

IT-95-5/18-T
D 86123 - D 86112
27 AUGUST 2014

86123

Aj

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: 27 August 2014

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/Confidential Annexes

93rd MOTION FOR FINDING OF DISCLOSURE
VIOLATION AND FOR REMEDIAL MEASURES
(AUGUST 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 exculpatory material.

The Violation

2. On 21 August 2014 the prosecution disclosed for the first time two documents that had been admitted under seal in the *Stanisic & Simatovic* case.¹ The documents are letters dated 9 July 2004 in which Senior Trial Attorney Dermot Groome of the Office of the Prosecutor details exculpatory evidence for disclosure to Slobodan Milosevic during his trial.

3. The first document indicates that the Prosecution had received information that suggested, *inter alia*, that the people responsible for the killings in Srebrenica were acting on their own and that an armed rebellion was being planned in September 1995 against the Republika Srpska civilian authority and that the situation was chaotic.²

4. The second document indicates that the Prosecution had received information that suggested that as of 1994, Slobodan Milosevic was not cooperating with Dr. Karadzic and that the Srebrenica killings were done without the knowledge of General Mladic or high authorities of Republika Srpska.³

5. The exculpatory nature of these documents is that they tend to corroborate Dr. Karadzic's defence that he had no knowledge of the Srebrenica killings, that he had no material ability to punish the perpetrators. It also contradicts the allegation of the indictment that Dr. Karadzic was part of a joint criminal enterprise with Slobodan Milosevic.

6. In e-mail correspondence on 22 August, the prosecution indicated that the material had not been disclosed to Dr. Karadzic due to "human error".

7. Dr. Karadzic was prejudiced by the prosecution's violation of Rule 68 because he was unable to use the exculpatory material in time to locate and present this evidence during the defence case, which is now closed.

8. Dr. Karadzic therefore requests that the Trial Chamber make a finding that the prosecution has once again violated its disclosure obligations under Rule 68 by failing to

¹ *Prosecutor v Stanisic & Simatovic*, No. IT-03-69-A, *Prosecution Sixth Notification of Compliance With Access Decision* (21 August 2014)

² A copy of this document is attached as Confidential Annex "A". It is not being directly quoted in this public filing.

³ A copy of this document is attached as Confidential Annex "B".

disclose the exculpatory material as soon as practicable.

The Remedy

9. Dr. Karadzic requests that the prosecution be ordered to disclose to Dr. Karadzic the information in its original form, so that he can track down the source of the information and interview the witness who has personal knowledge of these facts. Dr. Karadzic may seek to re-open his defence case once he has completed his investigation of this late-disclosed information.

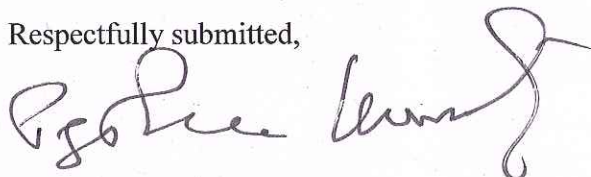
10. The latest disclosure violation reveals that the prosecution in the past had made a practice of providing substantive and exculpatory material to defence teams by way of correspondence. In order to ensure that all such exculpatory material has been disclosed, Dr. Karadzic requests that the prosecution be ordered to search its correspondence files or folders for each case prosecuted at this Tribunal involving some or all of the events which are the subject of Dr. Karadzic's indictment, and disclose any additional exculpatory material located in such searches.

Conclusion

11. Violations of the prosecution's duty to disclose exculpatory evidence continue to be uncovered, even at this late stage of the proceedings. The Trial Chamber is urged to take a more robust approach to these violations.

Word count: 662

Respectfully submitted,



Radovan Karadzic