

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: 20 July 2010

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public with Confidential Annex*

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EIGHTH 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 once again violated Rule 66(A)(ii) by failing to disclose two witness statements of Witness KDZ029.

2. The two statements were given in 1992 to non-governmental organizations investigating crimes in Bosnia and have been in the possession of the prosecution since 1995.<sup>1</sup> They were disclosed on 19 July 2010 as Rule 66(B) material. The Trial Chamber had required that all statements of witness KDZ029 be disclosed thirty days before the trial commenced in October 2009.<sup>2</sup>

3. Both statements were signed by the witness, who affirmed that he/she was willing to testify to those matters to an international court. The prosecution is under an obligation to disclose all statements of prosecution witnesses in its possession, regardless of who took the statement.<sup>3</sup>

4. 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>

5. 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>

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<sup>1</sup> Copies of the statements are attached as Annex "A". The prosecution has advised in e-mail correspondence that it has been in possession of these statements since 1995, but does not believe they come within Rule 66(A)(ii).

<sup>2</sup> *Decision on Protective Measures for Witnesses* (30 October 2008)

<sup>3</sup> *Prosecutor v Milutinovic et al*, No. IT-05-87-T, *Decision on Ojdanic Motion for Disclosure of Witness Statements and for Finding of Violation of Rule 66(A)(ii)* (29 September 2006) at para. 14; *Prosecutor v Mpambara*, No. ICTR-2001-65-I, *Decision: Defence Motion for Disclosure of Documents and Objections Regarding the Legality of Procedures* (28 February 2002) at para. 22; *Prosecutor v Nshogoza*, No. ICTR-07-91-PT, *Decision on Defence Motions for Disclosure Under Rules 66 and 68 of the Rules of Procedure and Evidence* (22 December 2008) at para. 24; *Prosecutor v Gatete*, No. ICTR-2000-61-PT, *Decision on Defence Motions for Disclosure Pursuant to Rule 66(A)(ii) and Commencement of Trial* (13 October 2009) at para. 19; *Prosecutor v Nyiramasuhuko et al*, No. ICTR-98-42-T, *Decision on the Defence Motion for the Disclosure of the Declarations of the Prosecutor's Witnesses Detained in Rwanda and all Other Documents and Information Pertaining to the Judicial Proceedings in their Respect* (18 September 2001) at para. 6

<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)

6. 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.

7. 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.

8. 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.

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

10. On 15 July 2010, Dr. Karadzic filed his *Seventh Motion for Finding Disclosure Violations and for Remedial Measures* after the prosecution belatedly disclosed three statements of witnesses Stjepan Klujic and KDZ386, which had been in its possession for several years.

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

12. The latest violation appears to be the result of the prosecution's failure to follow the jurisprudence which requires disclosure of statements taken by third parties in the possession of the prosecution. Therefore, as a remedy, Dr. Karadzic requests that the Trial Chamber direct the prosecution to disclose all statements of its witnesses in its possession, regardless of who had taken the statement, by the end of the summer judicial recess and to certify that such disclosure is complete. Further remedies, such as recalling witnesses, may be requested once the scope and effect of the prosecution's failure to disclose statements taken by third parties is known.

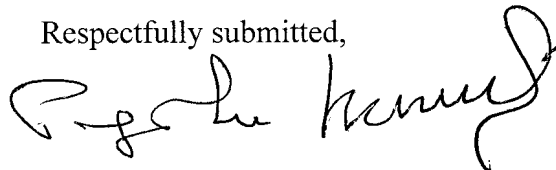
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<sup>6</sup> Transcript of 14 July 2010, p. 5078

13. 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 an appropriate remedy.

Word count: 911

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', written in a cursive style.

Radovan Karadzic