

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: 16 February 2011

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/Strictly Confidential Annexes

FORTY-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 68, by failing to disclose, as soon as practicable, the relevant portions of a diary written by a prominent individual who visited Sarajevo in 1992. The diary indicates that this individual was told on his visit by the UNPROFOR Commander that the Serbs informed them before they fired their heavy weapons. The UNPROFOR Commander also confirmed Dr. Karadzic's statement that the Serbs refrained from firing their heavy weapons even in the face of Muslim attacks. The diary also indicates that the writer found Dr. Karadzic refreshingly honest and that Dr. Karadzic had indicated that those atrocities which had been committed by Serbs had been committed by persons who were out of control of the authorities.¹

2. The document in question was disclosed by the prosecution on 14 February 2011.² The prosecution has advised that the diary has been in its possession since 2002.

3. The exculpatory nature of this diary is that it tends to refute the allegations in the indictment that the Bosnian Serbs were firing indiscriminately and disproportionately into Sarajevo and that the perpetrators were persons under Dr. Karadzic's control.

4. It should also be noted that the prosecution itself has indicated that the document may fall within Rule 68 in its disclosure letter.

5. The failure to disclose this statement prior to the testimony of witnesses who have testified to shellings during this same period in 1992, such as Arnout van Lynden, General Hussein Ali Abdel-Razek, Martin Bell, and Jeremy Bowen, prejudiced Dr. Karadzic by preventing him from using this information during his cross examination of these witnesses.

6. Dr. Karadzic has also been prejudiced by the late disclosure because he was unable to assess the document in preparing for trial as part of the development of his overall defence strategy.

¹ The document in question is attached as Strictly Confidential Annex "A" and the information appears on page R1097606. Because the prosecution has indicated that the diary was provided to them under Rule 70 on the condition that it not be disseminated outside of the defence team, Dr. Karadzic is filing the excerpts on a strictly confidential basis, meaning it should not be transmitted to others beyond the Chamber and OTP. He has also made the information in this motion deliberately vague so as not to identify the author.

² The disclosure letter is attached as Strictly Confidential Annex "B".

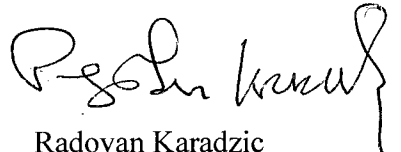
7. The Trial Chamber has already held that the prosecution's policy of delaying disclosure of exculpatory material violates Rule 68.³ This latest example indicates that the violations are continuing.

8. Therefore, the Trial Chamber is requested to make a finding that Rule 68 has been violated by the failure to disclose this diary as soon as practicable.

9. Given the six week adjournment granted by the Trial Chamber for the late disclosure of the 31 January 2011 material, Dr. Karadzic does not seek an additional adjournment for this violation which came to his attention on 14 February 2011. He will decide whether it is necessary to recall any of the above-named witnesses once the full scope of the prosecution's disclosure violations is known at the end of their case.

Word count: 664

Respectfully submitted,



Radovan Karadzic

³ *Decision on Prosecution's Motion for Reconsideration of Trial Chamber's 11 November 2010 Decision* (10 December 2010) at para. 11; *Decision on Accused's Seventeenth bis and Twenty-Eighth Disclosure Violation Motions* (16 December 2010) at para. 23