

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: 7 October 2010

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public with Confidential Annex B

TWENTY-SECOND 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), by failing to disclose two additional statements of prosecution witness Evert Albert Rave, and for remedial measures.¹

2. The statements were made in 1995 and were likely in the possession of the prosecution well before the 7 May 2009 deadline set by the Trial Chamber for disclosure of all statements of prosecution witnesses.² The statements were not disclosed until 6 October 2010.³

3. 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.⁴

4. 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.⁵

5 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.

6 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.

7. 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.

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

² *Order Following Status Conference and Appended Work Plan* (6 April 2009) at para. 7

³ A copy of the letter containing the disclosure is attached as Annex "A".

⁴ TR 1460

⁵ *Decision on Accused's Second Motion for Finding Disclosure Violation and for Remedial Measures* (17 June 2010)

8. On 24 September 2010, the Trial Chamber issued its *Decision on the Accused's Eleventh through Fifteenth Motions for Finding Disclosure Violations and for Remedial Measures*. The Trial Chamber again found multiple violations of Rule 66(A)(ii) and Rule 68 but declined to impose any remedy.

9. On 30 September 2010, the Trial Chamber issued its *Decision on Accused's Seventeenth Motion for Finding of Disclosure Violation and for Remedial Measures*. It found that the prosecution had violated its disclosure obligations under Rule 68 as to some of the 96 items identified in the motion. However, it ruled that the 5 day adjournment it had previously ordered was an adequate remedy.

10. On 4 October 2010, the Trial Chamber issued its *Decision on Accused's Sixteenth Motion for Finding of Disclosure Violation and for Remedial Measures*. The Chamber found that the prosecution had breached its order concerning access to the transcript of closed session proceedings relating to Witness KDZ088, but declined to provide a remedy beyond having ordered the disclosure,

11. The Trial Chamber has not yet ruled on Dr. Karadzic's 18th, 19th, 20th, or 21st Disclosure Violation motions.

12. Dr. Karadzic notes that the Trial Chamber consistently refuses to provide a remedy for these violations. This creates a kind of impunity. The Trial Chamber consistently declines to require that the prosecution counsel take responsibility for disclosure by certifying that disclosure is complete, or to delay the testimony of witnesses to whom the disclosure violations relate.

13. In its *Decision on the Accused's Ninth and Tenth Motions for Finding Disclosure Violations and for Remedial Measures* (26 August 2010), the Trial Chamber ordered that all outstanding Rule 66(A)(ii) material be disclosed by 1 October 2010. The prosecution missed that deadline with respect to the statements of Evert Albert Rave.

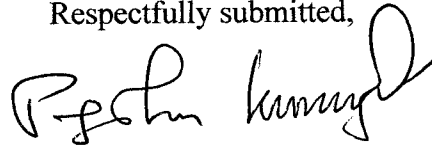
14. The prosecution claims that the late disclosure was due in part to the requirement that it obtain consent from the Netherlands to disclose the statements pursuant to Rule 70. This argument must fail for two reasons. First, the statements date back to 1995 and have been in the possession of the prosecution for a long time. Request for consent to disclose the statements could and should have been made long before the deadline of 1 October 2010.

15. Second, the prosecution had no business obtaining these statements subject to the provisions of Rule 70(B). That Rule applies to material “used solely for the purpose of generating new evidence”. Mr. Rave was an eyewitness to the events in Srebrenica. He testified in the *Krstic* trial ten years ago. The prosecution must have known that it would have an obligation under Rule 66(A)(ii) to disclose any of his statements coming into its possession. Therefore, the statements were never within the category of material to be used solely for the purpose of generating new evidence. It was an abuse of Rule 70 to obtain the statements on that basis.⁶

16. Dr. Karadzic respectfully requests that the Trial Chamber make a specific finding that the prosecution has violated Rule 66(A)(ii) with respect to these two statements by failing to disclose them by 7 May 2009. Because there is also no justification for the prosecution not having disclosed the statements prior to the 1 October 2010 deadline imposed by the Chamber, Dr. Karadzic further requests that the testimony of Evert Albert Rave be excluded from the trial as a long overdue remedial measure.

Word count: 1049

Respectfully submitted,



Radovan Karadzic

⁶*Prosecutor v Thomas Lubanga Dyilo*, No. ICC-01/04-01/06, *Decision on the Consequences of Non-Disclosure of Exculpatory Materials...* (13 June 2008) at para. 73 aff'd *Judgement on the Appeal of the Prosecutor against the Decision of Trial Chamber I entitled "Decision on the Consequences of Non-Disclosure of Exculpatory Materials..."* (20 October 2008)

ANNEX "A"



United Nations
Nations Unies



International
Criminal Tribunal
for the Former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

Office of the
Prosecutor

Bureau du
Procureur

Case No. IT-95-5/18

06 October 2010

Disclosure Batch 412: Disclosure pursuant to Rule 66(A)(ii) of cleared Rule 70 witness materials cited in Prosecution Notice of Compliance with Trial Chamber's Decision Concerning Rule 66(A)(ii) Disclosure

Please find enclosed the items detailed below for delivery to the accused Mr. Radovan Karadžić. These materials are part of the Rule 70 materials referred to in footnote 4 of the Prosecution Notice of Compliance with Trial Chamber's Decision Concerning Rule 66(A)(ii) Disclosure and were identified as a result of additional measures implemented by the Prosecution as detailed in paragraph 15 of the "Prosecution's Consolidated Response to Karadžić's Third, Fourth and Fifth motions for Finding Disclosure Violations and for Remedial Measures", filed 06 July 2010.

We would appreciate acknowledgement of receipt of the material by signature and returning the signed receipt to our office.

The Prosecution also wishes to remind the Accused of the terms of non-disclosure detailed in the Trial Chamber "Decision on Prosecution Motion for Non-Disclosure" dated 02 September 2008 and the "Decision on Protective Measures for Witnesses" dated 30 October 2008.

Yours sincerely,

Hildégard Uertz-Retzlaff
Senior Trial Attorney

1 CD entitled "Disclosure Batch 412 – Rule 66(A)(ii) Witness Materials" containing the materials listed below:

Description	Date	ENG ERN	BCS ERN	Comment
RAVE, Evert Albert				
Prior Statements				
Dutch MOD Srebrenica investigation / Srebrenica debriefing statement	30-Aug-95	R013-8587- R013-8606; R013-0133- R013-0155 (NED)		This item is a recently Rule 70 cleared statement of the witness.
Dutch MOD Srebrenica investigation / Srebrenica debriefing statement	03-Oct-95	R018-4928- R018-4930; R013-0159- R013-0161 (NED)		This item is a recently Rule 70 cleared statement of the witness.

Please acknowledge disclosure of the above mentioned material by signing this receipt below.

Signature: _____

Date: _____