

IT-95-5/18-T
D 78613 - D 78610
27 AUGUST 2013

78613

Kj

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-05/18-T

THE PRESIDENT

Before: Judge Theodor Meron

Registrar: Mr. John Hocking

Date Filed: 27 August 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

REPLY BRIEF: REQUEST FOR REVERSAL OF
LIMITATIONS OF CONTACT WITH JOURNALIST:
SUDDEUTSCHE ZEITUNG MAGAZIN

Office of the Prosecutor:

Mr. Alan Tieger

Ms. Hildegard Uertz-Retzlaff

The Accused:

Dr. Radovan Karadzic

1. Dr. Radovan Karadzic has requested that the President reverse the decision of the Registrar for denial of a face-to-face interview between him and a journalist for *Suddeutsche Zeitung Magazin*.

2. On 21 August 2013, there was filed the *Deputy Registrar's Submission Regarding the Accused's Request for Reversal of Limitations of Contact With Journalist: Suddeutsche Zeitung Magazin [sic]*. Dr. Karadzic now replies.

3. The issue in this appeal is a simple one: Does the Registrar's application of a total ban on face-to-face contact between a detained accused and a journalist violate the proportionality principle?

4. Dr. Karadzic maintains that the Registrar was required to consider ways in which his right to freedom of expression could be maintained while at the same time protecting the Tribunal's interests in the "good order" of the Detention Unit and the non-disclosure of confidential information.

5. The Registrar's letter is clear that no consideration of such alternatives was undertaken. The Registrar considers himself without discretion to approve face-to-face contact with a journalist in light of Rule 61(B) of the Rules of Detention.

6. However, Rule 61(B) was amended when Rule 64 *bis* was adopted and expressly states that the Rule is subject to Rule 64 *bis* (C)—the provision which grants the power of the President to review Registrar denials of contact with the media. If the Registrar has no discretion to approve face-to-face contacts with journalists, there is absolutely nothing for the President to review. Therefore, the amendment to Rule 61(B) indicates that some measure of discretion to approve face-to-face visits exists and that the proportionality principle should be applied.

7. If Rule 61(B) is interpreted as conferring no discretion to approve any face-to-face visits with the news media, then the Rule itself violates the proportionality principle.

8. Dr. Karadzic has suggested reasonable ways in which the proportionality principle could be applied.

9. With respect to security concerns if a journalist conducted the interview in the visiting area of the detention unit, he suggested that the interview could be held in the Tribunal's main building during the lunch recess at his trial. The response of the Deputy Registrar has not attempted to refute this point.

10. With respect to confidentiality concerns, Dr. Karadzic has suggested that an employee of the Registry can be present during the interview to ensure that no confidential information is disclosed. The Deputy Registrar claims that the Registry's Court Officer for the *Karadzic* case is not sufficiently familiar with the record of the case to spot confidential information—yet that very same Court Officer has performed this very function for the Trial Chamber since the commencement of the trial in October 2009.

11. In any event, the same person who has reviewed Dr. Karadzic's written answers to journalists for the Registrar in the past for confidentiality concerns could be designated by the Registrar to be present during the face-to-face interview and perform the same function.

12. The Deputy Registrar contends that the presence of a Registry employee would not prevent the initial disclosure of confidential information to the journalist during a face-to-face interview. However, the same concerns are present for the trial proceedings. A party may disclose confidential information in open court and persons sitting in the public gallery, including journalists, would hear this. The Tribunal has not imposed a total ban by closing the public gallery. Instead, it has applied the proportionality principle by delaying the broadcast of the hearing and admonishing those in the public gallery not to disclose the information. This approach has worked, and the Registrar's failure to even consider the same approach for interviews with journalists was error.

13. In this case, the magazine has indicated that it is not interested in receiving written answers to written questions and will not publish Dr. Karadzic's views in that form. The Registrar's denial of a face-to-face interview will result in the denial of Dr. Karadzic's right of expression.

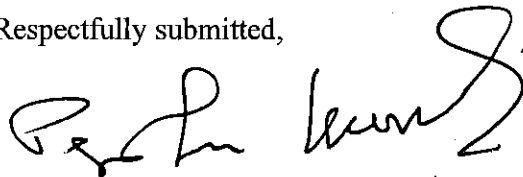
14. The position of the magazine is in accordance with what is considered standard sound journalistic practice of face-to-face interviews in which the journalist can ask follow up questions, and challenge the statements if necessary. Indeed, the Tribunal's principals—President, Prosecutor, and Registrar—frequently engage in face-to-face interviews with journalists and rarely have their views expressed in the media based upon written answers to written questions.

15. The Registrar decided on Dr. Karadzic's request on the basis that he had no discretion. By doing so, the Registrar failed to take into account any other relevant considerations. His total ban on face-to-face interviews violates the proportionality principle and Dr. Karadzic's right to freedom of expression.

16. It is respectfully requested that the decision of the Registrar be reversed.

Word count: 847

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', written in a cursive style.

Radovan Karadzic