



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: 15 January 2009  
Original: English

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**IN THE TRIAL CHAMBER**

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

**Acting Registrar:** Mr. John Hocking

**Decision of:** 15 January 2009

**PROSECUTOR**

**v.**

**RADOVAN KARADŽIĆ**

***PUBLIC***

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**DECISION ON ACCUSED MOTION FOR DISCLOSURE OF RULE 68 MATERIAL  
OBTAINED UNDER RULE 70 (B) AND  
ORDER ON PROSECUTION DISCLOSURE REPORT**

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**Office of the Prosecutor**

Mr. Alan Tieger  
Mr. Mark B. Harmon

**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”);

**BEING SEISED OF** the Accused’s “Motion for Disclosure of Rule 68 Material Obtained under Rule 70(B)”, filed on 4 December 2008 (“Motion”), the “Prosecution Response to Motion for Disclosure of Rule 68 Material Obtained under Rule 70”, filed on 10 December 2008 (“Response”), and the Accused’s “Motion for Leave to Reply: Rule 68/70 Disclosure”, filed on 16 December 2008 (“Reply”);

**NOTING** that, in the Motion, the Accused requests that the Prosecution be required to notify him and the Chamber of the number of Rule 68 exculpatory documents being withheld from disclosure pursuant to the provisions of Rule 70(B) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) and of the steps, if any, being taken by the Prosecution to obtain disclosure,<sup>1</sup> to which the Prosecution responds that it is “fully complying with its disclosure obligations under Rule 68 including disclosure of documents obtained under Rule 70(B)” and that “[n]o material is being withheld from disclosure”;<sup>2</sup>

**NOTING** further that, in its Response, the Prosecution provides a report on the current status of disclosure under Rules 65 *ter*, 66 and 68, including the number of Rule 70(B) documents disclosed, and then proposes that “[s]hould the Trial Chamber consider it useful, the Prosecution would continue to file regular reports on its disclosure for the benefit of the Chamber and the Accused”<sup>3</sup> and that in his Reply, the Accused indicates that this proposal would address his concern, and asks the Trial Chamber to order that such reports “include the number of Rule 68 documents, if any, that Rule 70(B) providers have not authorized be disclosed to the accused”;<sup>4</sup>

**RECALLING** this Trial Chamber’s “Order on Proposed Disclosure Report”, filed on 19 December 2008 (“Order”), in which the Chamber “endorses the Prosecution’s proposal to file a regular disclosure report, and considers that the report should be filed by the Prosecution on a monthly basis as an Annex to a Notice” and ordered the Prosecution to file a further submission as to the structure and content of such reports;<sup>5</sup>

<sup>1</sup> Motion, para. 3.

<sup>2</sup> Response, para. 3.

<sup>3</sup> Response, para. 13.

<sup>4</sup> Reply, para. 5.

<sup>5</sup> Order, paras 4–5.

**NOTING** with approval the Prosecution's "Submission on Proposed Disclosure Report", filed on 5 January 2009 ("Submission") in which the Prosecution undertakes that the proposed disclosure reports would "detail the disclosure provided pursuant to the respective Rules within the time period between disclosure reports" and "outline the anticipated future disclosure including timelines and bring to the attention of the Trial Chamber matters that may impact on the Prosecution's ability to facilitate complete and timely disclosure",<sup>6</sup> and indicates that it intends to describe the disclosed materials by category;<sup>7</sup>

**NOTING** also that the Prosecution also suggests that the reports be filed one week before each status conference;<sup>8</sup>

**CONSIDERING** that a monthly report would enable the Trial Chamber and the parties to monitor the disclosure of documents in manageable quantities;

**CONSIDERING** that, with respect to material falling under Rule 68, the language of Rule 68(iii), by its reference not only to the need to obtain consent of the provider of Rule 70(B) material to its disclosure but also to "the fact of its existence", militates against the disclosure of the specific information sought by the Accused, namely, the number of documents, if any, provided pursuant to Rule 70(B) for which the providers have not yet authorised disclosure of the material; but that the Prosecution may include such information if it so wishes;

**PURSUANT TO** Rule 54 of the Rules of Procedure and Evidence of the Tribunal;

**HEREBY:**

- (a) **GRANTS** leave to reply; and
- (b) **DENIES** the Motion; and

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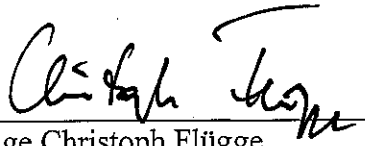
<sup>6</sup> Submission, para. 3.

<sup>7</sup> Submission, para. 4.

<sup>8</sup> Submission, para. 5.

- (c) **ORDERS** the Prosecution to file its disclosure report on the fifteenth day of each month until further order.

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

  
Judge Christoph Flügge

Dated this fifteenth day of January 2009  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**