

**UNITED
NATIONS**

International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-95-5/18-PT
Date: 10 December 2008

IN TRIAL CHAMBER III

Before: Judge Iain Bonomy, Presiding
Judge Christoph Flügge
Judge Michèle Picard

Registrar: Mr. Hans Holthuis

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**PROSECUTION RESPONSE TO MOTION FOR DISCLOSURE
OF RULE 68 MATERIAL OBTAINED UNDER RULE 70**

The Office of the Prosecutor:

Mr. Alan Tieger
Mr. Mark B. Harmon
Ms. Hildegard Uertz-Retzlaff

The Accused

Radovan Karadžić

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No. IT-95-5/18-PT

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**PROSECUTION RESPONSE TO MOTION FOR DISCLOSURE OF RULE 68
MATERIAL OBTAINED UNDER RULE 70**

I. INTRODUCTION

1. The Prosecution opposes Karadžić's "Motion For Disclosure of Rule 68 Material Obtained Under Rule 70(B)."¹
2. In the Motion Karadžić seeks orders by the Trial Chamber relating to the disclosure regime with respect to Rule 70(B) documents.² In particular, he requests that the Prosecution be required to notify him and the Chamber of the exculpatory material which is being "withheld" under Rule 70(B) and of the steps taken for disclosure of such material.³
3. The Motion should be dismissed. The Prosecution is fully complying with its disclosure obligations under Rule 68 including disclosure of documents obtained under Rule 70(B). To date 203 potentially exculpatory documents obtained under

¹ Filed on 3 December 2008 (Motion).

² Motion, para.14.

³ Motion, paras.3, 14.

Rule 70(B) have been disclosed to the Accused. No material is being withheld from disclosure.

II. DISCLOSURE OF POTENTIALLY EXCULPATORY DOCUMENTS PROVIDED UNDER RULE 70(B)

4. The Motion is premised entirely on an unsubstantiated “concern” that the Prosecution is withholding from disclosure materials obtained under Rule 70(B).⁴ However, Karadžić has not indicated any specific failure by the Prosecution with respect to its obligations under Rule 68 justifying an intervention of the Trial Chamber.

5. There is a presumption that the Prosecution is fulfilling its disclosure obligations in good faith.⁵ An order for disclosure should only be contemplated where the accused can satisfy the Chamber that the Prosecution has failed to discharge its obligations under Rule 68.⁶ No such failure exists in this case. No material is being withheld and there is no basis for any orders of the Trial Chamber to ensure compliance with Rule 68 disclosure. Further, as the Trial Chamber previously noted, it does not serve as a “monitor for routine correspondence between the parties.”⁷

6. The Prosecution is fully aware of its continuing obligation to disclose material pursuant to Rule 68, including disclosure of Rule 70(B) material. It has been clearly established that, while it is within the providers’ discretion to refuse to authorise disclosure, it is not within the Prosecution’s discretion to withhold exculpatory material which was provided pursuant to Rule 70.⁸

7. There is a system in place to ensure timely disclosure of exculpatory material. The Prosecution is actively searching and reviewing materials for Rule 68 disclosure

⁴ Motion, paras.1 and 2.

⁵ *Prosecutor v. Karemera et al.*, Decision on Joseph Nzirorera’s Interlocutory Appeal, Case No. ICTR-98-44-AR73.6, App.Ch., 28 April 2006, para.17; *Prosecutor v. Kordić and Čerkez*, Appeal Judgement, Case No. IT-95-14/2-A, App.Ch., 17 December 2004, para.183.

⁶ *Prosecutor v. Brđanin*, Decision on Appellant’s Motion for Disclosure Pursuant to Rule 68 and Motion for an Order to the Registrar to Disclose Certain Materials, Case No. IT-99-36-A, App. Ch., 7 December 2004, p. 3; *Prosecutor v. Blaškić*, Decision on the Appellant’s Motions for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings, Case No. IT-95-14-A, App.Ch., 26 September 2000, para. 45.

⁷ Order on Accused’s Notice of Request for Inspection and Disclosure, 22 October 2008, p.2.

⁸ *Prosecutor v. Blaškić*, Decision on Prosecution’s Notification Regarding Rule 70 Material, Case No. IT-95-14-A, App.Ch., 18 May 2004 (*Blaškić Appeals Decision*), pp.4-5.

and is progressing diligently with its disclosure obligations. Its searches for Rule 68 material include documents received under Rule 70(B). Once material received under Rule 70(B) has been identified as potentially exculpatory, the Prosecution takes steps to obtain the consent of the provider under Rule 70(C) for disclosure in the Karadžić case.⁹ After consent is given, the material is disclosed in a timely manner.

8. Under this regime, the Prosecution to date has disclosed a total of 212 documents received pursuant to Rule 70(B). 203 of those documents were disclosed under Rule 68, eight documents were disclosed pursuant to Rule 66(A)(i) and one document was disclosed as a potential exhibit. Karadžić's concern that documents are not being disclosed under Rule 68 due to Rule 70 restrictions¹⁰ is baseless.

III. STATUS OF DISCLOSURE

9. Without prejudice to its submissions on the merits of the Motion, the Prosecution takes this opportunity to provide the Trial Chamber and the Accused with an update on its disclosure.

10. To date the Prosecution has disclosed 6498 items to the Accused Karadžić totaling approximately 104,283 pages.

11. Pursuant to Rule 66(A)(i), 1031 items have been disclosed as part of the Indictment Supporting Materials. 990 items have been disclosed under Rule 65*ter* as potential Prosecution exhibits. 4477 items have been disclosed pursuant to Rule 68 including 203 documents obtained under Rule 70(B).

12. The Prosecution is continuing to review its evidence collection for potentially exculpatory material pursuant to Rule 68.

13. Should the Trial Chamber consider it useful, the Prosecution would continue to file regular reports on the status of its disclosure for the benefit of the Chamber and the Accused.

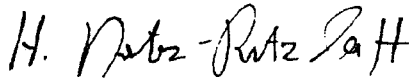
⁹ See Rule 68(iii).

¹⁰ Motion, paras.1-3.

IV. CONCLUSION

14. The Prosecution respectfully requests that the Trial Chamber dismisses the Motion in its entirety.

Word Count: 848


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Dated this 10th day of December 2008
At The Hague, The Netherlands