

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: 3 February 2014

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/ Confidential Annexes

86th MOTION FOR FINDING OF DISCLOSURE
VIOLATION AND FOR REMEDIAL MEASURES
(JANUARY 2014)

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 the testimony of Witness SZ-07 in the *Stanisic & Zupljanin* case and a proofing note concerning his testimony.

2. The testimony of Witness SZ-07 was given entirely in closed session in December 2011. Pursuant to the Trial Chamber's *Decision Partially Granting Radovan Karadzic's Request for Access to Confidential Material* (30 June 2010), Dr. Karadzic was granted access to closed session testimony transcripts from that case. The Trial Chamber ordered the parties in that case to, on an ongoing basis, "identify for the Registry...for disclosure to Radovan Karadzic...all closed and private session testimony which are not subject to Rule 70 or for which consent to disclosure has been obtained."¹

3. Although it was clear that Rule 70 was not implicated, neither the prosecution nor the defence in that case identified the testimony of Witness SZ-07 to the Registry and the testimony was not disclosed to Dr. Karadzic until 14 January 2014 after he notified the prosecution that he intended to call Witness SZ-07 as a defence witness in January 2014.²

4. The prosecution also failed to disclose a proofing note containing information obtained from Witness SZ-07 which was in its possession from December 2011.³

5. While SZ-07 was a defence witness, and the initial responsibility of identifying his testimony rested upon the defence team of Mr. Zupljanin, this did not relieve the prosecution of its obligation to see that exculpatory evidence in its possession was disclosed to Dr. Karadzic. Disclosure of the proofing note was required independent of the Trial Chamber's access order, and prosecution had the obligation to either disclose the closed session transcript or ensure that the Registry provided access to Dr. Karadzic once its exculpatory nature was known.

6. The exculpatory nature of the evidence is reflected in the last sentence of paragraphs 4 and 6, and paragraph 9 of the proofing note and the last three paragraphs of the summary of the testimony.⁴

¹ Pg. 9, disposition #1

² A copy of the disclosure letter is Confidential Annex "A".

³ A copy of the proofing note is attached as Confidential Annex "B" A summary of the closed session testimony is attached as Confidential Annex "C". The transcript of the testimony can be found in e-court under 65 ter #1D09901.

7. Dr. Karadzic has been prejudiced by the late disclosure of the testimony and proofing note because it was only fortuitous that he decided to have his investigators interview Witness SZ-07 near the end of his defence case after other witnesses from the same municipality became unavailable. It was only then that he learned that Witness SZ-07 testified in the *Stanisic & Zupljanin* case and that he possessed this exculpatory information. Had the testimony and proofing note been disclosed to him as soon as practicable, as required by Rule 68, he would have called the witness at an earlier stage in his case.

8. Who knows how many other persons whose exculpatory information is in the possession of the prosecution cannot be called as defence witnesses because their information remains undisclosed to Dr. Karadzic? Dr. Karadzic was lucky to have stumbled upon Witness SZ-07 on his own. Due to the prosecution's disclosure practices, there are likely to be other persons who Dr. Karadzic has not identified who could have provided exculpatory testimony during his trial.

9. It is respectfully requested that the Trial Chamber make a finding that the prosecution has violated Rule 68 by failing to timely disclose the testimony and proofing note.

10. These violations demonstrate that the prosecution had not disclosed all of the exculpatory information in its possession despite repeated admonitions by the Trial Chamber and despite all of the mechanisms it claimed to have put in place to detect and disclose exculpatory material.

11. Additional violations are expected to be uncovered since this disclosure was missed by the prosecution trial team and there can be no assurance that other exculpatory material has not been missed.

12. Dr. Karadzic requests that the prosecution be precluded from cross examining Witness SZ-07 at Dr. Karadzic's trial as a sanction for its disclosure violation—taking into account the plethora of Rule 68 violations which have been found in this case.

13. Alternatively, Dr. Karadzic requests that the time of the defence examination of this witness not be counted towards his time limitation of 325 hours in which to

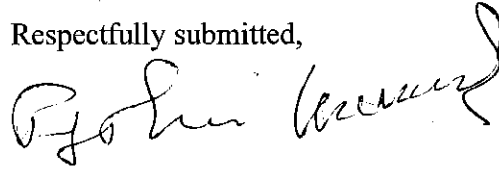
⁴ Given that the testimony was heard in closed session, Dr. Karadzic does not specify the content of the witness' information in this public filing.

present his defence case, as the disclosure violation prevented him from presenting his case more efficiently.

14. Dr. Karadzic also 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: 914

Respectfully submitted,

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

Radovan Karadzic