

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-T

IN TRIAL CHAMBER No. 3

Before: Judge O-Gon Kwon, Presiding
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Date: 2 September 2010

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public with Confidential Annexes

THIRTEENTH MOTION FOR FINDING OF DISCLOSURE
VIOLATION AND FOR REMEDIAL MEASURES

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves for a finding that the prosecution has once again violated Rule 66(A)(ii), and in some instances Rule 68, by failing to disclose the following additional 30 statements:¹

KDZ137 Jose Cutileiro
 KDZ138 Elvir Jahic
 KDZ158 Christian Nielsen
 KDZ163
 KDZ171 Paul Groenewegen
 KDZ188 Charles Kirudja
 KDZ219 John Hamill (2)²
 KDZ239
 KDZ277 Miodrag Simovic (2)³
 KDZ319 Mehmed Music (2)
 KDZ321 Cedric Thornberry⁴
 KDZ323 Emir Turkusic
 KDZ340 (2)
 KDZ369 Alen Gicevic
 KDZ391
 KDZ426 Jose Baraybar
 KDZ430 Dragan Majkic
 KDZ439 Hajrudin Karic
 KDZ464 Muhamed Heco
 KDZ475 Helge Brunborg (2)
 KDZ480
 KDZ525 Branko Djeric

¹ Copies of the statements in question are attached as Annex "A".

² Dr. Karadzic notes that the failure to disclose the 1995 statement also constitutes a violation of Rule 68 as it contradicts prosecution evidence concerning the number of casualties at the Markale I shelling and raises doubts about the conduct of the Muslim authorities in charge of the scene.

³ These are highly substantive interviews conducted by Alan Tieger and Carolyn Edgerton. The failure to disclose these statements is particularly disappointing..

⁴ This is a highly substantive interview conducted by Alan Tieger over a period of four days. It covers events which have already been the subject of testimony by witnesses at this trial. The failure to disclose this statement is particularly disappointing.

KDZ527 Milan Trbojevic
 KDZ552 Vitomir Zepenic
 KDZ554⁵

2. The statements were for the most part were made well before the 7 May 2009 deadline set by the Trial Chamber for disclosure of all statements of prosecution witnesses.⁶ The statements were not disclosed until 27 August 2010.⁷ The pure number of these undisclosed statements represents a staggering violation of Rule 66(A)(ii).

3. Most of the statements were proofing notes taken by OTP itself—sometimes by the very trial attorneys who are participating in this trial. It is inconceivable that the prosecution was not aware of these statements prior to May 2009 and its obligation to produce them. While the prosecution explains that the statements are disclosed pursuant to additional measures it has recently implemented, it has never explained why these measures were not implemented prior to the deadline for Rule 66(A)(ii) disclosure.

4. Dr. Karadzic is concerned that proofing notes may exist, and have not been disclosed, for witnesses who have already testified. Some witnesses, such as Herbert Okun, testified in multiple trials. Rule 66(A)(ii) does not obligate the prosecution to disclose statements of witnesses who have already testified.⁸ Therefore, he requests that the same search techniques be undertaken for witnesses who have already testified and that those statements be disclosed to him pursuant to Rule 66(B) as material to the preparation of his defence. Dr. Karadzic may wish to have those witnesses recalled depending on the nature of the undisclosed proofing notes.

5. Dr. Karadzic is also concerned that proofing notes and other statements may exist for witnesses whose testimony has already been admitted pursuant to Rule 92 *bis* without the opportunity for cross examination. Because such statements may bear upon the credibility of those witnesses or the decision not to make them available for cross examination, Dr. Karadzic requests that the same search techniques be undertaken for witnesses who have already testified and that those statements be disclosed to him pursuant to Rule 66(B) as material to the preparation of his defence.

⁵ The failure to disclose this earlier also constitutes a violation of Rule 68.

⁶ *Order Following Status Conference and Appended Work Plan* (6 April 2009) at para. 7

⁷ A copy of the letter containing the disclosure is attached as Annex “B”.

⁸ *Prosecutor v Blaskic*, No. IT-95-14-A, *Decisions on the Appellant’s Motions for Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings* (26 September 2000)

6. On 22 April 2010, the Trial Chamber found that the prosecution violated its disclosure obligations by failing to timely disclose a letter authored by its witness, Ambassador Okun. The Trial Chamber denied Dr. Karadzic's request for a remedy, but asked the prosecution to make sure that it did not happen again.⁹

7. On 17 June 2010, the Trial Chamber found that the prosecution had violated Rule 66(A)(ii) as to ten items. The Trial Chamber denied Dr. Karadzic's request for a remedy, but again expressed its concern.¹⁰

8. On 20 July 2010, the Trial Chamber issued its *Decision on the Accused's Third, Fourth, Fifth, and Sixth Motions for Finding Disclosure Violations and for Remedial Measures*. The Chamber found multiple violations of Rule 66(A)(ii) but declined to impose any remedy.

9. On 18 August 2010, the Trial Chamber issued its *Decision on the Accused's Seventh and Eighth Motions for Finding Disclosure Violations and for Remedial Measures*. The Chamber found more multiple violations of Rule 66(A)(ii) but declined to impose any remedy.

10. On 26 August 2010, the Trial Chamber issued its *Decision on the Accused's Ninth and Tenth Motions for Finding Disclosure Violations and for Remedial Measures*. The Chamber found more multiple violations of Rule 66(A)(ii) but declined to impose any remedy.

11. On 24 August 2010, Dr. Karadzic filed his *Eleventh Motion for Finding Disclosure Violations and for Remedial Measures* after the prosecution timely failed to disclose ten additional statements of eight witnesses.

12. On 30 August 2010, Dr. Karadzic filed his *Twelfth Motion for Finding Disclosure Violations and for Remedial Measures* after the prosecution failed to disclose a statement from an additional witness.

13. The Trial Chamber has not yet ruled on the Eleventh and Twelfth Motions.

14. On 20 August 2010, the prosecution filed its *Prosecution Submission of Report Concerning Additional Measures Related to Rule 66(A)(ii) Disclosure*. It revealed that 21 witness statements which had not been timely disclosed had been located

⁹ TR 1460

¹⁰ *Decision on Accused's Second Motion for Finding Disclosure Violation and for Remedial Measures* (17 June 2010)

in supplemental searches done after the filing of Dr. Karadzic's disclosure motions. However, it did not explain why the searches it is now undertaking were not conducted prior to the 7 May 2009 deadline for Rule 66(A)(ii) disclosure.

15. Dr. Karadzic notes that the Trial Chamber consistently refuses to provide a remedy for these violations. This creates a kind of impunity. The revelation on 27 August 2010 that 30 additional statements, mostly the OTPs own proofing notes, were never disclosed for more than 15 months after the deadline demonstrates that the Chamber's approach is a flawed one.

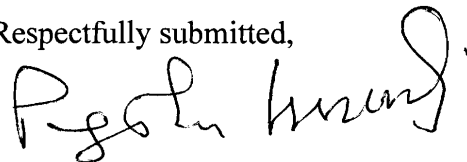
16. Dr. Karadzic is particularly troubled by the fact that some of the statements were the result of interviews conducted by Senior Trial Attorney Alan Tieger. It is one thing to fail to disclose statements unknown to members of the trial team; it is quite another to fail to disclose statements at which members of the trial team were present and at which significant substantive issues were discussed.

17. Therefore, Dr. Karadzic requests that the Trial Chamber make a specific finding of a violation of Rule 66(A)(ii), and Rule 68 where appropriate, and then impose an appropriate remedy. Dr. Karadzic reiterates his request for the remedy that each Trial Attorney responsible for the direct examination of the witness to personally certify that disclosure is complete, The latest revelations show that the Trial Chamber was wrong to have rejected such a remedy in the past.

18. Dr. Karadzic also suggests that the Trial Chamber order that the testimony of any witness, as to whom a disclosure violation is found after 1 October 2010, be excluded.

19. Dr. Karadzic also requests that the testimony of witnesses John Hamill and Alen Gicevic be postponed until after the New Year as a result of the disclosure violation.
Word count: 1350

Respectfully submitted,



Radovan Karadzic