

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: 12 February 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public Version

77th MOTION FOR FINDING OF
DISCLOSURE VIOLATION
(JANUARY 2013)

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 a statement of one of its witnesses.

2. On 22 January 2013, the prosecution disclosed for the first time the relevant contents of three statements of two prosecution witnesses made in 1996.¹

3. Pursuant to Rule 66(A)(ii), the prosecution was required to disclose these statements by 7 May 2009. The prosecution has acknowledged that the statements were in its possession at that time, but claims they were not disclosed due to an oversight. The Trial Chamber is respectfully requested to make an express finding that the prosecution has once again violated its disclosure obligation pursuant to Rule 66(A)(ii).

4. Dr. Karadzic has been prejudiced by the prosecution's violation of its disclosure obligations. Had the statements been disclosed to him before the trial commenced, he could have used it in his cross examination of the two witnesses, which is the very point of Rule 66(A)(ii).

5. These statements bring the total number of statements which the prosecution failed to disclose to Dr. Karadzic in violation of Rule 66(A)(ii) to an astounding and unacceptable 410.

6. The Trial Chamber has yet to impose any meaningful sanction on the prosecution for its disclosure violations. In addition to a finding of violation, the Trial Chamber is respectfully requested to exclude the testimony of the two witnesses as a sanction for the prosecution's serial violations of Rule 66(A)(ii).

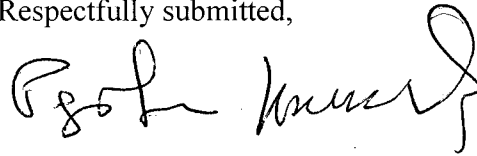
7. When a party other than the prosecution violates a rule of this Tribunal, they are sanctioned regardless of whether anyone has been prejudiced.² By refusing to sanction the prosecution unless a showing of prejudice is made, despite 410 violations of Rule 66(A)(ii), the Trial Chamber is applying an inexplicable double standard.

¹ The letter of disclosure is attached as Confidential Annex "A". The statements are attached as Confidential Annex "B".

² *Prosecutor v Seselj*, No. IT-03-67-R77.2, *Judgement on Allegations of Contempt* (24 July 2009); *In the Case Against Florence Hartmann*, No. IT-02-54-R77.5, *Judgement on Allegations of Contempt* (14 September 2009); *Prosecutor v Seselj*, No. IT-03-67-R77.3, *Judgement* (31 October 2011); *Prosecutor v Margetic*, No. IT-95-14-R77.6, *Judgement on Allegations of Contempt* (7 February 2007); *Prosecutor v Marijadic & Rebic*, No. IT-95-14-A, *Judgement* (27 September 2006); *Prosecutor v Jovic*, No. IT-95-14-R77-A, *Judgement* (15 March 2007); *In the matter of Vojislav Seselj*, No. IT-03-67-R77.4, *Judgement* (28 June 2012).

Word count: 479

Respectfully submitted,

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

Radovan Karadzic