

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: 3 August 2010

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public with Confidential Annexes

NINTH 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 timely disclose six witness statements.

2. The statements in question are as follows:

KDZ578	Dusan Kovacevic	12 May 2009
KDZ430	Dragan Majkic	28 Nov 2005
KDZ122		02 Apr 2000 05 Feb 2004 26 Sep 2008
KDZ450		08 Apr 2010

2. These statements were not disclosed until 27 July 2010.¹ The Trial Chamber had required that all such statements be disclosed by 7 May 2009.²

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.³

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.⁴

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.

¹ The letters enclosing the disclosure are attached as Annex "A". The statements in question are attached as Annex "B", with the exception of the statement of KDZ430 which is contained in a video file.

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

³ TR 1460

⁴ *Decision on Accused's Second Motion for Finding Disclosure Violation and for Remedial Measures* (17 June 2010)

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 partial oral ruling, found that the prosecution had indeed violated Rule 66(A)(ii) concerning the Mandic proofing notes.⁵

9. 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.

10. On 20 July 2010, Dr. Karadzic filed his *Eighth Motion for Finding Disclosure Violations and for Remedial Measures* after the prosecution failed to timely disclose two statements of Witness KDZ029.

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

12. The Trial Chamber has not yet issued a decision on the Seventh and Eighth Motions.

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.

14. He notes that the April 2010 statement of KDZ450 was taken by Trial Attorney Carolyn Edgerton, who is part of the prosecution trial team in this case. This late disclosure underscores that measures for accountability, such as the certification of the attorney leading the witness that disclosure is complete, would improve the prosecution's compliance with its disclosure obligations.

⁵ Transcript of 14 July 2010, p. 5078

Word count: 743

Respectfully submitted,

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

Radovan Karadzic