



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: 17 March 2011

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: 17 March 2011

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON ACCUSED'S MOTION FOR FIFTH SUSPENSION OF PROCEEDINGS

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

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 for Fifth Suspension of Proceedings”, filed publicly with confidential annex on 8 March 2011 (“Motion”), and hereby issues its decision thereon.

1. According to the Motion, at the end of February 2011, the Office of the Prosecutor (“Prosecution”) disclosed to the Accused “hundreds of items totalling an estimated 20,000 pages and 38 videos containing an estimated 179 hours of material” (“Disclosed Material”).¹ The Disclosed Material was provided by the Prosecution on the basis that it “may fall within the ambit of Rule 68 or may be of relevance for the defence case”.² The Accused submits the majority of the Disclosed Material consists of “transcripts or recordings of interviews conducted by the Office of the Prosecutor of suspects and other potential witnesses who it decided not to call”.³

2. Given the volume of the Disclosed Material and the ongoing violations by the Prosecution of its disclosure obligations, the Accused submits that it is necessary for the six week suspension ordered by the Chamber on 16 February 2011 to be extended by an additional six weeks.⁴ He refers to the four other occasions when the Chamber ordered a suspension of proceedings due to the disclosure by the Prosecution of a large volume of additional potentially exculpatory material.⁵ He specifically cites the “Decision on the Accused’s Motion for Fourth Suspension of Proceedings”, filed on 16 February 2011 (“Decision on Fourth Suspension”) where the Chamber ordered that proceedings should be suspended for six weeks from 21 March 2011 to allow the defence to “adequately review some 34,000 pages and 200 hours of video material disclosed pursuant to Rule 68 at the end of January 2011”.⁶

3. The Accused submits that he was prejudiced because he did not have all Rule 68 material in his possession prior to commencing the cross-examination of witnesses who have begun testifying about the alleged takeover of municipalities in Bosnia and Herzegovina and that this also impacted on the day to day preparation for trial and development of a “coherent defence strategy”.⁷ In support of this submission, he identifies examples of instances where he

¹ Motion, para. 2.

² Motion, confidential annex A.

³ Motion, para. 2.

⁴ Motion, para. 1.

⁵ Motion, paras. 3, 8.

⁶ Motion, para. 3.

⁷ Motion, para. 10.

was unable to confront witnesses who had already testified with potentially exculpatory material which the defence had not been able to review before their testimony due to its late disclosure.⁸ He also emphasises that he filed 42 disclosure violation motions before receiving the Disclosed Material and that he should not be required to defend allegations pertaining to the takeover of municipalities in Bosnia and Herzegovina “until he has reviewed all of the disclosure that he was entitled to receive before the trial”.⁹ He therefore requests the Chamber to extend the current period of suspension for an additional six weeks.¹⁰

4. On 11 March 2011, the Prosecution filed the “Prosecution’s Response to Karadžić’s Motion for Fifth Suspension of Proceedings” (“Response”), opposing the Motion. While the Prosecution acknowledges the impact which the volume of Disclosed Material will have on the Accused’s resources and preparations, it contends that an additional six-week adjournment is excessive.¹¹ In support of this submission, it argues that the Accused has already been granted a six-week adjournment and that he can use this upcoming suspension to prioritise his review of the Disclosed Material and “incorporate it into his ongoing preparations”.¹²

5. The Prosecution also contends that the volume of material “actually requiring review is far less than the total number of pages of disclosed material”.¹³ It submits that approximately 6,500 of the 20,000 pages are “duplicative in substance” given that items were disclosed in both English and BCS to assist the review of the Disclosed Material.¹⁴ In addition it submits that over one quarter of the items disclosed in one of the disclosure batches was already available to the Accused given that he was granted access to confidential material in other cases.¹⁵ The Prosecution also claims that the Disclosed Material which largely consists of transcripts or recordings of witness interviews “are conducive to rapid review” and that even if the Chamber considers that a further suspension is necessary, the “circumstances warrant only a brief extension to the forthcoming adjournment”.¹⁶

6. The Chamber recalls that Articles 20(1) and 21(4)(c) of the Statute of the Tribunal (“Statute”) protect the rights of an accused person to be tried expeditiously, with full respect for his rights, and without undue delay. In addition, Article 21(4)(b) of the Statute provides that an

⁸ Motion, paras. 5-6.

⁹ Motion, para. 11.

¹⁰ Motion, para. 11.

¹¹ Response, para. 1.

¹² Response, para. 5.

¹³ Response, para. 2.

¹⁴ Response, para. 2.

¹⁵ Response, para. 7.

¹⁶ Response, paras. 2, 6.

accused person should have “adequate time and facilities for the preparation of his defence”. The Chamber further recalls that an adjournment of the proceedings is an exceptional measure, which it will only order if convinced that it is in the interests of justice to do so.¹⁷

7. In the “Decision on Prosecution’s Request for Reconsideration of Trial Chamber’s 11 November 2010 Decision”, the Prosecution was ordered to identify and disclose Rule 68 material to the Accused as follows:

(i) Rule 68 material from ongoing and related completed cases relating to the period before the Decision, by 23 December 2010, (ii) Rule 68 materials found in searches that have been completed but the search results are still subject to review, by 31 January 2011, (iii) Rule 68 materials identified from searches that are “currently being conducted”, by 28 February 2011, and (iv) Rule 68 material identified during witness-related searches for all Prosecution witnesses, by 18 April 2011.¹⁸

8. These deadlines were set by the Chamber because the Prosecution claimed that it could not meet the previous 17 December 2010 deadline for the search for and disclosure of all potentially exculpatory materials in its possession.¹⁹ The third deadline listed above clearly prompted the disclosure of the Disclosed Material at the end of February 2011. The final deadline for disclosure of Rule 68 “material identified during witness-related searches” was subsequently brought forward by the Chamber to 31 March 2011.²⁰

9. While the Chamber has held that “it is not necessary for the trial to be suspended whenever new Rule 68 material” is disclosed, it has suspended proceedings when it considered that the large volume of material disclosed pursuant to Rule 68 warranted a suspension to allow the Accused “sufficient time to review and incorporate that material if necessary into his ongoing preparations for trial”.²¹ When the Chamber ordered the six week suspension of proceedings, which is scheduled to commence on 21 March 2011, it made an assessment that this period was sufficient to allow the Accused and his team to prioritise and review the 32,000 pages and 200 hours of video which were disclosed to him on 31 January 2011.²² The Disclosed Material in this instance is approximately 20,000 pages and 179 hours of video. The Chamber notes that according to the Prosecution many items were disclosed in both English and BCS which meant that approximately 6,500 of the 20,000 pages were duplicates, and that, in addition,

¹⁷ Decision on Accused’s Motion for Suspension of Proceedings, 18 August 2010, para. 5.

¹⁸ Decision on Prosecution’s Request for Reconsideration of Trial Chamber’s 11 November 2010 Decision, 10 December 2010 (“Reconsideration Decision”), para. 17.

¹⁹ Reconsideration Decision, para. 15.

²⁰ Decision on Fourth Suspension, paras. 13-14.

²¹ Decision on Accused’s Twenty-Second, Twenty-Fourth and Twenty-Sixth Disclosure Violation Motions, 11 November 2010, para. 40; Decision on Accused’s Thirtieth and Thirty-First Disclosure Violation Motions, 3 February 2011, para. 13; Decision on Fourth Suspension, para. 12.

²² Decision on Fourth Suspension, paras. 1, 7.

the Accused had access to some of the remaining material given that confidential material in other cases had already been made available to him. Having considered the volume of the Disclosed Material in light of the Prosecution's submission as to the duplicative nature of some of the material and the Accused's estimate of the time that would be required to conduct his review, the Chamber finds that it is in the interests of justice for the six-week period of suspension to be extended for a further two weeks. The Chamber does not form a view as to whether or not the Disclosed Material actually falls within the scope of Rule 68, but finds that, given the volume of material and manner in which it was disclosed by the Prosecution, the Accused and his team will require additional time to review it and to determine whether or not any of the documents are potentially exculpatory and incorporate them if necessary into his ongoing preparations for trial. In reaching this conclusion, the Chamber is also mindful of the continuing pattern of disclosure violations on the part of the Prosecution and stresses its expectation that there should be no further violations by the Prosecution of its disclosure obligations after the final 31 March 2011 deadline for the disclosure of all Rule 68 materials in its possession. The Chamber reiterates its recent observations and concerns about the impact of the Prosecution's inadequate approach to its disclosure obligations on the smooth conduct of this trial and notes that this further suspension is the latest product of those failings.²³

10. For the foregoing reasons, and pursuant to Articles 20(1) and 21(4)(c) of the Statute and Rule 54 of the Rules, the Trial Chamber hereby **GRANTS** the Motion **IN PART**, and **ORDERS** that following the completion of the current six week suspension, the proceedings shall be suspended for a further two weeks and will therefore resume on 23 May 2011.

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



Judge O-Gon Kwon
Presiding

Dated this seventeenth day of March 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

²³ Decision on Fourth Suspension, para. 13.