



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

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

Date: 27 April 2009

Original: English

IN THE TRIAL CHAMBER

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

Acting Registrar: Mr. John Hocking

Decision of: 27 April 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON MOTION ON MODALITIES OF
RULE 66(A)(ii) DISCLOSURE**

Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Mr. Radovan Karadžić

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seised of the Accused’s “Motion on the Modalities of Rule 66(A)(ii) Disclosure”, filed on 14 April 2009 (“Application”), and hereby renders its decision thereon.

I. Background and Submissions

1. In the Motion, the Accused moves the Chamber to order the Office of the Prosecutor (“Prosecution”) to communicate material to him pursuant to its disclosure obligations under Rule 66(A)(ii) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) on an external hard drive, organised in a certain manner. Specifically, the Accused requests that the Prosecution be ordered to create a folder on the external hard drive for each witness, listed in alphabetical order, and to include in each of these witness folders: (a) the prior statements of the witness; (b) the prior testimony of the witness, segregated by case; (c) any exhibits to be offered through the witness; (d) any Rule 68 material that might affect the credibility of the witness; (e) a hyperlinked index of all this material. The Accused argues that such an order is necessary “since the work plan of the Trial Chamber provides him with too small of a time period to review too much material ...”¹ In addition, the Accused requests that the Chamber exclude the testimony of any witness whose prior statements or transcripts of testimony are not disclosed to him by the 7 May 2009 deadline established in the Chamber’s “Order Following on Status Conference and Appended Work Plan” of 6 April 2009.²

2. In the “Prosecution’s Response to Karadžić’s Motion on the Modalities of Rule 66(A)(ii) Disclosure”, filed on 22 April 2009, the Prosecution agrees to voluntarily provide to the Accused future Rule 66(A)(ii) disclosure materials on an external hard drive, organised in some respects in the manner he requests. It opposes the Motion in all other respects.

II. Discussion

3. Rule 66(A)(ii) requires the Prosecution to “make available to the defence” (a) copies of all statements of the witnesses whom it intends to call to testify at trial; and (b) copies of all transcripts and written statements taken in accordance with Rule 92 *bis*, Rule 92 *ter*, and Rule 92 *quater*, within the time-limit prescribed by the Trial Chamber or pre-trial judge. It does not set out the manner in which this material is to be made available, nor the manner in which it is to be

¹ Motion, para. 5.

² Motion, para. 6.

organised. The Appeals Chamber in *Šešelj* upheld a Trial Chamber decision that Rule 66(A) disclosure may be effected electronically, provided that “reasonable and necessary assistance in the circumstances is given to an accused” such as the basic equipment and training necessary to make effective use of the material thus disclosed.³

4. The reason behind the first aspect of the Motion, concerning the manner in which Rule 66(A)(ii) material should be provided and organised, is stated to be time constraints imposed by the Chamber in its work plan. The Chamber notes, however, that the deadline set for the disclosure of all this material is 7 May 2009, more than two months in advance of the projected date of the pre-trial conference, and a month and a half before the filing date for the Accused’s pre-trial brief. The Chamber also notes that a significant amount of Rule 66(A)(ii) material has already been disclosed to the Accused – 2,975 documents up to the Prosecution’s disclosure report of 15 April 2009 – well in advance of the deadline.

5. The Chamber does not, therefore, consider that the manner in which disclosure is currently being carried out by the Prosecution, nor the deadlines set by the Chamber, negatively affect the Accused’s fair trial rights. Nonetheless, the Prosecution has volunteered to provide further Rule 66(A)(ii) material (1) on an external hard drive, (2) organised into folders for each witness, (3) including in each folder the prior statements and transcripts of the relevant witness, with indexes thereto attached. There is, therefore, no need for the Chamber to issue an order with regard to these matters. The Prosecution should consult with the Registry of the Tribunal in relation to the arrangements for the provision of said external hard drive to the Accused.

6. The Prosecution states in its Response that it is not obliged, nor is it able, to include in the requested folders for each witness the exhibits that it will seek to tender through that witness. The Chamber will not order it to do so, as the Rules and the work plan established for this case clearly contemplate the disclosure of proposed exhibits as a separate process from disclosure under Rule 66(A)(ii). Moreover, in its Order of 6 April 2009, the Chamber has already directed the Prosecution to link each of its proposed witnesses to the exhibits that it would seek to tender through them, when it files its Rule 65 *ter* (E)(ii) and (iii) lists.

7. Similarly, the Chamber is satisfied that the Prosecution is fulfilling its Rule 68 disclosure obligations by way of the Electronic Disclosure System (“EDS”). The Accused and his legal associates and advisers can make use of the search function in the EDS to find material relevant to the Prosecution’s proposed witnesses which may affect their credibility. The Rules do not

³ *Prosecutor v. Šešelj*, Case No. IT-03-67-AR73.5, Decision on Vojislav Šešelj’s Interlocutory Appeal against the Trial Chamber’s Decision on Form of Disclosure, 17 April 2007, para. 19.

require, nor is it in the interests of justice for the Chamber to order, that the Prosecution also provide such material to the Accused as part of a package of Rule 66(A)(ii) disclosure material.

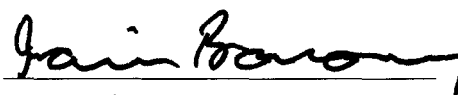
8 With regard to the Accused's request for a hyperlinked index of all the Rule 66(A)(ii) material disclosed to him, the Chamber does not consider that hyperlinking is necessary, so long as a detailed index of this material is provided, and the material is organised in a manner that makes it easy for him to find, as will be the case if the Prosecution organises the material into separate folders for each witness, which it has agreed to do.

9 The second aspect of the Accused's Motion raises the separate issue of what "penalty" to impose upon the Prosecution if it fails to meet the 7 May 2009 deadline for disclosure of all material subject to Rule 66(A)(ii). The Chamber considers this request to be premature, and will deal with this situation if and when it should arise.

III. Disposition

10 For these reasons, pursuant to Rules 54 and 66(A)(ii) of the Rules, the Trial Chamber hereby **DENIES** the Motion.

Done in English and French, the English text being authoritative.



Judge Iain Bonomy
Presiding

Dated this twenty-seventh day of April 2009
At The Hague
The Netherlands

[Seal of the Tribunal]