

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: 28 June 2010

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/Confidential Annex

FIFTH 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 violated Rule 66(A)(ii) by failing to disclose the following witness statements and testimony within the time prescribed by the Trial Chamber:

<u>Witness</u>	<u>Item</u>	<u>Date of Disclosure</u>
KDZ105	Statement of 11 November 2002	23 June 2010
KDZ145	Statement of 28 April 2009	23 June 2010
KDZ226	Statement of 7 September 2009	23 June 2010
KDZ245	Statement of 5 February 2007	23 June 2010

2. The Trial Chamber had ordered that all Rule 66(A)(ii) material be disclosed by 7 May 2009.¹ All but one of these materials were in existence on 7 May 2009, yet were not disclosed until almost a year later. The one subsequent statement was in existence since 7 September 2009 but not disclosed until June 2010. In each case, the prosecution has represented that the item was “recently discovered”.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 *Order Following Status Conference and Appended Work Plan* (6 April 2009) at para. 7

² A copy of the letter accompanying the disclosure is attached as Confidential Annex “A” to this motion.

³ TR 1460

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

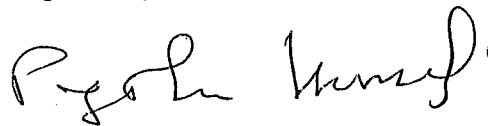
7. On that same day, he received the letter from the prosecution evidencing the latest violation of Rule 66(A)(ii) with respect to the four items listed above.

8. Dr. Karadzic recognizes that due to the volume of documents in his case, disclosure presents a challenge to the prosecution. However, the above pattern of late disclosures demonstrates that the prosecution is falling short on meeting its disclosure obligations.

9. Dr. Karadzic believes 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 may include exclusion of the testimony of some or all of the affected witnesses, or 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.

Word count: 613

Respectfully submitted,



Radovan Karadzic