

IT-95-5/18-T
D81212-D81172
04 December 2013

IT-95-5/18-T p.81212

MC

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: 4 December 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/Confidential Annexes

84th MOTION FOR FINDING OF DISCLOSURE
VIOLATION AND FOR REMEDIAL MEASURES
(NOVEMBER 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 68 by failing to timely disclose four exculpatory documents. Three of the documents has been in the possession of the prosecution for many years, but were not disclosed until earlier this year when, in response to continuing violations, the prosecution made its "Rules of the Road" collection of some 30,000 pages of documents available to the defence. The fourth document was the prosecution's own interview conducted on 5 October 2001 which it inexplicably never disclosed until specifically requested in November 2013.

Document #1

2. The first document is a statement of a Muslim resident of Grbavica, given to the Bosnian State Security Service on 2 October 1992.¹ The resident advised that:

"I must mention that in [the street where I lived] many civilians were killed or wounded by snipers shooting from the free territory."

3. The resident also described the actions of a Serb commissioner who protected Muslims and Croats in his building from searches and looting.

4. The exculpatory nature of this document is twofold. First, it describes how the ABiH was employing snipers to fire at civilians in Grbavica, which explains why it was necessary and militarily justifiable for the VRS to employ snipers in Grbavica and to fire into "free territory". Second, the conduct of the Serb commissioner contradicts the allegation that there was a policy or joint criminal enterprise to expel non-Serbs and commit violent acts against them.

5. Dr. Karadzic has been prejudiced by the late disclosure of this document because he could have used the information in his cross examination of prosecution witnesses and his direct examination of defence witnesses who testified about Grbavica. There are no more Grbavica-related witnesses scheduled to testify at the trial.

Document #2

6. The second document is a statement of a Muslim resident of Hadzici given to the Bosnian State Security Service on 19 July 1992.² The resident described how he had

¹ A copy of the statement is attached as Confidential Annex "A". The annexes are filed confidentially because it is not known whether assurances of confidentiality have been given to these witnesses by the prosecution.

² A copy of the statement is attached as Confidential Annex "B".

been arrested and taken to be interrogated by the military police, but was released without any questioning or mistreatment on the orders of a Serb official named Milan Kuzman. He further related that he was unharmed during his stay in Hadzici.

7. The exculpatory nature of this document is that the conduct of the Serb official contradicts the allegation that there was a policy or joint criminal enterprise to expel non-Serbs and commit violent acts against them. It supports Dr. Karadzic's contention that the authorities were not expelling or incarcerating all Muslims, but only those suspected of assisting the enemy.

8. Dr. Karadzic has been prejudiced by the late disclosure of this document because he could have used the information in his cross examination of prosecution witnesses and his direct examination of defence witnesses who testified about Hadzici. There are no more Hadzici-related witnesses scheduled to testify at the trial.

Document #3

9. The third document is a statement of a Muslim resident of Bijeljina, given before an investigative judge in Bosnia on 6 March 1996.³ The resident describes how, when looking for his son who had allegedly been taken by Arkan's men, he went to the President of Bijeljina municipality, who received him properly and said that he was good friends with the witness' son. The municipal President promised to try to find out what happened to his son and to try and get him released.

10. The exculpatory nature of this document is that it shows that the crimes in Bijeljina were not committed in collusion with the authorities as alleged by the prosecution, but were committed by persons over whom the authorities had no control. It contradicts the allegation that there was a policy or joint criminal enterprise to expel non-Serbs and commit violent acts against them.

11. Dr. Karadzic has been prejudiced by the late disclosure of this document because he could have used the information in his cross examination of prosecution witnesses and his direct examination of defence witnesses who testified about Bijeljina. There are no more Bijeljina-related witnesses scheduled to testify at the trial.

³ A copy of the statement is attached as Confidential Annex "C".

Document #4

12. The fourth document is a transcript of an interview by the ICTY Office of the Prosecutor with Damir Dosen on 5 October 2001, after Mr. Dosen had pled guilty.⁴ During the interview, Mr. Dosen was asked about the killings at Koricanske Stijena. He was asked if the perpetrators said who ordered the execution. He responded:

No. I can only assume and I can only say about how I put things together in my head after the event. I think this was done upon or spontaneously on, on self-initiative. I think that there were some reasons and there is evidence perhaps also at, at Prijedor about this. For example, there was a special unit from Banja Luka that was supposed to come to arrest them. Even kill them if they offered resistance.⁵

13. The witness repeated that “judging by the pressure that came from Banja Luka to arrest these people and even kill them, so that they had to hide and run. Because of that, it seemed to me that this was, that something that was done spontaneously on self-initiative.”⁶

14. The exculpatory nature of this document is that it shows that the killings at Koricanske Stijena were not planned by the authorities and that the authorities were serious in trying to prosecute the perpetrators. This completely contradicts the prosecution’s case against Dr. Karadzic for the Koricanske Stijena killings. It is inexplicable why such an exculpatory document was not disclosed to Dr. Karadzic.

15. Dr. Karadzic has been prejudiced by the late disclosure of this document because he could have used the information in his cross examination of prosecution witnesses who testified about the Koricanske Stijena incident.

Remedy

16. It is respectfully requested that the Trial Chamber make a finding that the prosecution has violated Rule 68 by failing to timely disclose these documents.

17. These violations demonstrate that the prosecution had not disclosed all of the exculpatory information in its possession despite repeated admonitions by the Trial

⁴ A copy of the transcript of the interview of Mr. Dosen is Confidential Annex “D”.

⁵ p.16

⁶ p.18

Chamber and despite all of the mechanisms it claimed to have put in place to detect and disclose exculpatory material.

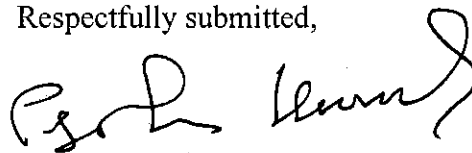
18. This motion represents the latest installment of the defence's review of the recent Rules of the Road disclosure and additional violations are expected to be uncovered as the remaining material is reviewed.

19. Dr. Karadzic further requests that he be granted an additional 4 hours for his defence case to remedy the prejudice by the non-disclosure.

20. Finally, Dr. Karadzic renews his request that the Trial Chamber order that the defence be given open-file disclosure, as the violations of the prosecution's disclosure obligations continue to be uncovered. Only full disclosure can ensure a fair trial.

Word count: 1294

Respectfully submitted,

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

Radovan Karadzic