

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: 2 February 2011

THE PROSECUTOR

v.

RADOVAN KARADZIC

*Public w/Confidential Annex*

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MOTION FOR FOURTH SUSPENSION OF PROCEEDINGS

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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 an order suspending the trial proceedings in his case for a period of three months prior to the commencement of witnesses who will testify about alleged ethnic cleansing in the municipalities. The suspension is necessary due to the ongoing violations of the prosecutor's disclosure obligations, culminating in the huge volume of Rule 68 disclosure pertaining to the municipalities component of the case provided to the defence on 31 January 2011.

2. In its *Decision on Prosecution's Request for Reconsideration of Trial Chamber's 11 November 2010 Decision* (10 December 2010), the Trial Chamber established a deadline of 31 January 2011 for disclosure of all "Rule 68 material found in searches but the search results are still subject to review". This resulted in the disclosure on 31 January 2011 of 1725 items totaling an estimated 32,000 pages and 142 videos containing an estimated 200 hours of material.<sup>1</sup> More than 90% of the material appears to deal with the municipalities.

3. It is simply impossible to review, or even catalogue, this material while the trial is ongoing. The defence team is fully stretched to the maximum just preparing for upcoming witnesses. More than 90% of the newly disclosed material is in BCS, making it impossible for Dr. Karadzic's legal advisor or interns to contribute to the task and putting the burden squarely on the same people who are needed for preparation of ongoing witnesses—Legal Associate Marko Sladojevic and the case managers and investigators.

4. The Trial Chamber has already found that the prosecution's systemic delay in disclosing Rule 68 material violated the provisions of the Rule.<sup>2</sup> The 31 January 2011 disclosures represent the latest evidence of the magnitude and scope of these violations. Absent a suspension of the proceedings, the trial will continue without an opportunity for the material to be reviewed and Dr. Karadzic will be irreparably prejudiced.

5. Dr. Karadzic has filed 37 disclosure violation motions prior to receipt of the 31 January 2011 material. In virtually all of the motions, the Trial Chamber has found that the prosecution violated its disclosure obligations. However, these motions represent just the tip of the disclosure violation iceberg. Dr. Karadzic has selected only those

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<sup>1</sup> A copy of the disclosure letters detailing this disclosure is attached as Confidential Annex "A".

<sup>2</sup> *Decision on Accused's Twenty-Second, Twenty-Fourth, and Twenty-Sixth Disclosure Violations* (11 November 2010) at para. 33

exculpatory documents which are (1) in English and (2) pertain to witnesses who have already testified, to be included in his motions. Such documents represent a miniscule portion of the Rule 68 disclosures being belatedly made by the prosecution.

6. In addition, the violations can be expected to continue. The Trial Chamber has given the prosecution until 18 April 2011 to disclose the remaining Rule 68 material. That category of material, based upon witness-related searches, is likely to be voluminous and to affect mostly municipalities witnesses. Requiring the defence to deal with piecemeal disclosure of the events in the municipalities is highly prejudicial, particularly considering that the responsibility for this state of affairs rests squarely upon the prosecution.

7. The Trial Chamber has, on previous occasions, found that voluminous disclosures of Rule 68 material warranted a suspension of proceedings. In August 2010, the Trial Chamber suspended the proceedings for two weeks after the disclosure of approximately 113 hours of recordings seized from the residence of General Mladic's wife.<sup>3</sup> In September 2010, the Trial Chamber suspended the proceedings for a period of one week due to the late disclosure of 5,740 pages of material seized from the residence of Dragomir Pacanas.<sup>4</sup> In November 2010, the Trial Chamber suspended the proceedings for one month after the late disclosure of 14,726 pages of material from Mr. Pacanas' hard drive.<sup>5</sup>

8. In suspending the proceedings, the Trial Chamber took into consideration the volume of the late-disclosed material as well as the pattern of continuing violations.

9. In this instance, the volume is three times the amount of material that warranted a one-month suspension of the proceedings.<sup>6</sup> In addition, the pattern of violations goes well beyond the latest disclosure dump on 31 January 2011. Disclosure violations, including inexcusable violations of Rule 66(A)(ii), have been continuing since the last suspension of proceedings ended in early December.<sup>7</sup>

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<sup>3</sup> *Decision on Accused's Motion for Suspension of Proceedings* (18 August 2010)

<sup>4</sup> Transcript of 13 September 2010 at pp. 6593-94; *Decision on Accused's Seventeenth Motion for Finding of Disclosure Violation and for Remedial Measures* (29 September 2010)

<sup>5</sup> *Decision on Accused's Twenty-Second, Twenty-Fourth, and Twenty-Sixth Disclosure Violations* (11 November 2010) at para. 41

<sup>6</sup> It is more than twice the number of written pages and the video material is considered to add the equivalent of 12,000 pages (200 hours at 60 pages per hour)

<sup>7</sup> See 28<sup>th</sup> through 36<sup>th</sup> Disclosure violation motions.

10. Those violations are likely to continue until the final deadline of 18 April 2011. The accused is prejudiced by not having all of the Rule 68 material in his possession prior to commencing to cross examine witnesses related to the municipalities component of the case—it prevents him from formulating a coherent defence strategy and takes away from the day to day preparation which is necessary to cross examine witnesses on an ongoing basis.

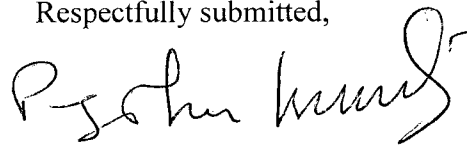
11. It is respectfully requested that the trial be suspended after the testimony of Sarajevo witness Dzevlan on 15 February 2011 until 15 May 2011, except for periods in March 2011 when four Sarajevo witnesses are scheduled to be heard on fixed days. This will ensure that the accused is not required to start defending the events in the municipalities until he has received all of the disclosure that he was entitled to receive before the trial commenced and that he can use the time until then to read and organize the massive disclosure of 31 January and the anticipated final disclosure on 18 April 2011.

12. This suspension will also reduce the number of disclosure violation motions being filed because it will stop the ongoing prejudice from witnesses being called who cannot be confronted with material disclosed after they have testified. It will allow for the trial to resume under conditions where Dr. Karadzic can receive a fair trial and have had adequate time to prepare the municipalities portion of the case. Absent a suspension, that portion of the case will be tainted by unfairness stemming from the prosecution's disclosure violations.

13. For all of the above reasons, it is respectfully requested that the Trial Chamber order a three month suspension of proceedings in this case.

Word count: 1163

Respectfully submitted,



Radovan Karadzic