

**UNITED
NATIONS**



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-95-05/18-T
Date: 07 October 2013
Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Theodor Meron, President
Registrar: Mr. John Hocking
Decision of: 07 October 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON REQUEST FOR REVERSAL OF LIMITATIONS
OF CONTACT WITH JOURNALIST: SÜDDEUTSCHE
ZEITUNG MAGAZIN**

Office of the Prosecutor:
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:
Dr. Radovan Karadžić

1. **I, THEODOR MERON**, 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”), am seised of the “Request for Reversal of Limitations of Contact with Journalist: *Süddeutsche Zeitung Magazin*”, filed by Radovan Karadžić (“Karadžić”) on 7 August 2013 (“Request”). The Deputy Registrar of the Tribunal (“Deputy Registrar”) filed a response on 21 August 2013,¹ and Karadžić filed a reply on 27 August 2013.²

I. BACKGROUND

2. On 1 August 2013, Karadžić wrote to the Registrar of the Tribunal (“Registrar”) requesting an in-person meeting with a journalist of the *Süddeutsche Zeitung Magazin*, a print media.³ Karadžić asserted that although the Tribunal had not previously allowed interviews with detainees at the United Nations Detention Unit (“UNDU”) due to “security concerns”, a recent TV report, prepared by the British Broadcasting Corporation (“BBC”) and filmed within the UNDU (“BBC Documentary”), had “set a new precedent for access of serious mainstream media”.⁴

3. On 2 August 2013, the Registrar denied the Media Request.⁵ He asserted that the Rules governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal⁶ (“Rules of Detention”) prohibit face-to-face contact with the media, specifically Rule 61(B) of the Rules of Detention.⁷ The Registrar stated that this interpretation is further supported by a decision rendered by the Acting President of the Tribunal in *Karadžić*’s case, which held that “Rule 61 of the Rules of Detention imposes a total ban on face to face visits between detainees and journalists”.⁸ The Registrar further asserted that the BBC Documentary was an entirely different scenario than the one presented by Karadžić, as the BBC did not have the permission to communicate with any of the detainees and did not have access to the UNDU areas while they were used by detainees.⁹ The Registrar explained that the BBC was only granted permission to film within the UNDU after it obtained permission from the host prison

¹ Deputy Registrar’s Submission Regarding the Accused’s Request for Reversal of Limitations of Contact with Journalist: *Süddeutsche Zeitung Magazin* [sic], 21 August 2013 (“Response”).

² Reply Brief: Request for Reversal of Limitations of Contact with Journalist: *Süddeutsche Zeitung Magazin*, 27 August 2013 (“Reply”).

³ See Request for Media Contact, 31 July 2013 (“Media Request”), Annex A.

⁴ Request, Annex A, p. 1.

⁵ See Request, Annex B, Letter from John Hocking, Registrar, to Karadžić, Re: Contact with *Süddeutsche Zeitung Magazin*, 2 August 2013 (“Impugned Decision”).

⁶ IT/38/REV.9, 21 July 2005.

⁷ Impugned Decision, p. 1.

⁸ Impugned Decision, n. 2, citing *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Karadžić’s Request for Reversal of Denial of Contact with Journalist, 12 February 2009, para. 16 (“12 February 2009 Decision”).

⁹ Impugned Decision, pp. 1-2.

authorities and other entities using the premises, and after a written agreement was signed.¹⁰ Finally, the Registrar observed that the *Süddeutsche Zeitung Magazin* was welcome to apply for a similar visit to the UNDU through the Tribunal's Media Office.¹¹

II. STANDARD OF REVIEW

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

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 judgment 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.¹²

Accordingly, an administrative decision may be quashed if the Registrar:

- (a) failed to comply with [...] legal requirements [...], or
- (b) failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision, or
- (c) took into account irrelevant material or failed to take into account relevant material, or
- (d) reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached (the "unreasonableness" test).¹³

5. Unless unreasonableness has been established, "there can be no interference with the margin of appreciation of the facts or merits of that case to which the maker of such an administrative decision is entitled".¹⁴ The party challenging the administrative decision bears the burden of demonstrating that "(1) an error of the nature enumerated above has occurred, and (2) [...] such an error has significantly affected the administrative decision to his detriment".¹⁵

III. APPLICABLE LAW

6. Rule 61 (B) of the Rules of Detention provides that "[t]he Registrar shall refuse to allow a person to visit a detainee if he has reason to believe that the purpose of the visit is to obtain information which may be subsequently reported in the media."

¹⁰ Impugned Decision, p. 2.

¹¹ Impugned Decision, pp. 1-2.

¹² *Prosecutor v. Miroslav 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 ("Žigić Decision"), para. 13. See also Decision on Request for Review of Decision on Defence Team Funding, 31 January 2012 ("Karadžić Decision"), para. 6.

¹³ Karadžić Decision, para. 6 (internal citation omitted). See also Žigić Decision, para. 13.

¹⁴ Žigić Decision, para. 13. See also Karadžić Decision, para. 7.

¹⁵ Karadžić Decision, para. 7 (internal citation omitted and alteration in original). See also Žigić Decision, para. 14.

7. Rule 64 *bis* of the Rules of Detention states “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.” Rule 64 *bis* of the Rules of Detention further holds that “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.”

IV. SUBMISSIONS

8. Karadžić requests that I reverse the Impugned Decision, on the basis that the Registrar erred in failing to consider the possibility of a face-to-face interview in the Tribunal’s main building which, in his view, would not violate Rule 61 of the Rules of Detention.¹⁶ Karadžić asserts that it is well established that restrictions on the rights of an accused are subject to the principle of proportionality.¹⁷ In support hereof, Karadžić relies on past a decision by the Acting President of the Tribunal,¹⁸ jurisprudence from the United States and Europe,¹⁹ the European Prison Rules,²⁰ and the Dutch Penitentiary Principles Act.²¹ According to Karadžić, the Registrar was under an obligation to consider alternative conditions under which a face-to-face interview could take place that would not jeopardise the “good order” of the UNDU or lead to the disclosure of confidential information.²²

9. Karadžić asserts that it is “questionable” whether the Registrar can maintain that the security of the UNDU will be compromised by the presence of a journalist, in light of the permission given to the BBC to film inside the detention facility and the availability of a virtual tour of the UNDU on the Tribunal’s website.²³ Karadžić contends that a meeting within the Tribunal’s main building would not implicate “the good order” of the UNDU nor would it violate Rule 61 of the Rules of Detention.²⁴ With regard to the possible disclosure of confidential information, Karadžić submits that the Registrar failed to consider alternative measures to ensure that no such information is revealed, such as allowing a court officer to sit in on the interview.²⁵ Moreover, Karadžić asserts that the record demonstrates that he has obeyed all the rules and has not

¹⁶ Request, paras 6, 18.

¹⁷ Request, para. 19.

¹⁸ Request, para. 19, *citing* Decision on Request for Reversal of Limitations of Contact with Journalist: Russia Today, 6 November 2009 (“6 November 2009 Decision”), para. 23.

¹⁹ Request, paras 20-23.

²⁰ Request, para. 24.

²¹ Request, para. 25.

²² Request, para. 26. *See also* Request, para. 33.

²³ Request, para. 29.

²⁴ Request, para. 29.

²⁵ Request, para. 30.

disclosed any confidential information in the past five years he has been at the Tribunal.²⁶ The alternative of written correspondence lacks, in Karadžić's view, "the spontaneity of oral communication, and the ability to follow-up or clarify the answer".²⁷

10. The Deputy Registrar responds that in issuing the Impugned Decision, the Registrar observed the standard set out in the *Kvočka* Decision and applied the Rules of Detention, the relevant jurisprudence of the Tribunal, and the Registry Protocol for Contacts between a Detainee and the Media ("Media Protocol").²⁸ According to the Deputy Registrar, the Rules of Detention are not location-specific in their application.²⁹ Thus, in the Deputy Registrar's view, Rule 61(B) of the Rules of Detention prohibits face-to-face interviews both at the UNDU and in the Tribunal's main building.³⁰ The Deputy Registrar contends that the Request was denied on the basis of a decision by the Acting President of the Tribunal who found that "the risk of potential disclosure of confidential information to a journalist in a direct conversation between a detainee and a journalist – even if inadvertent – is unacceptable".³¹

11. The Deputy Registrar further asserts that the Registrar complied with the basic rules of natural justice and procedural fairness by examining the Request although he considered it likely to have been completed by the journalist instead of Karadžić himself as required by the Media Protocol.³² The Deputy Registrar submits that the Registrar offered alternative modes of communication between *Süddeutsche Zeitung Magazin* and Karadžić, in accordance with the Media Protocol, and invited the journalists to apply for a visit to an unoccupied area of the UNDU, in line with their implied interest in visiting the detention facility.³³ The Deputy Registrar similarly notes that the Registrar only considered relevant material.³⁴ In this regard, she submits that Karadžić's reference to the interviews he held with prosecution witnesses who were journalists, in the Tribunal's main building is irrelevant, since the proofing sessions fulfilled a completely different function, namely to prepare for his participation as a self-represented accused at trial, and the journalists signed specific non-disclosure undertakings.³⁵

12. The Deputy Registrar next asserts that the Impugned Decision is reasonable and proportionate, and does not restrict Karadžić's freedom of expression by limiting the

²⁶ Request, para. 31. *See also* Request, paras 13, 15-16.

²⁷ Request, para. 27.

²⁸ Response, paras 9-10.

²⁹ Response, para. 11.

³⁰ Response, para. 12.

³¹ Response, para. 11, *citing* 12 February 2009 Decision, para. 21.

³² Response, para. 13. *See also* Response, Annex, Media Protocol, p. 1.

³³ Response, para. 13.

³⁴ Response, para. 14.

³⁵ Response, para. 14.

communication to written correspondence.³⁶ The Deputy Registrar contends that the Tribunal's jurisprudence is clear that "the restriction of detainees' contact with the media to written interviews is proportionate and protects the detainees' right to freedom of expression" whilst minimizing the risk of disclosing confidential information.³⁷ In her view, Karadžić's proposal to allow a court officer to sit in on a face-to-face interview is impractical and insufficient to prevent disclosure of confidential information to the journalists themselves.³⁸ The Deputy Registrar avers that an interview in written form, especially if conducted with a print media, adequately allows Karadžić to convey his messages to the media.³⁹ She asserts that Karadžić's argument that such written communication is purportedly "less spontaneous and does not leave room for clarifications" is more of a concern for the journalists than for the detainee and has been unsuccessfully raised by Karadžić before.⁴⁰ In this regard, the Deputy Registrar refers to a decision by the Acting President of the Tribunal finding that while a detainee is generally allowed to communicate with the media, this right does not comprise the form in which such communications take place.⁴¹ Finally, according to the Deputy Registrar, there has never been a request for further clarification by a journalist following previous interviews conducted with Karadžić via written communication.⁴²

13. In his reply, Karadžić asserts that Rule 61(B) of the Rules of Detention provides the Registrar with the discretion to consider alternative ways to ensure Karadžić's freedom of expression.⁴³ Karadžić submits that the amendment to Rule 61(B) of the Rules of Detention, which subjected decisions of the Registrar to review by the President in accordance with Rule 64 *bis*(C) of the Rules of Detention, would be deprived of any meaningful application if Rule 61(B) of the Rules of Detention was to be interpreted as conferring no discretion to the Registrar.⁴⁴ He further claims that in case of such interpretation, Rule 61(B) of the Rules of Detention itself would violate the principle of proportionality.⁴⁵ Finally, Karadžić asserts that the alternative presented by the Registrar of a written interview would lead to a complete denial of his right to freedom of expression, since the concerned journalists, in accordance with "sound journalistic practice", were not interested in such type of exchange.⁴⁶

³⁶ Response, para. 15.

³⁷ Response, para. 16.

³⁸ Response, para. 17.

³⁹ Response, para. 19.

⁴⁰ Response, para. 18.

⁴¹ Response, para. 19.

⁴² Response, para. 20.

⁴³ Reply, paras 3-5. *See also* Reply, paras 10-14.

⁴⁴ Reply, paras 6-7.

⁴⁵ Reply, para. 7.

⁴⁶ Reply, para. 14. *See also* Reply, para. 13.

V. DISCUSSION

14. As a preliminary matter, I consider that the Registrar acted reasonably in finding that the Rules of Detention apply *mutatis mutandis* to locations where a detainee is held for a limited amount of time during his ongoing detention at the UNDU. The primary purpose of the Rules of Detention is to “govern the administration of the detention unit”.⁴⁷ However, this set of rules more broadly aims at regulating “the general rights and obligations of detainees at all stages from admission to release”,⁴⁸ and the wording of Rule 61(B) of the Rules of Detention in particular does not limit the scope of its application to the UNDU *per se*. Indeed, the very purpose of the Rules of Detention would be compromised if they did not apply to foreseen temporary interruptions of the detainees’ presence at the UNDU.⁴⁹ In this regard, I consider that the Registrar acted in accordance with the rationale of Rule 61(B) of the Rules of Detention, which aims to protect confidential information, when he concluded that its application covers communications between journalists and detainees both inside the Tribunal’s main building, as well as at the UNDU.

15. Similarly, I consider that the Registrar took into account relevant material when determining that Rule 61 of the Rules of Detention does not allow for an in-person meeting between Karadžić and journalists from the *Süddeutsche Zeitung Magazin*.⁵⁰ I further find that the Registrar acted reasonably in concluding that where detainees are provided with alternative means of communication with the media, the restriction on in-person meetings is not unreasonable *per se*.⁵¹ The *Süddeutsche Zeitung Magazin*’s disinterest in conducting a written interview does not lead to a denial of Karadžić’s freedom of speech.⁵²

16. I also recall that in a prior decision the Acting President of the Tribunal found that while “a blanket denial of all interactive contact with the media”⁵³ is disproportionate it is “within the Registrar’s discretion to determine the most appropriate modality of communication”.⁵⁴ In light of the discretion afforded to the Registrar, I do not consider that he is under an obligation to consider alternative modes of conducting an in-person meeting with the media. In this regard, I consider it reasonable for the Registrar to have determined that the presence of a court officer, or similar alternatives, would not alleviate the risk of disclosing confidential information during an in-person

⁴⁷ Rules of Detention, Preamble.

⁴⁸ Rules of Detention, Preamble.

⁴⁹ See Rule 64 (A) of the Rules of Detention, which protects the following interests: (i) Prevention of the detainee’s escape; (ii) Efficiency of the proceedings; (iii) Safety of the detainee and others; and (iv) Prevention of disclosure of confidential information. See also Rule 64 *bis* (B) of the Rules of Detention.

⁵⁰ See Impugned Decision, p. 1, citing 12 February 2009 Decision, para. 16.

⁵¹ See Impugned Decision, p. 1. See also Response, paras 13, 16, 19; 12 February 2009 Decision, para. 16.

⁵² Reply, para. 13.

⁵³ See 12 February 2009 Decision, para. 18.

⁵⁴ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Request for Reversal of Limitations of Contact with Journalist, 21 April 2009 (“21 April 2009 Decision”), para. 23; 28 October 2009 Decision, para. 21.

meeting with a journalist.⁵⁵ Therefore, I consider the Impugned Decision reasonable given that the Registrar provided the detainee with access to other modes of communication with the media, including written correspondence.

VI. CONCLUSION

17. In light of the above, I find that Karadžić has failed to provide a basis for quashing the Impugned Decision. Specifically, I find that the Impugned Decision was reasonable, complied with the relevant legal requirements and took into account only relevant material. Moreover, the Registrar observed basic rules of natural justice and procedural fairness.

VII. DISPOSITION

18. In view of the foregoing, I hereby **DENY** the Request in its entirety.

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

Done this 7th day of October 2013,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Tribunal]

⁵⁵ See Response, para. 17.