

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-5/18-AR98bis.1

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Patrick Robinson
Judge Liu Daqun
Judge Khalida Rachid Khan
Judge Bakhtiyar Tuzmukhamedov

Registrar: Mr. John Hocking

Date: 10 June 2013

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public w/Confidential Annexes

SUPPLEMENTAL SUBMISSION IN SUPPORT OF
MOTION TO DISMISS APPEAL AND
FOR APPOINTMENT OF AMICUS CURIAE PROSECUTOR

The Office of the Prosecutor:
Mr. Peter Kremer QC

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic has moved to dismiss the prosecution's appeal as a sanction for violation of its disclosure requirements and for the appointment of an *amicus curiae* prosecutor to investigate whether the prosecution's disclosure violations and its certification that it had complied with its disclosure obligations constitute contempt of this Tribunal.

2. On 19 November 2012, the prosecution filed a certification that "the Prosecutor has disclosed to the Accused all material under Rule 68(i) relating to Count 1 which has come into his actual knowledge..."¹

The Latest Violation

3. On 6 June 2013, the prosecution disclosed for the first time information provided by a crime technician for the Banja Luka police who had investigated the massacre at Koricanske Stijena to the ICTY Office of the Prosecutor in 2003.²

4. The statement contains exculpatory information and should have been disclosed pursuant to Rule 68(i). The exculpatory nature of the statement is patently obvious. The witness said:

"While waiting for the green light to process the scene, we learned that Radovan Karadzic had issued an order that the crime should be investigated and that the survivors were not to be harmed and the bodies collected."

5. The Koricanske Stijena massacre committed by members of the Prijedor police intervention platoon is the most relied upon incident in support of the prosecution's claim that genocide was committed in the municipalities as alleged in Count 1 of the Indictment and is therefore squarely covered by the certification by the prosecutor that all Rule 68 material had been disclosed.

6. The interview was conducted by an investigator who has worked extensively on the *Karadzic* case. There is no excuse for this violation of the prosecution's disclosure obligation. It is further evidence of the inaccuracy of the certification provided to the Appeals Chamber.

¹ *Corrigendum to Prosecution's Rule 98 bis Appeal Brief*

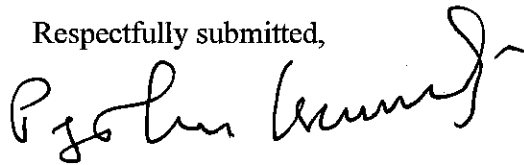
² The letter of disclosure is attached as Confidential Annex "A". The information report is attached as Confidential Annex "B". The witness is listed as a "sensitive source" and it is not known whether the witness would require protective measures.

7. Dr. Karadzic has been prejudiced by this violation because he could have elicited this information from prosecution witnesses during his cross examination and the information could be considered by the Appeals Chamber as evidence that the Trial Chamber did not err when it concluded that the crime at Koricanske Stijena was not committed with genocidal intent or was in any way the result of the statements of President Karadzic which the prosecution contends demonstrate his genocidal intent.

8. Dr. Karadzic respectfully requests that the Appeals Chamber consider this latest violation of the prosecution's disclosure obligations when deciding on his motion to dismiss or appoint an *amicus curiae* prosecutor. In the absence of a remedy, the violations continue.

Word count: 546

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', with a stylized flourish at the end.

Radovan Karadzic