

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: 8 April 2014

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/ Confidential Annexes

91st MOTION FOR FINDING OF DISCLOSURE
VIOLATION AND FOR REMEDIAL MEASURES
(APRIL 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 66(A)(ii), and Rule 68, by failing to timely disclose the statements of seven of its witnesses.

Rule 66(A)(ii)

2. On 28 February 2014, the prosecution disclosed for the first time information provided by six of its Rule 92 *bis* witnesses.¹ On 7 March 2014, information from a seventh witness was disclosed.² The information was obtained from the witnesses between 1995 and May 2013.

3. Pursuant to Rule 66(A)(ii), the prosecution was required to disclose these statements by 7 May 2009 or as soon as practicable thereafter. Despite these statements being in its possession for between 9 months and 9 years, the prosecution failed to timely disclose them.

4. This is now an astounding 424 statements of its own witnesses that the prosecution has failed to disclose under Rule 66(A)(ii).

5. In its *Prosecution Periodic Disclosure Report* (17 February 2014), the prosecution explained that it had missed several statements of its witnesses because it had not conducted updated searches for Rule 92 *bis* and *quater* witnesses since its original search in advance of the May 2009 deadline.

6. While this explains, though does not excuse; its failure to disclose four of the seven statements which are the subject of this motion, the prosecution has failed to explain why the 1995 statement of Faris Gavrankapetanovic, the 2004 statement of Ferid Spahic or the 2006 testimony of Witness KDZ107 was not disclosed in May 2009.³

7. The prosecution states that “errors are inevitable given the nature and volume of the Prosecution’s evidence collection and the vast amount of disclosure in this case.”⁴ This is indeed Dr. Karadzic’s point—by insisting on bringing a case of unmanageable scope and resisting efforts by the defence and the Chamber to reduce it, the prosecution created the very situation which it finds itself in. Having made that choice, it must bear

¹ The letter of disclosure is attached as Confidential Annex “A”. The annex is filed confidentially because it includes information that would identify a protected witness.

² The letter of disclosure is attached as Confidential Annex “B”

³ The seven statements are attached as Confidential Annexes “C” thru “I”

⁴ *Prosecution Periodic Disclosure Report* (17 February 2014) at para. 10

the consequences. So far, all of the consequences of the prosecution's massive disclosure violations in this case have been borne by Dr. Karadzic.

Rule 68

8. The prosecution's failure to disclose the transcript of the interview with Witness KDZ107 also violated Rule 68. During the interview, Witness KDZ107 added information to his prior testimony *Blagojevic* case. This information, that he was told that persons shot at the Vuk Karadzic School on 13 July 1995 had tried to escape, is exculpatory in nature.

9. Given that the *Blagojevic* testimony was admitted pursuant to Rule 92 *bis* in Dr. Karadzic's case, the prosecution's failure to disclose the interview transcript not only violated Rules 66(A)(ii) and 68, but prejudiced Dr. Karadzic, who was unable to cite the new information as a reason to refuse admission of the testimony, require that witness KDZ107 appear for cross examination, or admit the interview transcript as a supplemental Rule 92 *bis* statement.

The Remedy

10. The Trial Chamber is requested to make a finding that the prosecution has once again violated Rule 66(A)(ii) by failing to disclose the seven statements in a timely manner.

10. It is high time for an additional remedy.

11. The Trial Chamber's forgiveness of the prosecution's 424 violations of the May 2009 deadline for disclosure of the statements of all of its witnesses, including those whose evidence was admitted pursuant to Rule 92 *bis*, stands in stark contrast to its treatment of the defence evidence offered under Rule 92 *bis*. In its *Decision on Accused's Motions for Admission of Evidence Pursuant to Rule 92 bis*, the Trial Chamber excluded 13 of 15 defence witnesses on the grounds that the defence had not met the Chamber's deadline for designation of Rule 92 *bis* witnesses.

12. In order to restore some balance to the treatment of both parties, the Trial Chamber is requested to exclude the testimony of the seven witnesses as a sanction and remedy for the latest disclosure violation. This will provide the prosecution in the future an incentive to search for and disclose all statements of its Rule 92 *bis* witnesses—addressing the very error that caused the non-disclosure in this instance.

13. Additionally, Dr. Karadzic again 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. This is not a plea for reconsideration of prior decisions, but a reflection that the continuing revelation of ongoing disclosure violations warrants relief beyond that provided by the Chamber in its earlier decisions.

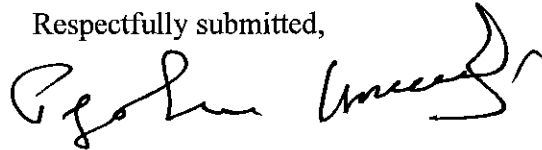
14. Dr. Karadzic continues to maintain that in a case of this scope and magnitude, only full disclosure can ensure a fair trial.

15. Finally, Dr. Karadzic notes the Trial Chamber's admonition that "the filing of disclosure violation motions should not be a numerical exercise directed towards documenting every disclosure violation, and should focus on examples where there is demonstrable prejudice."⁵ Dr. Karadzic understands the Trial Chamber's frustration at having to adjudicate 91 disclosure violation motions, with more likely to come. But his failure to seek relief for these violations before the Trial Chamber will preclude him from complaining about them on appeal, both individually and cumulatively, if he is convicted.

16. Therefore, he apologizes for having to continue to bring such motions and respectfully invokes the maxim "don't shoot the messenger!"

Word count: 1057

Respectfully submitted,



Radovan Karadzic

⁵ *Decision on Accused's Eighty-Seventh Disclosure Violation Motion* (10 March 2014)