

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-05/18-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: 15 July 2010

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public with Confidential Annexes*

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SEVENTH MOTION FOR FINDING OF DISCLOSURE  
VIOLATION AND FOR REMEDIAL MEASURES

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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 violated Rule 66(A)(ii) by failing to disclose three witness statements of Stjepan Klujic and Witness KDZ386.

2. The three statements were in the possession of the prosecution since 2000 (Klujic) and 2006 (KDZ386).<sup>1</sup> They were disclosed on 13 July 2010.<sup>2</sup> The Trial Chamber had required that all such statements be disclosed by 7 May 2009.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

5. On 22 June 2010, Dr. Karadzic filed his *Submission on Third Motion for Finding Disclosure Violations and for Remedial Measures* after the late disclosure of Rule 66(A)(ii) and 68 material on the eve of the testimony of witness John Wilson.

6. On 23 June 2010, Dr. Karadzic filed his *Fourth Motion for Finding Disclosure Violations and for Remedial Measures* after receiving late disclosure of material related to the testimony of prosecution witness Herbert Okun, who completed his testimony in April.

7. On 28 June 2010, Dr. Karadzic filed his *Fifth Motion for Finding Disclosure Violations and for Remedial Measures* after the prosecution disclosed four more witness statements which had been in its possession for several years.

8. On 9 July 2010, Dr. Karadzic filed his *Sixth Motion for Finding Disclosure Violations and for Remedial Measures* after the prosecuted disclosed two proofing notes for Momcilo Mandic after his testimony had commenced. The Trial Chamber, in a

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<sup>1</sup> Copies of the statements are attached as Annex "A".

<sup>2</sup> A copy of the disclosure letter is attached as Annex "B".

<sup>3</sup> *Order Following Status Conference and Appended Work Plan* (6 April 2009) at para. 7

<sup>4</sup> TR 1460

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

partial oral ruling, found that the prosecution had indeed violated Rule 66(A)(ii) concerning the Mandic proofing notes.<sup>6</sup>

8. The Trial Chamber has not yet ruled on the Third, Fourth, or Fifth motion.

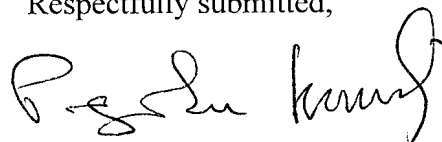
9. While Dr. Karadzic has expressed sympathy with the prosecution's task of providing full disclosure from its mammoth collection of documents, the latest violation is troubling in light of the failure of the prosecution to have fully complied with Rule 66(A)(ii) by now. In addition, it should be noted that one of the statements of Mr. Klujic is 18 pages single spaced, and the statement of KDZ386 is a 130 page transcript of interview. These are highly substantive statements which were taken by the Office of the Prosecutor itself. The KDZ386 statement was taken by Julian Nicholls, a prosecutor assigned to the Karadzic trial team.

10. It is hard to imagine that such important statements in the possession of the prosecution have been missed. While Dr. Karadzic does not allege bad faith, the failure to disclose such statements appears to be negligent, at best. Had the Trial Chamber required the prosecutors leading the witnesses to personally certify compliance with the disclosure rules, it is likely that Mr. Nicholls would have disclosed the KDZ386 statement.

11. Dr. Karadzic reiterates that if the Trial Chamber continues to fail to provide a remedy for such violations, it creates a kind of impunity. Therefore, he requests that the Trial Chamber make a specific finding of a violation of Rule 66(A)(ii) and then impose some remedy which would serve to deter such violations in the future. Such a remedy should now include an order requiring the lead prosecutors to personally certify that they have verified that Rule 66(A)(ii) has now been complied with as to all remaining witnesses, as well as excluding the testimony of Mr. Klujic and KDZ86.

Word count: 759

Respectfully submitted,



Radovan Karadzic

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<sup>6</sup> Transcript of 14 July 2010, p. 5078