



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-T

Date: 24 February 2015

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 24 February 2015

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON THE ACCUSED'S MOTION TO COMPEL DISCLOSURE OF RULE 70
CORRESPONDENCE**

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 to Compel Disclosure of Rule 70 Correspondence” filed publicly on 30 January 2015 with confidential annexes (“Motion”), and hereby issues its decision thereon.

I. Background and Submissions

1. The Accused requests that the Chamber order the Office of the Prosecutor (“Prosecution”) to disclose a September 2012 communication (“Communication”) it received from the United Kingdom of Great Britain and Northern Ireland (“UK”).¹ The Communication pertains to clearance given by the UK for the disclosure of a document (“Document”) pursuant to Rule 70 of the Tribunal’s Rules of Procedure and Evidence (“Rules”).² The Accused seeks this order pursuant to Rules 54 and 66(B) of the Rules and notes that the Prosecution refused to provide a copy of the Communication in January 2015.³

2. The Accused argues that disclosure of the Communication is necessary to allow him and the Chamber to determine whether the Prosecution’s explanation as to why it failed to disclose the Document was accurate.⁴ He refers to the failure of the Prosecution to ensure a reliable and efficient system for recording and disclosing Rule 70 material despite the warnings of the Chamber and foreshadows that he may file a motion for the appointment of a “Special Master” to review the Prosecution’s evidence collection as a remedy for the continuing disclosure violations.⁵

3. The Accused points to other examples where the Chamber has ordered the parties to disclose communications with a Rule 70 provider.⁶ He submits that disclosure of the Communication is warranted in this case given the inconsistent explanation provided by the Prosecution for the failure to disclose the Document.⁷ The Accused provides further detail surrounding the Communication and the late disclosure of the Document in confidential Annex A to the Motion.⁸ He further submits that Rule 66(B) of the Rules could also allow for disclosure of material relevant to a breach of an accused’s rights.⁹ In this case, he submits that

¹ Motion, para. 1.

² Motion, para. 1.

³ Motion, para. 1.

⁴ Motion, para. 2.

⁵ Motion, para. 2.

⁶ Motion, para. 5.

⁷ Motion, para. 6.

⁸ Motion, para. 3, confidential Annex A.

⁹ Motion, para. 9.

disclosure of the Communication is material to whether he is entitled to a remedy with respect to the Prosecution's disclosure violations and whether further steps should be taken by the Chamber.¹⁰ He also notes that the Chamber has power to order disclosure of the Communication pursuant to Rule 54 of the Rules, given its power to issue such orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.¹¹

4. On 11 February 2014, the Prosecution filed publicly with confidential appendix the "Prosecution Response to Motion to Compel Disclosure of Rule 70 Correspondence" ("Response"), opposing the Motion.¹² The Prosecution submits that the Accused's suggestion that it made false representations or that there was a glaring inconsistency in the explanation provided, is unfounded.¹³ It notes that it has consistently acknowledged that the Document should have been disclosed earlier when it was cleared by the Rule 70 provider.¹⁴ It further submits that the Document in question has been found by the Chamber to be of very low probative value.¹⁵ It also argues that while it has explained these matters in detail in a letter to the Accused, he "inexplicably persists in persuing the matter" with the Chamber.¹⁶

5. The Prosecution argues that therefore, the Accused has failed to establish a *prima facie* basis for why the Communication is "material to the preparation of the defence" for disclosure under Rule 66(B) and has also failed to show why its disclosure would be necessary pursuant to Rule 54, particularly when considering the confidential nature of correspondence with Rule 70 providers.¹⁷ It concludes that the Accused in seeking to "intensively litigate such marginal matters" is wasting Tribunal resources.¹⁸

II. Discussion

6. The Chamber has had regard to Rules 54 and 66(B) of the Rules which the Accused invokes to seek an order for disclosure of the Communication. Having carefully considered the submissions, including the confidential submissions with respect to the background to the disclosure of the Document and the surrounding circumstances, the Chamber sees no basis to order the disclosure of the Communication. The material considered by the Chamber includes the clarification provided by the Prosecution by way of letter to the Accused which, in the

¹⁰ Motion, para. 10.

¹¹ Motion, para. 11.

¹² Response, para. 1.

¹³ Response, paras. 1, 3.

¹⁴ Response, paras. 3-4.

¹⁵ Response, para. 1, confidential Appendix, note 2.

¹⁶ Response, para. 1.

¹⁷ Response, paras. 2, 5-6, 10.

¹⁸ Response, para. 11.

Chamber's view, adequately explains the reason why the Document was not disclosed and addressed the Accused's concerns in this regard.¹⁹

7. Contrary to the Accused's suggestion, there is nothing to suggest that the Prosecution's explanation for its late disclosure of the Document is inaccurate or that there is any inconsistency which would warrant an order requiring disclosure of the confidential Communication with a Rule 70 provider. In this regard, the Chamber expresses its displeasure that the Accused pursued such a marginal issue when the Chamber had already ruled on the lack of prejudice to him with respect to the late disclosure of the underlying Document. The Chamber takes this opportunity to remind the Accused's legal adviser that he should advise the Accused, that there is no benefit in filing frivolous motions which amount to a waste of valuable judicial resources.

IV. Disposition

8. Accordingly, the Chamber, pursuant to Rules 54 and 66(B) of the Rules, hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-fourth day of February 2015
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁹ Response, confidential Annex C.