

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-05/18-PT

IN TRIAL CHAMBER No. 3

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

Acting Registrar: Mr. John Hocking

Date Filed: 6 February 2009

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION FOR DISCLOSURE OF RULE 68 MATERIAL

The Office of the Prosecutor:

Mr. Alan Tieger
Mr. Mark Harmon

The Accused:

Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves for an order requiring the prosecution to disclose Rule 68 material to him on CD Rom or DVD.

2. On 3 February 2009, Dr. Karadzic noted that the prosecution was only notifying him of the existence of Rule 68 material on its Electronic Disclosure Suite (“EDS”) and not providing him with the material itself. He requested that the prosecution disclose Rule 68 material on CD Rom or DVD.¹

3. The prosecution responded on 5 February 2009, refusing the request.²

4. The prosecution is in direct contravention of Appeals Chamber jurisprudence which has held that its Rule 68 disclosure obligations are not satisfied by posting material on the EDS.³

5. In the *Lukic* case, the Trial Chamber held that posting a document on the EDS is insufficient to comply with Rule 66(A)(ii).⁴ The same must be true for the Rule 68 obligation, which has been described as one which is as important as the duty to prosecute.⁵

6. Dr. Karadzic is prejudiced by the prosecution’s failure to provide Rule 68 material to him outside the EDS. First, only he and his two legal associates are allowed access to the EDS, while his other team members are allowed access to confidential material. Given that the Registrar insists on remunerating Dr. Karadzic’s legal associates at support staff rates, they do not have time to search the EDS. Providing the material on CDs or DVDs will allow other members of the defence team to work with the material.

7. Second, the prosecution can monitor the time and frequency of defence team members’ access to the EDS, as well as the content that they are searching for. The defence should be free to work with exculpatory material without making its strategy known to the prosecution, or being accountable to the prosecution as to how it is spending its time.

¹ A copy of his letter is attached as Annex “A” to this Motion.

² A copy of the response is attached as Annex “B” to this Motion.

³ *Prosecutor v Karemera et al*, No. ICTR-98-44-AR73.7, *Decision on Interlocutory Appeal Regarding the Role of the Prosecutor’s Electronic Disclosure Suite in Discharging Disclosure Obligations* (30 June 2006) at para. 10

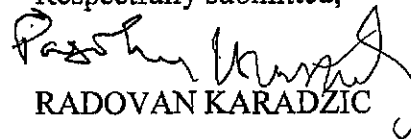
⁴ *Prosecutor v Lukic & Lukic*, No. IT-98-32/1-T, *Decision on Milan Lukic’s Motion to Suppress Testimony for Failure of Timely Disclosure* (3 November 2008) at para. 17

⁵ *Prosecutor v Kordic & Cerkez*, No. IT-65-14/2-A, *Judgement* (17 December 2004) at para. 183, 242; *Prosecutor v Brdjanin*, No. IT-99-36-A, *Decision on Appellant’s Motion for Disclosure Pursuant to Rule 68 and Motion for an Order the Registrar to Disclose Certain Materials* (7 December 2004)

8. Therefore, the Trial Chamber is respectfully requested to make a finding that the prosecution is in breach of its obligations under Rule 68 and to order the prosecution to immediately furnish all Rule 68 material to the accused in CD Rom and DVD format.

Word count: 553

Respectfully submitted,



RADOVAN KARADZIC

ANNEX "A"

Dr. Radovan Karadzic

3 February 2009

Ms. Hildegard Uertz-Retzlaff
Office of the Prosecutor
ICTY

Ms. Uertz-Retzlaff,

I notice you are now sending me notice of disclosures being made on the EDS instead of sending me DVDs or CDs containing the disclosures.

I need the disclosures in CD or DVD form. So can you please provide CDs and DVDs for all material which you have placed on EDS such as those items contained in your letters of 23 and 27 January 2009.

I also request that all correspondence sent to me by OTP be copied to my Legal Advisors Peter Robinson and Goran Petronijevic. You can send it to them at their ICTY e-mail addresses.

Thank you for your cooperation.

Yours truly,


Dr. Radovan Karadzic

ANNEX "B"

05 February 2009

United Nations
Nations UniesInternational
Criminal Tribunal
for the former
YugoslaviaTribunal Pénal
International pour
l'ex-YougoslavieOffice of the
ProsecutorBureau du
Procureur

Subject: Your letter dated 3 February 2009

Dear Dr. Karadžić,

In relation to the issue of disclosure, I can inform you that there is no change in the Prosecution's disclosure practise.

From the beginning we have provided you all Rule 65 ter and Rule 66 materials on CD and all Rule 68 materials through EDS and we intend to continue this practise.

Since 27 October 2008, we have provided to you 12 batches of potential Rule 68 materials via EDS, namely the batches 10, 15, 16, 20, 21, 22, 29, 32 and 33. Depending on the amount of materials we provided you with a CD containing an electronic index of what was made available on the EDS.

This is in conformity with Tribunal practice and the establishment of the EDS. In addition, because CDs are not searchable, the provision of Rule 68 materials on CD would not be particularly useful to you and your associates. The current practise allows you to electronically search the Rule 68 materials and thus permits quicker and easier access to the desired information, especially in relation to the video and intercept materials disclosed.

If you wish, we could arrange access for your associates to your case-specific file on the EDS so that they can also make use of this opportunity.

As requested in your letter, we will provide Mr. Robinson and Mr. Petronijević with a copy of this letter and all future correspondence.

Yours sincerely,

Hildegard Uertz-Retzlaff
Senior Trial Attorney

Mr. Radovan Karadžić
UNDU

cc: Peter Robinson
Goran Petronijević