

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: 11 December 2014

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/ Confidential Annexes

96th MOTION FOR FINDING OF DISCLOSURE
VIOLATION AND FOR EXCLUSION OF EVIDENCE

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 a United Nations report that documents his efforts to prevent crimes against non-Serbs in 1994. As a remedial measure and sanction for the violation, Dr. Karadzic further requests that the Trial Chamber exclude evidence it previously admitted of uncharged events in Bihac and Gorazde during that same year.

2. On 10 December 2014, the prosecution disclosed, for the first time, a United Nations report that sets forth specific instances of Dr. Karadzic and the leadership of Republika Srpska taking steps to prevent crimes against non-Serbs, and indeed the United Nations, in 1994. In Confidential Annex "A", Dr. Karadzic sets out the portions of the document that constitute exculpatory evidence under Rule 68. The document, which the provider has requested be confidential, is attached as Confidential Annex "B".

3. The prosecution has advised that this document has been in its possession since 1999.

4. The Trial Chamber is requested to make a finding that by failing to disclose the document attached as Confidential Annex "B", the prosecution violated its disclosure obligation under Rule 68.

5. Dr. Karadzic has been prejudiced by the prosecution's failure to disclose this material as soon as practicable. Had this material been disclosed in time, Dr. Karadzic could have elicited the information described in Confidential Annex "A" from United Nations witnesses called by the prosecution, such as General Michael Rose or General Adrianus van Baal.

6. The prosecution convinced the Trial Chamber to exercise its discretion to allow Generals Rose and Van Baal to testify to uncharged events in Bihac and Gorazde during 1994 on the grounds that such evidence established command and control, intent, and pattern against Dr. Karadzic.¹ Yet at the same time, it failed to disclose UN evidence contained in Confidential Annex B that refuted such command and control, intent, and pattern.

7. While much of the document is not exculpatory, the prosecution's failure to search for and disclose this type of "mixed" inculpatory/exculpatory material prior to trial

¹ T7240 (5 October 2010); T8386 (27 October 2010)

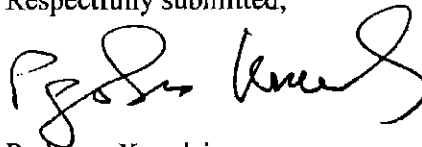
is inexcusable. The ICTR Appeals Chamber had held before Dr. Karadzic was even arrested that documents containing both exculpatory and inculpatory material must be disclosed pursuant to Rule 68.²

8. Dr. Karadzic believes that the remedy of excluding the 1994 evidence of uncharged events in Bihac and Gorazde is appropriate not only to mitigate the prejudice from the violation, but as a long-overdue sanction against the prosecution for disclosure violations that continue unabated well into the deliberation phase of this case. By exclusively focusing on prejudice to the accused, this Trial Chamber has failed to recognize that violations of a party's disclosure obligations are not only offenses against the other party, but are offenses against the administration of justice itself.

9. For all of the above reasons, it is respectfully requested that the Trial Chamber make a finding that the prosecution has again violated its disclosure obligations pursuant to Rule 68, and exclude the prosecution evidence of 1994 events in Bihac and Gorazde it has previously admitted.

Word count: 762

Respectfully submitted,



Radovan Karadzic

² *Prosecutor v Karemera et al*, No. ICTR-98-44-AR73.13, *Decision on Joseph Nzirorera's Appeal from Decision on Tenth Rule 68 Motion* (14 May 2008) at para. 12