision, pursuant to Rule 83 of the Rules of Detention⁹ and Regulation 3 of the Complaints Procedure¹⁰, 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 Karadžić further requests that I issue an order to the Registrar to make “Skype” available at the UNDU by 1 October 2017;¹¹

RECALLING that I ordered the Registrar on 12 June 2017 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 that 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 Regarding Mr. Karadžić’s Appeal of the Registrar’s Decision on Skype”, filed on 23 May 2017 (“Registrar’s Submission of 23 May 2017”);¹²

NOTING that on 11 August 2017, the Registrar requested a brief extension to file his submission in response to the Order for Submissions;¹³

NOTING that I received the “Registrar’s Submission in relation to the Order of 12 June 2017”, filed on 14 August 2017, with a confidential annex (“Registrar’s Submission of 14 August 2017” and “Confidential Annex”, respectively), in which the Registrar submits that the Registry has continued to conduct its own analysis and hold consultations to explore the following suitable avenues to provide secure video communication at the UNDU (“Registry Investigation”): (i) the secure video communication provided by the Dutch Custodial Institutions Agency of the Ministry of Security and Justice (“DJI”); (ii) consultations with the International Committee of the Red Cross (“ICRC”) regarding standard operating procedures for secure video communication in other countries; (iii) “Skype for Business”, involving consultations with the Norwegian authorities running the Norgerhaven prison in the Netherlands where a pilot programme on the use of this

⁹ 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.

¹⁰ 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.

¹¹ Complaint, paras. 1, 29, 30. See also Complaint, paras. 20-28.

¹² Order for Submissions, 12 June 2017 (“Order for Submissions”).

¹³ Registrar’s Request for Brief Extension of Time to File the Submission in Relation to the Order of 12 June 2017, public, 11 August 2017 (“Request”).

application has been introduced; and (iv) video teleconferencing, using dedicated video teleconferencing (“VTC”) equipment or software installed on a regular computer;¹⁴

CONSIDERING that the Registrar requested only a brief extension of time to file the information requested in the Order for Submissions and that logistical reasons, combined with the brief extension of time requested, amount to good cause warranting an extension of some three (3) days to file the Registrar’s Submission of 14 August 2017;

RECALLING that an administrative decision of the Registrar is subject to review by the President for procedural or substantive unfairness and the President may quash an administrative decision if the Registrar (i) failed to comply with [...] legal requirements [...]; or (ii) failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision; or (iii) took into account irrelevant material or failed to take into account relevant material; or (iv) reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached (the “unreasonableness” test);¹⁵

CONSIDERING that the possibility of awaiting the establishment of 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 is not expected to be operational before 2020, does not represent a satisfactory resolution of the problem;¹⁶

CONSIDERING that in the course of the Registry Investigation, “Skype for Business”, currently used as a pilot video communication programme by the Norwegian authorities who run the Norgerhaven prison in the Netherlands, was determined to be incompatible with the Mechanism’s operating information technology (“IT”) environment because the Mechanism does not currently have in place the IT infrastructure to support this application;¹⁷

CONSIDERING, however, that in the course of the Registry Investigation the use of VTC specialised equipment or VTC software applications, were identified as secure solutions that may enable UNDU detainees to connect to outside users, the Mechanism would have to, *inter alia*: (i)

¹⁴ Registrar’s Submission of 14 August 2017, para. 2.

¹⁵ Public Redacted Version of Decision on Request for Review of Registrar’s Decision, 1 August 2017 (“*Karadžić Decision*”), paras. 12-13.

¹⁶ Further, in the Registrar’s Submission of 14 August 2017, it was held that if the Mechanism were to provide a secure video communication to UNDU detainees prior to the implementation of the programme by the Dutch authorities, it would need to take on all technical, financial and legal responsibilities associated with it, *see Confidential Annex*, para. 1; Order for Submissions, p. 3; Status Conference of 6 March 2017, p. 29. *See also* Registrar’s Submission of 23 May 2017, para. 3.

¹⁷ Confidential Annex, paras. 3-5.

purchase new VTC equipment at a cost of approximately USD10,000; and/or (ii) purchase an additional number of licence programmes (“VTC Solutions”);¹⁸

CONSIDERING that the VTC Solutions might provide a secure platform for video communication and that: (i) the VTC specialised equipment is already in use at the Mechanism between offices; (ii) the VTC specialised equipment runs a proprietary operating system that only deals with video-communications and is therefore less susceptible to viruses and malware which could be present on the computers of the approved contacts of detainees and which could affect the Mechanism’s IT operating system; (iii) the VTC specialised equipment allows for remote troubleshooting (without the need to access UNDU premises), and requires less ITSS’ involvement in terms of updates and maintenance; and (iv) following the closure of the UNDU, the VTC equipment could be retrieved and re-used by the Mechanism;¹⁹

CONSIDERING that at the time of reaching the Impugned Decision the Registrar was not aware of the VTC Solutions as potential platforms for UNDU video communications, however, the Registrar has committed, in light of these new solutions, to “further explore the options of the VTC specialised equipment and VTC software applications, as a potential platform for UNDU video communication”;²⁰

NOTING that the Registry is still awaiting further information from the ICRC regarding concrete solutions of secure video communication for detainees and on standard operating procedures on the use of video communications in other countries and that such information may be of benefit to the Registrar;²¹

RECALLING that one of the reasons that Karadžić’s request to access “Skype” or an equivalent means of communicating with his family was denied was on the basis that 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”);²²

CONSIDERING that necessary changes to the UNDU policy and regulatory frameworks should not be a barrier to the implementation of best practice in detention management and facilities, such as making VTC available to detainees under the authority of the Mechanism;

¹⁸ Confidential Annex, paras. 7-11.

¹⁹ Confidential Annex, paras. 7, 11.

²⁰ Confidential Annex, para. 11. *See also* Impugned Decision, p. 5164 (Registry pagination).

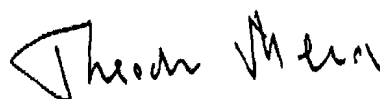
CONSIDERING the above-mentioned considerations, including, *inter alia*, that there are changes required to the UNDU policy and regulatory framework which may require consultation with the ICTY as well as the Mechanism, it is unreasonable to impose an order on the Registrar to implement the capacity for detainees at the UNDU to access Skype communications by 1 October 2017, as was requested by Karadžić;

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

HEREBY GRANT the Registrar's Request for an extension of time, and the Complaint, in part, and **REMIT** the matter for the reconsideration of the Registrar within forty-five (45) days, consistent with the terms of the present Decision.

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

Done this 29th day of August 2017,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Mechanism]

²¹ Confidential Annex, paras. 2, 11.

²² Impugned Decision, p. 5164 (Registry pagination). *See also* Complaint, para. 18.



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS/
FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS DEVANT LE
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I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

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From/ De :	<input checked="" type="checkbox"/> Chambers/ Chambre	<input type="checkbox"/> Defence/ Défense	<input type="checkbox"/> Prosecution/ Bureau du Procureur	<input type="checkbox"/> Other/ Autre :	
Case Name/ Affaire :	Prosecutor v. Radovan Karadžić		Case Number/ Affaire n° :	MICT-13-55-A	
Date Created/ Daté du :	29 August 2017	Date transmitted/ Transmis le :	29 August 2017	No. of Pages/ Nombre de pages :	6
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/Autre (specify/préciser) :
Title of Document/ Titre du document :	Decision on request for review of Registrar's decision				
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