

"DA GIBT ES KEINE VERTEIDIGUNG, NUR ANKLAGE!"

- Slobodan Milosevic am 2. September 2003 -

Erklärung der Deutschen Sektion des Internationalen Komitees für die Verteidigung von Slobodan Milosevic (ICDSM), gestützt auf: <http://www.sloboda.org.yu/engleski/indexengl.html>

Am 2. September 2003 wandte sich Präsident Slobodan Milosevic erneut an das „Tribunal“, und - bevor Richard May ihm eiligst das Wort abschnitt - stellte er erneut fest, dass er das ICTY nicht anerkennt, und dass diese Veranstaltung „kein Gerichtsprozess“ ist.

In der für diesen Tag angesetzten Vorverhandlung, bei der die Modalitäten festgelegt werden, („status conference“), die für die Beweisaufnahme durch die Verteidigung („defence case“) gelten, machte Präsident Milosevic das „ICTY“ darauf aufmerksam, dass hier zwei Dinge von zentraler Bedeutung sind: die verfügbare Zeit und die Bedingungen der Verteidigungstätigkeit.

Milosevic, der sich selbst verteidigt, stellte fest, dass zwei Jahre Zeit für die Vorbereitung einer Antwort auf die vorgebrachten Unterstellungen ein absolutes Minimum darstellen, und dass in Wirklichkeit die erforderliche Zeit unabsehbar ist. Ferner verlangte Präsident Milosevic unmittelbaren und unüberwachten Kontakt zu den Zeugen und die Möglichkeit, Dokumente ausfindig und verfügbar zu machen, um die in Den Haag vorgebrachten Lügen zu widerlegen, was nur zu bewältigen ist, wenn er freigelassen wird.

„Ich brauche die Bedingungen, die erforderlich sind, damit ich mein Verfahren vorbereite, während ich in Freiheit bin,“ erklärte Slobodan Milosevic vor der Kammer.

Präsident Milosevic erinnerte Herrn May daran, dass die Gegenseite, vertreten durch Carla Del Ponte, die Kosovo-Anklage im Jahre 1999 erhoben hat, d.h. praktisch drei Jahre vor Beginn des Haager „Prozesses“, und viereinhalb Jahre vor dem heutigen Tag. Andere Sachverhalte, die in den nachfolgenden Anklagen bezüglich Kroatien und Bosnien vorgebracht wurden, gehen auf das Jahr 1993 zurück.

Präsident Milosevic wies darauf hin, dass, wenngleich er den Prozess nicht als legitim anerkenne, Herr May und seine Kollegen ihm angemessene Zeit für die Vorbereitung zur Verfügung stellen müssen, sonst werde klar werden, dass das ICTY nicht die Rechte respektiert, für die es einzutreten behauptet, und dass es in Wirklichkeit beim ICTY keine Verteidigung gebe, sondern nur Anklage.

Präsident Milosevic verlangte ferner unmittelbaren, unüberwachten und ungehinderten Kontakt zu den Zeugen unter angemessenen Bedingungen in Freiheit. Er fügte hinzu, dass er nicht einmal ansatzweise die Zahl der Personen zu schätzen vermag, die für die Gegenseite arbeiten. Er verlangte, die Möglichkeit zu erhalten, die Zeugen ordnungsgemäß vorzubereiten, und erinnerte die Kammer an den Umfang der Vorbereitungen, die von der anderen Seite getroffen wurden.

Präsident Milosevic betonte, dass nicht er sondern die Kammer behauptet hat, dass ihm „Rechte“ zugestanden würden, und dass man daher dafür Sorge tragen sollte, dass ihm die Möglichkeit gegeben wird, diese Rechte in Anspruch zu nehmen. Präsident Milosevic erläuterte, dass der symbolische Wert der Waffengleichheit seine Forderungen unterstützt, seine Zeugen und Dokumente unter Bedingungen vorzubereiten, die angemessen und geeignet sind.

Im Anschluss an die Darlegungen von Präsident Milosevic zögerte „Richter“ May nicht, ein weiteres Mal jeglichen Antrag von Präsident Milosevic auf vorläufige Entlassung von vorn herein zurückzuweisen, ohne irgendeine Begründung zu geben. Herr May lehnte auch den Antrag von Präsident Milosevic auf zwei Jahre Zeit zur Vorbereitung seiner Sachverhaltsdarstellung sogleich im Schnellverfahren ab.

Nach längeren Einlassungen seitens des „Freundes des Gerichts“ und der Gegenseite sprach Präsident Milosevic erneut und kritisierte scharf die Unterstellung der „Anklage“ als absurd, dass beide Parteien gleichgestellt seien und zwischen ihnen Waffengleichheit bestehe. Er wiederholte, bevor er unterbrochen wurde, dass er das „Tribunal“ nicht anerkennt, dass der Prozess kein „Verfahren“ ist, aber dass die Kammer selbst behauptet hat, dass er Rechte hat. Auf die Aufforderung von Herr May, konkret zu werden, entgegnete Präsident Milosevic, dass er höchst praktische Ausführungen gemacht hat, und fragte, wie es ihm denn möglich sei, mit Zeugen ohne direkten und unüberwachten Kontakt mit ihnen zu kommunizieren. Er stellte fest, dass zwei Jahre Vorbereitung eine höchst bescheidene Abschätzung der Zeit ist, die nach den so genannten Prinzipien des „Tribunals“ erforderlich ist.

Präsident Milosevic schloss seine Bemerkungen mit der Feststellung ab, dass es bestens bekannt sei, dass es beim ICTY allein Anklage und keine Verteidigung gebe, auch gebe es keine Waffengleichheit.

ZWEI JAHRE FREIHEIT FÜR DEN SIEG DER WAHRHEIT!

Die „Kammer“ hat zu den an diesem Tag gehörten Eingaben keinerlei förmlichen Beschluss erlassen, aber hat die konkreten Forderungen von Präsident Milosevic bereits ohne Beratung zurückgewiesen. Eine Entscheidung, in der die Modalitäten der Einführung von Präsident Milosevics Beweismaterial festgelegt werden, wird in Kürze erwartet.

Vor kurzem hat das „Tribunal“ alle Besuche von Mitgliedern der Sozialistischen Partei Serbiens, von SLOBODA, der jugoslawischen Menschenrechtsorganisation für die Verteidigung von Slobodan Milosevic, und von anderen mit Präsident Milosevic verbundenen Personen untersagt. Damit könnte praktisch kein Zeuge vorbereitet werden.

Gegen diese Entscheidung und den Beschluss, der Präsident Milosevic Kontakte mit den Medien verbietet, Einspruch erhebend, hat SLOBODA am 2. September einen schriftlichen Antrag an den Präsidenten des „Tribunals“ gerichtet, diese Entscheidung aufzuheben, und diesen Antrag ausführlich begründet. Der volle englische Wortlaut des Schreibens von SLOBODA ist im Anhang beigefügt.

SLOBODA appelliert an alle Organisationen und Personen, die für Freiheit, Gerechtigkeit und Demokratie eintreten, gegen den vielleicht endgültigen Beweis, dass das Ziel des „Tribunals“ und seiner NATO-Vorgesetzten darin besteht, die Freiheit zu unterdrücken und die Wahrheit zum Schweigen zu bringen, dringend und entschieden Stellung zu beziehen.

Die ungeheuerlichen Vorgängen am 2. September 2003 in Den Haag gebieten, dass kein anständiger Mensch dazu schweigt.

Insbesondere den fortschrittlichen Kräften und Anwälten obliegt die Verantwortung, Farbe zu bekennen und sich zu Wort zu melden - Gründe und Argumenten gibt es mehr als genug.

Das Internationale Komitee für die Verteidigung von Slobodan Milosevic (ICDSM) und seine Sektionen in vielen Ländern, darunter die Deutsche Sektion des (ICDSM) werden bei dieser Aktion ihrer Verantwortung gerecht werden.

Anhang:

SLOBODA / FREEDOM Association
YUGOSLAV COMMITTEE FOR THE LIBERATION OF SLOBODAN MILOSEVIC
Belgrade, Rajiceva 16, tel./fax +381 11 630 549

Belgrade, September 2, 2003

To:
Judge Theodor Meron, President
ICTY, The Hague/The Netherlands
URGENT (via fax +3170 512 8637)

REQUEST TO THE PRESIDENT FOR REVIEW OF THE REGISTRAR'S DECISION TO DENY REQUESTS FOR VISITS TO PRESIDENT SLOBODAN MILOSEVIC AT THE DETENTION CENTRE, PURSUANT TO THE PRESIDENT'S SUPERVISORY POWERS, RULE 19 OF THE RULES OF PROCEDURE AND EVIDENCE

Hereby we request the President's intervention, on the basis of his powers set out at Rule 19 of the Rules of Procedure and Evidence, to reverse the Registrar's decision to deny, until further notice, visits from members of the Freedom Association (SLOBODA). The Registrar's decision is supported by his claim that individuals having visited President Slobodan Milosevic disclosed information to the media.

SUMMARY OF ARGUMENT

- A. The Registrar's decision constitutes an arbitrary and illegal exercise of the discretion afforded by Regulation 33 (B) of the Regulations to Govern the Supervision of Visits to and Communications with detainees (the "Regulations") and Rule 66 (B) of the Rules of Detention, and should therefore be overturned;
- B. The Registrar's decision violates the principle of equality of arms. The Registry permits, finances and otherwise aids and encourages unrestrained access to the media by the Prosecutor, while denying any such contact on the part of an accused person. The Registrar's decision should therefore be overturned;
- C. The Registrar's decision violates the fundamental, universally recognized principle of presumption of innocence, and should therefore be overturned;
- D. The Registrar's decision violates the fundamental principle of freedom of expression, has no legitimate aim, and is unnecessary. The Registrar's decision should be overturned;
- E. The Registrar's decision is tantamount to ordering the isolation of President Milosevic, and should be overturned.

THE FACTS

1. On 11 August 2003, Mr. Bogoljub Bjelica, Chairman of the Freedom Association, a non-government association, applied, in accordance with the applicable rules and procedural requirements, for a visit with President Milosevic, who had also requested to meet with Mr. Bjelica.
2. On 15 August 2003, he received a copy of a fax sent by the Registrar to Mr. Milosevic denying "until further notice" visits from "members of the SPS and associated entities, such the Freedom Association" until further notice.
3. On 19 August 2003, Mr Igor Raicevic of the Freedom Association requested the Registrar reconsider his decision to deny visits to members of the Freedom Association, which request did not get any reply;

ARGUMENT

The Registrar's decision to suspend visits is arbitrary and constitutes an abuse of discretion:a) the decision was not made in accordance with statutory authority;b) the decision did not respect the principle of audi alteram partem;c) the decision is overbroad and abusive with respect to its application over time;d) the decision arbitrarily and unjustifiably targets persons and groups entirely unconnected to those allegedly in breach of rules governing visits and communication with detainees;e) the decision is apparently unfounded, as no evidence is provided to support the Registrar's claim of transgression of the rules.

The decision was not made in accordance with statutory authority.

4. Regulation 33 (B) of the Regulations and Rule 66 of the Rules of Detention attribute discretion to the Registrar to deny visits to detainees. This discretionary power constitutes an exception to the general rule which provides that detainees have the right to meet with the person of their choice, subject to security considerations.
5. In absence of an express provision to the contrary, judicial review lies against administrative decisions before the ICTY .
6. This general principle is enunciated in Rule 92 of the Standard Minimum Rules for the Treatment of Prisoners :92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.
7. The ICTY Registrar's discretion is set out as follows in Rule 66 (B) of the Rules of Detention and 33 (B) of the Regulations:

(B) Permission may be denied if the Registrar has reason to believe that the purpose of the visit is to obtain information which may be subsequently reported in the media.

8. The Registrar may only deny visits if he has "reason to believe" that the purpose of the visit is that of obtaining information which may subsequently be reported in the media. Nowhere in the Registrar's fax to the Freedom Association is it alleged that the purpose of the visit made by 5 named SPS members was to obtain information that might subsequently be reported to the media.

9. The Registrar has not stated any reason to believe that any other member of the SPS, "associated entities" or members of the Freedom Association will apply for a visit with President Milosevic "for the purpose" of obtaining information which may subsequently be reported in the media.

10. The Registrar has simply banned, for an indeterminate period, members of a political party, members of an association, as well as persons unknown and unidentifiable, from visiting President Milosevic although those unknown have not yet expressed the desire to visit him, much less the intention of gathering information for the purposes of future publication in the media.

11. The decision is overbroadly prospective, and is ultra vires the discretionary authority provided by the Rules of Detention. The Decision is overbroad as to targeted individuals and groups, and is overbroad as to its duration.

12. The Registrar has misstated the Rule in his decision. In it he writes that the visitors had been advised that "dissemination to the media of any information disclosed to the media in any form is prohibited". The Rule merely confers discretion to the Registrar to prohibit visits if he has reason to believe that its purpose to obtain information that is subsequently reported by the media. Such a patent misstatement of the rule creates a reasonable apprehension that the Registrar also errs in the actual exercise of his discretion.

The decision did not respect the principle of audi alteram partem nor did respect procedural fairness;

13. Freedom Association/Sloboda is banned from visits to President Milosevic "until further notice". At no point was a representative of Sloboda/Freedom association called upon by the Registrar to provide a response to the charge of "flagrant (...) breach" of the Rules. It is obvious that the Registrar could not do so: No member of Freedom Association is even alleged to have breached the Rules. Yet the Registrar's decision arbitrarily bans its members from visits to Mr Milosevic.

14. In fact, all visits undertaken by Freedom Association members have been made without incident.

15. The Registrar's decision alleges a breach of Rules by two individuals, Mr. Vucelic and Mr. Andjelkovic. At no time prior to the ban were they given an opportunity to respond to the Registrar's allegations that they had violated their undertaking to comply with the rules and regulations of the ICTY. The Registrar has violated the most basic principles of natural justice.

16. The Registrar has not afforded an opportunity to the SPS, or its members, also subject to the Registrar's decision to deny visits to President Milosevic, to respond to his allegations before deciding to deny requests for visits "until further notice". The party, and its members, could not, in any event, reasonably be expected to respond to allegations made not against

them, but against third parties. The Registrar's decision therefore violates the most basic tenets of natural justice.

17. The Registrar's failure to afford an opportunity to respond to non-confidential evidence has been held by the President of the ICTY to represent a failure to act with procedural fairness, and has resulted in the President quashing the Registrar's decision in *Prosecutor v. Slijivancanin*

18. The Registrar has banned, until further notice, visits to President Milosevic, by "associated entities" of the SPS. These "entities" are unspecified, and therefore unknown. It is strikingly evident that unspecified groups or entities have not had an opportunity to respond to the Registrar's allegations against third parties. The Registrar's decision constitutes an egregious violation of the most basic principles of natural justice.

The Registrar's decision is overbroad and abusive with respect to its application over time.

19. The Registrar's decision to deny request to visit President Milosevic to members of the SPS, the Freedom Association, as well as entities as to yet unknown and unspecified "until further notice" constitutes an excess of jurisdiction. Discretion is to be exercised on a case by case basis, as clearly envisaged by the relevant rules. An administrative decision in force "until further notice" removes all exercise of discretion, essentially applying one discrete factual evaluation to all future cases.

20. In addition, an administrative decision taken "until further notice" is egregiously arbitrary with respect to the period of time in which it will be in force. The Registrar has failed to assert any legislative basis to justify the indeterminate nature of the decision. The Registrar has also failed to indicate what requirements or criteria, if any, would need to be met in order to terminate his decision to ban visits from persons and groups, some unspecified and yet to be identified. The decision is overbroad, and does not constitute an acceptable exercise of administrative discretion.

21. Rule 63 (A) and Rules and Rule 33 (B) of the Regulations clearly confers discretion to refuse a single visit-- not all visits,-- for an undisclosed, potentially indefinite period. The Rule requires the Registrar to treat each case individually, which he has failed to do. Instead he has restricted his discretion and thus exceeded and/ or not exercised his jurisdiction. The Registrar has rendered an illegal decision, which should be reversed.

The Registrar's decision arbitrarily and unjustifiably targets persons and groups entirely unconnected to those allegedly in breach of rules governing visits and communication with detainees.

22. It is trite to point out that banning visits by persons not even alleged to have breached rules is a violation of any legal standard. Not only does the impugned decision target all members of a political party, present and future, as well as present and future members of the Freedom Association, but outrageously extends the ban on visits to "associated entities" of the SPS. The Registrar has in essence banned unknown, unidentified, and unidentifiable groups from visiting President Milosevic. This decision is simply unprecedented and violates every fundamental principle of transparency. It is guilt by association, and worse, it targets people unknown.

23. By extending the ban on visits to undefined groups, the Registrar has usurped legislative jurisdiction and conferred absolute discretion onto himself. The Registrar's decision is patently ultra vires.

The Registrar's decision is apparently unfounded, as no evidence is provided to support the Registrar's claim of transgression of the rules

24. The Registrar's decision laconically states that "two articles were published in the media in Belgrade". The Registrar has provided no copy of publication, no date of publication, and has not identified the media in question. The Registrar has failed to positively identify the type of media alleged to have published details of a visit. The Registrar points to "factual inaccuracies" in the "articles". The paucity of information provided to support such a sweeping ban is well below any standard of transparency required in the drafting of his decision. The Registrar's claim that a "flagrant breach" of the Rules occurred is unreasonable, his reasons inadequate.

The Registrar's decision violates the principle of equality of arms. The Registry permits, finances and otherwise aids and encourages unrestrained access to the media by the Prosecutor, while denying any such contact on the part of an accused person. The Registrar's decision should therefore be quashed

25. The Registry facilitates, finances and otherwise supports joint press briefings of the ICTY's Spokesman for Registry and Chambers with Office of the Prosecutor's spokeswoman. Summaries of these press conferences are made available on the ICTY's website at <http://www.un.org/icty/latest/index.htm>.

26. Article 21 of the ICTY Statute sets out the minimum rights of accused persons. These rights encompass the principle of the equality of arms.

27. The principle of equality of arms, in the context of a trial, is to be interpreted as meaning that each party must be afforded a reasonable opportunity to present its case, under conditions that do not place it at a substantial disadvantage vis à vis the opposing party.

28. The Registrar's ban puts President Milosevic at "a substantial disadvantage vis-à-vis the opposing party" as, simply put, the "opposing party" maintains a channel of communication with the media, which it uses to present its case, and does so with the assistance and support of the Registry.

29. Equality of arms is violated when the Registrar simultaneously bans visits to an accused, based on the prohibition on contact with the media, while facilitating joint press briefings of the Tribunal and Prosecutor's spokespeople. The imbalance is striking.

30. The Registrar's decision to ban visits to President Milosevic based on prohibition of contact with the media could not be made in other United Nations Tribunals. No rule permitting such discretion has been adopted at the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, or the International Criminal Court. These Tribunals are held to the respect of the principle of the equality of arms.

The Registrar's decision violates the fundamental principle of freedom of expression, and should be quashed

31. Some security considerations can legitimately justify the non-disclosure of certain information to the media by visitors such as the details of floor plans of Detention Unit, for instance. Security considerations are a pattern throughout legislation governing visits to detention units under international and domestic law.

32. In contrast, the Registrar's decision constitutes a blanket prohibition of contact with the media. No security considerations have been asserted in support of the ban, which is tantamount to a gag order.

33. The ICTY is held to apply and respect the provisions of the International Covenant for Civil and Political Rights .

34. The accused is innocent, presumed as such by Article 21 of the ICTY Statute until proof has established, beyond a reason doubt, the contrary. The accused preserves his freedom of expression .

35. Visitors of the accused also enjoy the right to freedom of expression, a fundamental freedom set out in Article 19 of the Universal Declaration of Human Rights: "Everyone has the right to the freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

36. The Appeals Chamber of the ICTY has recognized the public's right to receive information from the press as a component of freedom of expression. On interlocutory appeal in *Prosecutor v. Brdjanin* , the Appeals Chamber overturned the Trial Chamber's decision to issue a subpoena to Jonathan Randall. The Appeals Chamber held:

As has been noted, the right to freedom of expression includes not merely the right of journalists and media organizations freely to communicate information. It also incorporates a right of members of the public to receive information. As the European Court of Human Rights put it in its decision in *Fresso and Roire v. France*: "Not only does the press have the task of imparting information and ideas on matters of public interest: the public also has a right to receive them."

37. Brdjanin described the vital role of war correspondents in the work of the Tribunal , and concluded:

The Appeals Chamber will not unnecessarily hamper the work of professions that perform a public interest.

38. The House of Lords, in *Regina v. Secretary of State for the Home Department Ex Parte Simms (A.P.) Secretary of State for the Home Department Ex Parte O'Brien* overturned the British Home Secretary's ban on verbal interviews between convicted prisoners serving sentences and the media .

39. The O'Brien case establishes that convicted prisoners have the right to conduct interviews with the media and discuss the unfairness of their trials. Lord Steyn stated:

The prisoners are in prison because they are presumed to have been properly convicted. They wish to challenge the safety of their convictions. In principle it is not easy to conceive of a more important function which free speech might fulfil.

40. O'Brien acknowledged the reality of miscarriages of justice, and the crucial role of the media in exposing them.

41. President Slobodan Milosevic asserts his innocence, and steadfastly criticizes the ICTY. He is innocent, until proven otherwise, and has every right to oppose the legitimacy of this institution. By banning contact with the media, the Registrar has violated the rights of Mr. Milosevic, of his visitors, and of the public at large.

42. The ICTY may not enjoy President Milosevic's criticism. Nonetheless, the public benefits of permitting him to communicate with the media far outweigh whatever embarrassment might be visited upon the ICTY. As Lord Steyn stated it:

Freedom of expression is, of course, intrinsically important: it is valued for its own sake. But it is well recognised that it is also instrumentally important. It serves a number of broad objectives. First, it promotes the self fulfilment of individuals in society. Secondly, in the famous words of Mr. Justice Holmes (echoing John Stuart Mill), "the best test of truth is the power of the thought to get itself accepted in the competition of the market.": *Abraham v. United States* 250 U.S. 616, at 630 (1919), per Holmes J. (dissent). Thirdly, freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve: people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country: see Stone, Seidman, Sunstein and Tushnet, *Constitutional Law*, 3rd ed., (1996), 1078-1086. It is this last interest which is engaged in the present case. The prisoners argue that in their cases the criminal justice system has failed, and that they have been wrongly convicted. They seek with the assistance of journalists, who have the resources to do the necessary investigations, to make public the wrongs which they allegedly suffered.

43. The House of Lords contemplated the right of convicted criminals to conduct interviews with the media. Neither Mr. Milosevic nor his visitors have been convicted of any crimes, yet the Registrar's decision strips them of rights enjoyed by convicted persons in the United Kingdom.

Freedom of expression before the ICTY⁴⁴. In the matter of *Brdjanin*, the Appeals Chamber recognized freedom of expression as a fundamental right. It had been asked to recognize a specific privilege for war correspondents before the Tribunal, but established instead a two-pronged test to determine whether a decision violating freedom of expression should be overturned in particular cases where compelling testimony would reduce the "free flow of information". The test developed by the majority of the Chamber is too narrow to apply to the instant matter.

45. Judge Shahabudeen's separate opinion, however, provides a useful test in the instant case. With respect to the International Covenant on Civil and Political Rights, he stated:

8. The Covenant was not constructed with the International Tribunal in view. So far as the Tribunal is concerned, there is no "law" providing for restrictions under article 19(3). But, given that it is acknowledged that the principles of the Covenant apply in relation to the Tribunal, those principles have to be construed to mean that the right to freedom of expression is subject to restrictions on the exercise of it which result from the responsibilities and functions of the Tribunal. This opinion will proceed on the basis that the protection of the public inter-

ests which justifies those restrictions includes the protection of the essential elements of the administration of justice; the matter is so understood generally.

9. If a restriction is judged “necessary”, no balancing of interests is thereafter required. The balance is made by the provision; the task of the courts is to say whether the particular restriction of freedom of expression is “necessary ” on any of the permitted grounds. If the restriction is necessary, the restriction prevails – the testimony is compelled; if the restriction is not necessary, freedom of expression prevails – the testimony is not compelled. But it seems to me that there is a preliminary stage at which some balancing of competing interests has inescapably to be made in the process of determining whether a restriction of freedom of expression is “necessary” for the protection of a public interest.

46. The Registrar has not asserted any grounds to establish that his decision to ban President Milosevic from contact , until further notice, with members of the SPS, and "associated entities", including the Freedom Association is necessary to protect the public interest.

47. The Registrar thus justified his decision to ban visits, as a result of alleged contacts with the media by previous visitors :

"In view of the flagrant nature of this breach of the rules and regulations of the Tribunal, I have decided that it would be in the interests of the good administration of the Detention Unit to deny until further notice any requests from members of the SPS and associated entities, such as the Freedom Association, for visits with you at the Detention Unit."

48. "The good administration of the Detention Unit", is a legitimate administrative preoccupation, but falls far short of the standard set out by Judge Shahabudeen. The Registrar's decision fails to show how his decision would satisfy "the protection of the public interests which justifies those restrictions" to freedom of expression, a right enjoyed by the public and by the accused.

49. The protection of the essential elements of the administration of justice , as opposed to the administration of the Detention Unit, could justify a restriction on freedom of expression. The Appeals Chamber has further held that adequate weight must be given to the ability of war correspondents to provide vital information to citizens of the international community.

50. Brdjanin stands for the general proposition that the protection of the administration of justice includes the protection of the free flow of information to the international community. The Registrar has not justified his restriction of the free flow of information to the public, nor has he justified his restriction on the ability of members of the public to participate in, or contribute to, the free flow of information in the media.

51. Security considerations with respect to the administration of the Detention Unit are set out elsewhere in the Rules and Regulations adopted with respect to detention. It has not been shown that it is necessary to adopt additional measures which so severely curtail the fundamental rights of such a great number.

52. Transparency is required of any judicial institution. The Registrar's decision, absent justification, heightens concerns that the ICTY has something to hide.

53. In the course of a trial where the Prosecution has put the transparency of the accused's governance at issue, it is demeaning to the law to strip him of the right to contact media. To ban yet unidentified persons from visiting him is unconscionable.

The Registrar's decision violates the fundamental, universally recognized principle of presumption of innocence, and should therefore be overturned.

54. Only a blatant disregard for the presumption of innocence can justify the violation of President Milosevic's fundamental right of freedom of expression, in addition to the violation of the rights of his potential visitors.

55. In effect, a ban on visits following alleged communication with the media supposes that President Milosevic is guilty and that his visitors are guilty by association. The ban assumes that Mr. Milosevic will tell his visitors bad things, which in turn will be reported in the media.

56. The ban also appears to prevent information favorable to Mr. Milosevic from being published in the media, which could only be justified if his guilt were assumed.

57. In any event, the Registrar's decision suggests that the public cannot be trusted with any information that could be received in the course of a visit with Mr. Milosevic.

58. The Registrar's decision violates Rule 5 of the Rules of Detention, which states:

All detainees, other than those who have been convicted by the Tribunal, are presumed to be innocent until found guilty and are to be treated as such at all times.

The Registrar's decision is tantamount to ordering the isolation of President Milosevic, and should be overturned.

59. The governing principle with respect to detention has been set out above: All detainees, other than those who have been convicted by the Tribunal, are presumed to be innocent until found guilty and are to be treated as such at all times.

60. This principle is at the heart of the rule providing for detainees right to visitors of their choice, subject to security considerations . This general rule is consistent with UN protocols on detention .

61. Amnesty International provides the following justification for the principle of free access to visitors:

The rights of detainees to communicate with others and to receive visits are fundamental safeguards against human rights abuses such as torture, ill-treatment and "disappearances".

Detained and imprisoned people must be allowed to communicate with the outside world, subject only to reasonable conditions and restrictions.

62. Mr. Milosevic is has been deprived of visits from his wife and immediate family since March 2003. The Registrar's decision now bans visits from members of the Serbian Socialist Party's "associated entities". This could justify denying every request for visitation made by anyone close or affiliated not with the SPS, but with Slobodan Milosevic himself.

63. The Registrar's decision is tantamount to imposing isolation on Mr. Milosevic. The Rules of Detention only contemplate this measure pursuant to specific conditions or when a detainee has committed serious breaches to the Rule;

64. President Milosevic's isolation raises the apprehension that a punitive measure has been carried out, although he has committed no breach of rules and is innocent of the charges brought against him until proof of the contrary;

65. The isolation imposed as a result of the Registrar's decision is unwarranted, arbitrary and capricious;

RELIEF SOUGHT

FOR THE FOREGOING REASONS, PETITIONER, FREEDOM ASSOCIATION/SLOBODA REQUESTS THE PRESIDENT OF THE ICTY :

DIRECT the Registrar to overturn his decision, rendered August 12th 2003, to deny visits from members of the SPS, "associated entities" and Freedom Association, until further notice;

DECLARE Rule 63 (B) of the Rules of Detention and Regulation 33 (B) of the Regulations to govern the supervision of visits to and communications with detainees contrary to article 21 of the ICTY Statute, and the International Covenant on Civil and Political Rights.

On behalf of "Sloboda (Freedom)" Association -
the Yugoslav Committee for the Defense of Slobodan Milosevic

Boguljub Bjelica,
President