

UNITED
NATIONS



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-55-A

Date: 5 November 2018

Original: English

THE PRESIDENT

Before: Judge Theodor Meron

Registrar: Olufemi Elias

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

RENEWAL OF APPEAL OF REGISTRAR'S DECISION ON SKYPE

Counsel for Radovan Karadzic:
Peter Robinson
Kate Gibson

1. Radovan Karadzic respectfully renews his *Appeal on Registrar's Decision on Skype* (12 May 2017) because the Registrar has failed to implement the President's *Decision on Request for Review of the Registrar's Decision* (29 August 2017) despite having more than 14 months to do so.

Procedural History

2. On 15 Nov 2016, at a Status Conference before Judge Meron, President Karadzic orally requested that consideration be given to providing video communication at the United Nations Detention Unit ("UNDU")¹

3. President Meron responded:

"I also would appreciate it if the Registrar would inquire about the possibility, subject to security and overriding considerations, with regards to use of Skype. I would like to know why this is completely out. I, myself, would find the use of Skype too complicated for me, but obviously Mr. Karadzic is more advanced technologically and he would have no problems with that. Let's look into that."²

3. On 24 November 2018, the Registrar filed a submission indicating that :

"The use of video communication applications, such as Skype, is currently not allowed at the UNDU due to security risks. The secure use of such means of communication would require a broad array of adjustments to the UNDU communication applications in cooperation with the Host State. In this regard, the Registry welcomes the fact that the Dutch Ministry of Security and Justice ("DJI") is in the process of exploring possibilities for the establishment of a nationwide secure platform that would eventually allow detainees in Dutch prisons the opportunity to have secure video communication. The establishment of such system may create a possibility for its use by detainees at the UNDU that would have beneficial effects for the detainees' wellbeing. The UNDU management is in regular contact with the DJI as this matter develops."³

4. On 25 November 2016, President Karadzic responded that video communication was presently available at the Dutch prison in Norgerhaven, to ICTY sentenced prisoners serving their sentences in Finland, in more than 600 prison facilities in 46 states of the United States, and in Italy and Greece, and urged the Registrar not to await a nationwide rollout in The Netherlands.⁴

¹ Transcript of 15 November 2016, p. 6

² *Id.*, p. 8

³ *Registrar's Submission in relation to matters raised at the 15 November 2016 Status Conference* (24 November 2016), para. 3

⁴ *Reply to Registrar's Submission on Availability of Skype* (25 November 2016), paras. 4-6

5. On 28 November 2016, the Association of Defence Counsel wrote to the Registrar in support of President Karadzic's request for the use video communication technology in the UNDU.⁵

6. On 5 December 2016, the Registrar filed a further submission suggesting that such issues are "better addressed through the framework provided by the Rules of Detention than through filings before the Pre-Appeal Judge."⁶

7. On 14 December 2016, the Pre-Appeal Judge invited the Registrar to provide information on any new development related to the potential establishment of secure video communication at the UNDU in writing in advance of the next status conference in this case.⁷

8. On 2 March 2017, the Registrar reported that the rollout of video calls in Dutch prisons "if indeed introduced, will not be operational before the year 2020" and that at Norgerhaven prison "Norwegian inmates are able to make video calls to persons located at designated and specially equipped police stations in Norway."⁸

9. At the status conference on 6 March 2017, President Karadzic's co-counsel indicated that the information provided by the Registrar was wrong:

"After we received this filing, we spoke to the Norwegian Ministry of Corrective Services who put us in contact, direct contact with the facility, and we spoke to someone called Mr. Sigmund Otterlei. And he confirmed that in this prison facility, they're currently housing detainees from 54 different countries and all of them have access to Skype, and there's no requirement that the family members who receive the calls are required to be in police stations. They can receive the phone calls in their homes, or in an Internet cafe, or anywhere that they have a device where they can receive a Skype call."⁹

10. President Meron indicated at the status conference that he would like to see progress on making video conferencing available at the UNDU and directed that his views be communicated to the Registrar.¹⁰

⁵ Annex A to *Appeal of Registrar's Decision on Skype* (12 May 2017)

⁶ *Registrar's Further Submission in relation to matters raised at the 15 November 2016 Status Conference* (5 December 2016), para. 3

⁷ *Order Relating to Matters Raised at the Status Conference* (14 December 2016)

⁸ *Registrar's Submission pursuant to the Order of 14 December 2016* (2 March 2017), paras. 2-3

⁹ Transcript of 6 March 2017, pp. 23-26

¹⁰ *Id.*, pp. 28-29

11. On 11 April 2017, after receiving no response to two e-mails sent by his counsel to the Registrar, President Karadzic invoked the procedure called for in the Rule of Detention and requested access to Skype or an equivalent means of communicating with his family.¹¹

12. On 19 April 2017, the UNDU commander rejected President Karadzic's request.¹²

13. On 25 April 2017, President Karadzic appealed the UNDU Commander's decision to the Registrar, pursuant to Rule 82 of the Rules of Detention.¹³

14. On 8 May 2017 the Registrar denied President Karadzic's request for video communication from UNDU.¹⁴

15. On 12 May 2017, President Karadzic appealed the Registrar's denial to the President.¹⁵

16. On 23 May 2017, the Registrar responded, indicating that it was "addressing these various legal, technical and security-related issues that would allow it to provide secure video communication to the detainees in the UNDU..."¹⁶

17. On 12 June 2017, the President ordered the Registrar to provide updated information on any new development within sixty (60) days.¹⁷

18. On 14 August 2017, the Registrar reported that he intended to further explore the options of the VTC specialised equipment and VTC software applications, as a potential platform for UNDU video communication.¹⁸

19. On 29 August 2017, the President reversed the Registrar's decision, finding 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", and remitted the matter to the Registrar for a new decision within 45 days.¹⁹

¹¹ Annex D to *Appeal of Registrar's Decision on Skype* (12 May 2017)

¹² Annex E to *Appeal of Registrar's Decision on Skype* (12 May 2017)

¹³ Annex F to *Appeal of Registrar's Decision on Skype* (12 May 2017)

¹⁴ Annex H to *Appeal of Registrar's Decision on Skype* (12 May 2017)

¹⁵ *Appeal of Registrar's Decision on Skype* (12 May 2017)

¹⁶ *Registrar's Submission regarding Mr. Karadzic's Appeal of the Registrar's Decision on Skype* (23 May 2017), para. 5

¹⁷ *Order for Submissions* (12 June 2017), p. 4

¹⁸ *Registrar's Submission in relation to the Order of 12 June 2017* (14 August 2017)

¹⁹ *Decision on Request for Review of Registrar's Decision* (29 August 2017)

20. On 11 October 2017, the Registrar reconsidered his decision and decided to begin a pilot project on video communication at the UNDU. He explained that the first phase would involve testing the connection between various locations in the region of the former Yugoslavia and the UNDU in the final week of October 2017. The next part would involve the recording of conversations and testing other security and safety measures. The final phase will involve volunteer detainees communicating with approved contacts using this platform under specific conditions.²⁰

21. At a status conference on 30 January 2018, the President reported that he had been advised that the Registry was ready to start the second phase of the pilot project and was working on new regulations for video communications for detainees.²¹

22. On 20 April 2018, the Registry advised that a number of technical difficulties had been encountered and that it had faced significant resource constraints which were not foreseen at the time the Registrar's decision was taken.²²

23. At a status conference on 18 August 2018, the President reported that "the Registry is also working on new regulations for video communication for detainees, which will be finalised once the third phase of the pilot project has been completed."²³

24. On 26 September 2018, in response to an inquiry by counsel for President Karadzic, the Registry reported that "the Registry has encountered certain technical issues in implementing the video call platform in the UNDU. We are currently assessing the security aspects of the issues encountered. Unfortunately, this will delay the next phase of the pilot (i.e., when detainees can make test calls with relatives)."²⁴

25. Counsel for President Karadzic sent follow up inquiries on 5 October 2018 and 2 November 2018, but no further information has been provided by the Registrar.

Argument

26. It has now been two years since President Karadzic requested to be able to use video communication to communicate with his family, and 14 months since the President reversed and remanded the Registrar's decision denying the use of video communication

²⁰ Public Redacted Version of *Reconsideration of my decision on your complaint concerning the Acting Commanding Officer's decision to deny your request to allow the use of Skype or an equivalent means of Communication* (19 October 2017)

²¹ Transcript of 30 January 2018, p. 76

²² E-mail from Registry to Lead Counsel

²³ Transcript of 18 August 2018, pp. 324-25

²⁴ The Registry e-mail is Annex A. The names of MICT staff members have been redacted.

at the UNDU. Despite having more than adequate time to do so, the Registrar has failed to implement video communication technology at the UNDU, primarily because it has made the issue a low priority.

27. President Karadzic greatly appreciates the consistent support of President Meron for his being able to have video communication with his family from the UNDU. However, it has become obvious that the Registrar needs a deadline in which to implement it. President Karadzic is concerned that the President's term will end without video communication being implemented and that he will be back to "Square One".

28. Therefore, President Karadzic respectfully renews his request for review of the Registrar's decision and requests that the President order the Registrar to implement video communication at the UNDU no later than 31 December 2018.

Word count: 1748

Respectfully submitted,

PETER ROBINSON
Counsel for Radovan Karadzic

ANNEX “A”

To: Peter Robinson/ICTY ADC/EXT@EXT-ICTY
From: LCDM/DU/JSS/MICT
Date: 09/26/2018 01:33PM
Subject: Video calls at the UNDU

Good Afternoon Mr. Robinson,

Further to your inquiry of 24 September 2018 to [REDACTED] and in her absence, please be informed that the Registry has encountered certain technical issues in implementing the video call platform in the UNDU. We are currently assessing the security aspects of the issues encountered. Unfortunately, this will delay the next phase of the pilot (i.e., when detainees can make test calls with relatives). We have informed the President's Office hereof, and will inform all detainees once we are in a position to begin the next phase of the pilot. Thank you for your consideration.

Best Regards,



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