

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 May 2015

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/ Confidential Annexes

99th MOTION FOR FINDING OF DISCLOSURE VIOLATION
AND FOR REMEDIAL MEASURES

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 disclose exculpatory material as soon as practicable. He also seeks remedial measures.

2. On 30 June and 4-5 July 2011, Witness DST-035 testified in closed session in the *Stanisic & Simatovic* trial during the defence case of Jovica Stanisic.¹ A statement from the witness was admitted into evidence pursuant to Rule 92 *ter*.²

3. The statement and testimony contained information of an exculpatory nature relating to the March-April 1992 events in Bijeljina municipality.³

4. The prosecution failed to disclose the statement until 25 April 2015 and failed to disclose the 4-5 July transcripts until 30 April 2015.⁴ This prevented Dr. Karadzic from learning of the exculpatory information until after his defence case had closed.

5. The prosecution's failure to disclose this material violated its obligation under Rule 68 to disclose exculpatory material as soon as practicable. It also violated the *Stanisic and Simatovic* Trial Chamber's order granting Dr. Karadzic access to confidential material from that case.⁵

6. Dr. Karadzic was prejudiced by this violation because he could have called Witness DST-035 as a witness in his defence case, or offered his testimony pursuant to Rule 92 *bis*, if disclosure had occurred before he closed his case in May 2014.

Remedies

7. Dr. Karadzic respectfully requests that the Trial Chamber make a finding that the prosecution has again violated its disclosure obligations by failing to disclose the above-described material as soon as practicable.

8. Dr. Karadzic further requests that, as a remedy for the disclosure violations, he be allowed to re-open his defence case to admit the statement and testimony of Witness DST-035 from the *Stanisic & Simatovic* case pursuant to Rule 92 *bis*.

9. Should the Trial Chamber not be amenable to allowing Dr. Karadzic to re-open

¹ A copy of the transcript of this testimony is attached as Confidential Annex "C".

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

³ Because of protective measures ordered by the Trial Chamber in the *Stanisic & Simatovic* case, Dr. Karadzic has specified the exculpatory information in Confidential Annex "A".

⁴ The information was received too late to be included in the 98th *Motion for Finding of Disclosure Violation and for Remedial Measures* (30 April 2015)

⁵ *Prosecutor v Stanisic & Simatovic*, No. IT-03-69-T, *Decision on Motion by Radovan Karadzic for Access to Confidential Materials in the Stanisic & Simatovic Case* (16 July 2009) at p. 7

his defence case at this stage, Dr. Karadzic requests that the Trial Chamber provide the remedy of drawing an inference against the prosecution on the factual issues to which the non-disclosed evidence relates.

10. Dr. Karadzic further requests that the Trial Chamber convene an oral hearing at which the prosecution is required to explain why it failed to disclose this exculpatory information and at which Dr. Karadzic can suggest further steps that can assure that all exculpatory material is disclosed to him prior to the delivery of the judgement in this case.

Word count: 935

Respectfully submitted,

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

Radovan Karadzic