

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 June 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/ Confidential Annexes

81st MOTION FOR FINDING OF DISCLOSURE
VIOLATION

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 68 by failing to timely disclose exculpatory documents it had obtained from the Serbian government in 2010.

2. In January and March 2010, Serbian authorities turned over a voluminous amount of material to the Office of the Prosecutor. This Trial Chamber held that the prosecution violated its obligations under Rule 68 by not disclosing some of this material to Dr. Karadzic as soon as practicable, and that the seized material contained items of an exculpatory nature.¹

3. On 16 July 2012, the Appeals Chamber issued a public redacted version of its *Decision on Prosecution Motion for the Appointment of Independent Counsel to Review Material Potentially Subject to Lawyer-Client Privilege*. In the decision, it was noted that the prosecution had identified voluminous material from the items furnished by Serbia in January and March 2010 which were potentially subject to the lawyer-client privilege of one of the *Popovic* accused.² It had isolated the material and forgone review of this material pending determination of the privileged status of the documents.³ On 18 November 2011, it filed a motion with the Appeals Chamber for appointment of an independent counsel to review the material.⁴ The Appeals Chamber decided to ask the President to appoint a Judge to review the material instead.⁵

4. On 30 July 2012, Dr. Karadzic filed his 73rd *Motion for Finding of Disclosure Violation (July 2012)*. He contended that the prosecution violated its Rule 68 obligation to disclose exculpatory material to him “as soon as practicable” by delaying in seeking

¹ *Decision on Accused's Seventeenth Motion for Finding of Disclosure Violation and for Remedial Measures* (29 September 2010) at para. 20; *Decision on Accused's Twenty-Second, Twenty-Fourth, and Twenty-Sixth Disclosure Violation Motions* (11 November 2010) at para. 37 (finding no disclosure violation, but ordering a further suspension of proceedings.)

² *Prosecutor v Popovic et al*, No. IT-05-88-A, *Decision on Prosecution Motion for the Appointment of Independent Counsel to Review Material Potentially Subject to Lawyer-Client Privilege* (16 July 2012) at para. 8 and fn. 15

³ *Prosecutor v Popovic et al*, No. IT-05-88-A, *Decision on Prosecution Motion for the Appointment of Independent Counsel to Review Material Potentially Subject to Lawyer-Client Privilege* (16 July 2012) at paras 2-3

⁴ *Prosecutor v Popovic et al*, No. IT-05-88-A, *Decision on Prosecution Motion for the Appointment of Independent Counsel to Review Material Potentially Subject to Lawyer-Client Privilege* (16 July 2012) at para. 1

⁵ *Prosecutor v Popovic et al*, No. IT-05-88-A, *Decision on Prosecution Motion for the Appointment of Independent Counsel to Review Material Potentially Subject to Lawyer-Client Privilege* (16 July 2012) at para. 8

appointment of an independent party to review the privileged material for more than 18 months.

5. The Trial Chamber denied that motion as speculative and premature.⁶

6. On 6 June 2013, the prosecution finally disclosed 179 documents from the material after receiving clearance from the Appeals Chamber.

7. A review of this material discloses multiple violations of Rule 68.

8. The material includes witness statements taken by the defence team of Ljubisa Beara. The statements are exculpatory to Dr. Karadzic's case in that they rebutted the prosecution's allegation that Ljubisa Beara had genocidal intent and that therefore the killings of prisoners from Srebrenica constituted genocide.

9. Among the exculpatory material are the following:

(A) Statement of Mikhajlo Mitrovic that Colonel Beara had no special leaning against members of other ethnic groups and that he advocated punishment of crimes against non-Serbs.⁷

(B) Statement of Spiro Pereula that Colonel Beara never displayed any intolerance towards other ethnic groups nor displayed intolerance towards them.⁸

(C) Statement of Pero Jukic Sunaric that Colonel Beara never paid attention to nationality and treated other national and ethnical groups correctly.⁹

(D) Statement of Spiradon Alacov that Colonel Beara made no distinction between people upon ethnic or religious grounds, rank or post.¹⁰

10. Dr. Karadzic has been prejudiced by the disclosure violations because he could have used the material in his cross examination of Prosecution VRS Main Staff witnesses such as General Manojlo Milovanovic and General Petar Skrbic, who were well acquainted with Colonel Beara. Dr. Karadzic has also been prejudiced by not being able to use the material by calling some of these individuals as witnesses in his defence case.

⁶ *Decision on Accused's Seventy-Third Disclosure Violation Motion* (21 August 2012) at para. 10

⁷ Confidential Annex "A" at pp. 2-6

⁸ Confidential Annex "B" at p. 1

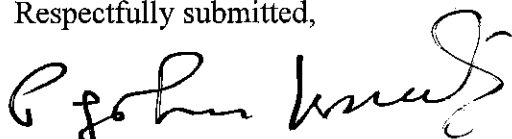
⁹ Confidential Annex "C" at pp. 1-2

¹⁰ Confidential Annex "D" at p. 2

11. The Trial Chamber is requested to make a finding that the prosecution violated its disclosure obligation as to the material described in paragraph 9 by delaying submission of the material to the Appeals Chamber for more than 18 months.

Word count: 880

Respectfully submitted,

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

Radovan Karadzic