



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: 3 September 2012

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: 3 September 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED'S MOTION FOR NEW TRIAL FOR DISCLOSURE
VIOLATIONS**

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 New Trial for Disclosure Violations”, filed on 13 August 2012 (“Motion”), and hereby issues its decision thereon.

I. Submissions

1. The Accused seeks an order granting a new trial on the basis of the numerous violations by the Office of the Prosecutor (“Prosecution”) of its disclosure obligations under the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ In the Accused’s submission the cumulative prejudice he suffered from the number of disclosure violations has resulted in an unfair trial and starting a new trial is the only remedy.²

2. The Accused observes that the Prosecution failed to disclose 406 witness statements or transcripts of testimony which it had in its possession prior to the May 2009 deadline for the disclosure of such material pursuant to Rule 66(A)(ii) of the Rules.³ He submits that the Prosecution disclosed 335,126 pages of exculpatory material since the commencement of the trial and that the “vast majority” of this material was not disclosed as soon as practicable.⁴ The Accused further notes that the Chamber has, on 58 occasions, made an express finding that the Prosecution had violated its disclosure obligations and that the extent of violations was “unprecedented in international criminal justice”.⁵

3. The Accused contends that a new trial should be ordered as a sanction for the Prosecution’s cumulative disclosure violations which continued with “impunity” despite the repeated warnings of the Chamber.⁶ The Accused cites to the Appeals Chamber jurisprudence which has held that the obligation to disclose is as important as the obligation to prosecute and that compliance with these obligations was essential to a fair trial.⁷

¹ Motion, para. 1.

² Motion, para. 1.

³ Motion, para. 3. The Accused notes that the Prosecution failed to disclose 25 per cent of its witness statements and transcripts of testimony before the May 2009 deadline.

⁴ Motion, para. 4. The Accused notes that the Prosecution disclosed 150 per cent more exculpatory material after the trial commenced than it had during the pre-trial phase of the case.

⁵ Motion, paras. 5–6.

⁶ Motion, paras. 7, 9, 11.

⁷ Motion, para 8, citing *Ndindabahizi v. Prosecutor*, Case No. ICTR-01-71-A, Judgement 16 January 2007, para. 72; *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Judgement, 17 December 2004 (“*Kordić and Čerkez* Appeal Judgement”), paras. 183, 242; *Prosecutor v. Brđanin*, Case No. IT-99-36-A, Decision on Appellant’s Motion for Disclosure Pursuant to Rule 68 and Motion for an order to the Registrar to disclose certain materials, 7 December 2004; *Prosecutor v. Karemera et. al.*, Case No. ICTR-98-44-AR73.7, Decision on

4. The Accused submits that even if the Chamber does not sanction the Prosecution, a new trial should be ordered to remedy the prejudice he has suffered.⁸ He acknowledges that the Chamber has in each of its decisions throughout the trial found that he was not prejudiced by the individual disclosure violations but asks the Chamber to consider the cumulative effect of these violations in ordering a new trial.⁹ The Accused emphasises that he was entitled to review the hundreds of thousands of pages of exculpatory material before he made his opening statement and before he began to cross-examine the first witness and that the fact that this did not occur affected his ability to plan a coherent defence and forced him to conduct “exploratory, rather than focused cross examinations”.¹⁰ In his submission the disclosure of this material after the start of the trial is “antithetic to the very notion of a fair trial” and the volume and continuing nature of the violations meant that his defence never recovered during the Prosecution phase of the case.¹¹

5. On 27 August 2012, the Prosecution filed the “Prosecution Response to Motion for New Trial for Disclosure Violations” (“Response”). It submits that the Motion should be dismissed on the basis that the Accused has failed to show that a new trial is warranted “either as a remedy or as a sanction”.¹² In support, it contends that the Accused did not identify the legal basis or standard for his request for a new trial nor did he show that a new trial was necessary to ensure the fairness of the proceedings.¹³ In that regard, the Prosecution observes that the Chamber has already found on 58 occasions that the Accused suffered no prejudice with respect to the Prosecution’s discrete disclosure violations and that the Accused “cannot claim to have been prejudiced by the aggregation of such instances”.¹⁴

6. The Prosecution refers to decisions of the Chamber which (1) referred to the continuing nature of the Prosecution’s obligation to disclose exculpatory material; (2) reminded the Accused of the need to consider newly disclosed Rule 68 material on a continuing basis as part of his ongoing trial preparations; and (3) rejected the Accused’s argument that the Prosecution’s disclosure violations prejudiced his ability to present a “coherent defence” and to conduct “focused cross examinations”.¹⁵ The Prosecution also noted that the Chamber has previously

Interlocutory Appeal Regarding the Role of the Prosecutor’s Electronic Disclosure Suite in Discharging Disclosure Obligations, 30 June 2006, para. 9.

⁸ Motion, para. 12.

⁹ Motion, paras. 13, 21.

¹⁰ Motion, paras. 16–17, 19.

¹¹ Motion, paras. 5–6.

¹² Response, paras. 1, 14.

¹³ Response, paras. 2, 4.

¹⁴ Response, paras. 2, 5–7.

¹⁵ Response, paras. 7–8, citing, Decision on Accused’s Seventy-Third Disclosure Violation Motion, 21 August 2012, para. 8; Decision on Accused’s Motion for Suspension of Proceedings Prior to Start of

found that the Accused was not prejudiced by specific disclosure violations given (1) the limited length and/or content of the material disclosed; (2) that the Accused was able to call the affected witnesses during his defence case; (3) that he had already cross-examined witnesses on related matters; or (4) that he already possessed similar information which had been disclosed to him.¹⁶ In the Prosecution's submission in the absence of prejudice, the Accused is "not entitled to a remedy, let alone a new trial".¹⁷

7. The Prosecution also contends that the Accused's submission with respect to the disclosure history of the case "contains several mis-characterisations".¹⁸ It observes that not all material disclosed pursuant to Rule 68 was exculpatory material and that the Accused's submission that the "vast majority" of the 335,126 pages was not disclosed as soon as practicable ignores that not all disclosure after the start of the trial date amounts to late disclosure.¹⁹ With respect to the Rule 66(A)(ii) statements the Prosecution submits that the Accused's submission "overlooks that the content of these statements may be similar or even identical to previously disclosed statements and/or may relate only to narrow or discrete issues tangential to the witness' evidence".²⁰ The Prosecution also argues that the Accused failed to substantiate his assertion that he had to learn the case against him as the trial proceeded, given that he did not cite a single example in relation to which disclosure had changed the Prosecution case as outlined in the Third Amended Indictment, Pre-Trial Brief and the Prosecution's opening statement.²¹

8. The Prosecution also outlines the measures taken by the Chamber with respect to the "active management" of the proceedings which have ensured that the trial has been fair and that the Accused has not been prejudiced.²² This has included steps taken to avert potential prejudice arising from disclosure violations individually or cumulatively, including (1) temporarily suspending the proceedings; (2) postponing the testimony of witnesses; (3) imposing disclosure

Srebrenica Evidence, 22 November 2011, para. 15; Decision on Accused's Twenty-Second, Twenty-Fourth and Twenty-Sixth Disclosure Violation Motions, 11 November 2010 ("Decision on Twenty-Second, Twenty-Fourth and Twenty-Sixth Motions"), para. 40.

¹⁶ Response, para. 8–9, citing Decision on Accused's Seventy-First Disclosure Violation Motion, 1 June 2012 ("Decision on Seventy-First Motion"), para. 12; Decision on Accused's Motion to Recall Twelve Municipalities Witnesses, 20 January 2012 ("Municipalities Recall Decision"), paras. 12–13, 17, 19–20; Decision on Accused's Motion to Recall Eleven Sarajevo Witnesses, 5 October 2011 ("Sarajevo Recall Decision"), paras. 11–17, 20; Decision on Accused's Forty-Seventh Motion for Finding of Disclosure Violation and for Further Suspension of Proceedings, 10 May 2011 ("Decision on Forty-Seventh Motion"), para. 18; Decision on Accused's Forty-Third to Forty-Fifth Disclosure Violation Motions, 8 April 2011 ("Decision on Forty-Third to Forty-Fifth Motions"), paras. 33, 35.

¹⁷ Response, para. 5.

¹⁸ Response, fn. 10.

¹⁹ Response, fn. 10.

²⁰ Response, fn. 10.

²¹ Response, para. 9.

deadlines; and (3) requiring explanations from the Prosecution for the difficulties experienced with respect to disclosure.²³ It also observes that the Chamber has given the Accused an opportunity to seek to recall witnesses affected by disclosure violations, but that the Accused has on multiple occasions been unable to show good cause for their recall.²⁴ In the Prosecution's submission the Accused has failed to explain why these measures have been "insufficient to safeguard the fairness of the proceedings".²⁵

9. Finally, with respect to the Accused's request that a new trial be ordered as a sanction, the Prosecution observes that the Accused has previously "relied without success upon the number of disclosure violations in support of requests for sanctions" and that in the Motion, he does not seek reconsideration of these decisions, or assess the standard relevant thereto.²⁶ The Prosecution emphasises that after 297 trial days, a new trial could only be justified as an exceptional measure.²⁷ The Prosecution submits that a new trial is not an appropriate sanction given that it would require victims and witnesses heard over the course of the trial to appear and that Accused did not "justify the waste of judicial resources".²⁸

II. Applicable Law

10. Rule 66(A)(ii) requires the Prosecution (within a time-limit prescribed by the Trial Chamber or pre-trial judge) to make available to the Defence "copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial, and copies of all transcripts and written statements taken in accordance with Rule 92 *bis*, Rule 92 *ter*, and Rule 92 *quater*".

²² Response, paras. 3, 10.

²³ Response, para. 10, citing Decision on Accused's Motion for Suspension of Proceedings, 18 August 2010 ("Decision on First Suspension"); Decision on Accused's Seventeenth Motion for Finding of Disclosure Violation and for Remedial Measures, 29 September 2010 ("Decision on Seventeenth Motion"); Decision on Accused's Motion for Fourth Suspension of Proceedings, 16 February 2011 ("Decision on Fourth Suspension"); Decision on Accused's Motion for Fifth Suspension of Proceedings, 17 March 2011 ("Decision on Fifth Suspension"); Decision on Forty-Seventh Motion; Decision on Accused's Eighteenth to Twenty-First Disclosure Violation Motions, 2 November 2010 ("Decision on Eighteenth to Twenty-First Motions"), para. 39; Decision on Accused's Twenty-Ninth Disclosure Violation Motion, 11 January 2011 ("Decision on Twenty-Ninth Motion"); Oral Decision on Eighth Motion for Suspension, T. 17933 (Hearing); Decision on Twenty-Second, Twenty-Fourth and Twenty-Sixth Motions, para. 42; Decision on Accused's Forty-Ninth and Fiftieth Disclosure Violation Motions, 30 June 2011 ("Decision on Forty-Ninth and Fiftieth Motions"), paras. 54-55; Decision on Accused's Motion for Reconsideration of Decision on Ninth Suspension of Proceedings: Witness KDZ456, 11 November 2011, para. 11; Decision on Accused's Motion for Ninth Suspension of Proceedings: Witness KDZ456, 28 October 2011, para. 11; Decision on Accused's Fifty-Ninth Disclosure Violation Motion, 14 October 2011, para. 13; Sarajevo Recall Decision, para. 22; Municipalities Recall Decision, para. 24; Decision on Accused's Motion to Recall Johannes Rutten, 26 April 2012.

²⁴ Response, para. 10.

²⁵ Response, para. 11.

²⁶ Response, para. 12.

²⁷ Response, para. 4.

²⁸ Response, para. 13.

11. Rule 68 of the Rules imposes a continuing obligation on the Prosecution to “disclose to the Defence any material which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence”.²⁹

12. Rule 68 *bis* provides that a Trial Chamber may, *proprio motu* or at the request of either party, decide on sanctions to be imposed on a party which fails to comply with its disclosure obligations under the Rules. In determining the appropriate remedy (if any), the Chamber has to examine whether or not the accused has been prejudiced by the relevant breach.³⁰

13. 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 accused person should have “adequate time and facilities for the preparation of his defence”.

III. Discussion

14. While the number of disclosure violations in this case has reflected badly on the Prosecution, its knowledge of what it holds in its evidence collections and its approach to disclosure, the Chamber has not found that the Accused has been prejudiced by any of these violations. The Chamber has also been cognisant of the cumulative effect of those violations and taken measures throughout the case to ensure that the Accused’s preparations for trial have not been prejudiced and that the disclosure violations have not compromised his right to a fair trial.³¹ In that regard the Chamber has on multiple occasions suspended proceedings to allow the Accused time to review and incorporate large batches of newly disclosed material into his preparations in order to protect his fair trial rights.³² In deciding to suspend proceedings and determining the appropriate length of suspension the Chamber considered the cumulative effect of the Prosecution’s poor disclosure practices on the Accused’s preparations and ensured he had

²⁹ Decision on the Accused’s Motion to Set Deadlines for Disclosure, 1 October 2009, paras. 8, 19, citing *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004 (“*Blaškić* Appeal Judgement”), para. 267.

³⁰ *Kordić and Čerkez* Appeal Judgement, para. 179; *Blaškić* Appeal Judgement, para. 268.

³¹ Decision on Eighteenth to Twenty-First Motions, para. 43; Decision on Twenty-Second, Twenty-Fourth and Twenty-Sixth Motions, para. 41; Decision on Accused’s Twenty-Seventh Disclosure Violation Motion, 17 November 2010 (“Decision on Twenty-Seventh Motion”), para. 15; Decision on Twenty-Ninth Motion, paras. 13, 16; Decision on Forty-Ninth and Fiftieth Motions, para. 49.

³² Decision on First Suspension, paras. 7– 8, where the Chamber ordered a two week suspension of proceedings; Decision on Seventeenth Motion, para. 7 referring to T. 6593–6594 (Hearing) where the Chamber ordered a one week suspension of proceedings; Decision on Twenty-Second, Twenty-Fourth and Twenty-Sixth Motions, para. 41 referring to T. 8907–8908, 3 November 2010 where the Chamber ordered a one month suspension of proceedings; Decision on Fourth Suspension, para. 12 where the Chamber ordered a six week suspension of proceedings; Decision on Fifth Suspension, para. 9 where the Chamber extended the period of suspension by two weeks; Decision on Forty-Seventh Motion, para. 24 where the Chamber extended the period of suspension by a further week.

sufficient time to consider the newly disclosed material. For example the Chamber observed that the “cumulative effect of the Prosecution’s multiple disclosure violations was a significant factor in the Chamber’s decision to suspend the trial proceedings for one month”.³³

15. In addition, the testimony of some witnesses has been postponed or delayed when witness specific material was disclosed in violation of the Prosecution’s disclosure obligations.³⁴ For example, the Chamber recognised the strain which the stream of disclosure violations placed on the Accused’s resources and, “to ensure that the Accused does not suffer any prejudice” due to these violations, the Chamber ordered that none of the witnesses “affected by the untimely disclosure” could be called before a specific date to “ensure that the Accused has sufficient time to review the disclosed material, and incorporate it, if necessary, into his defence strategy and cross-examination of the affected witnesses”.³⁵ In light of these measures there is nothing to support the Accused’s claim that the late disclosure of documents has forced him to conduct “exploratory, rather than focused cross examinations”.

16. The Chamber has also imposed additional deadlines for the Prosecution to review and disclose material and required the Prosecution to provide detailed reports on their disclosure practices and to implement additional measures to rectify identified problems.³⁶ These measures were taken to minimise disruptions to the course of proceedings, to preserve the Accused’s fair trial rights and to avert any potential prejudice. Contrary to the Accused’s suggestion, the Chamber in assessing the potential prejudice to the Accused from each disclosure violation has had regard to the specific documents concerned as well as the cumulative effect of these violations on the Accused’s fair trial rights.³⁷

17. In none of the disclosure violation decisions, has the Chamber found that the Accused was prejudiced by the Prosecution’s disclosure violations. In reaching this conclusion the Chamber found that (1) the subject matter of the disclosed material was of limited length or not

³³ Decision on Twenty-Seventh Motion, para. 15.

³⁴ Decision on Accused’s Third, Fourth, Fifth and Sixth Motions for Finding of Disclosure Violation and for Remedial Measures, 20 July 2010 (“Decision on Third to Sixth Motions”), para. 31; Decision on Eighteenth to Twenty-First Motions, para. 43; Decision on Twenty-Ninth Motion, para. 17; Decision on Forty-Ninth and Fiftieth Motions, para. 52.

³⁵ Decision on Eighteenth to Twenty-First Motions, para. 43.

³⁶ Decision on Third to Sixth Motions, para. 47; Decision on Accused’s Seventh and Eighth Motions for Finding of Disclosure Violations and for Remedial Measures, 18 August 2010 (“Decision on Seventh and Eighth Motions”), para. 22; Decision on Accused’s Ninth and Tenth Motions for Finding of Disclosure Violations and for Remedial Measures, 26 August 2010 (“Decision on Ninth and Tenth Motions”), para. 23; Decision on Eighteenth to Twenty-First Motions, para. 39; Decision on Twenty-Second, Twenty-Fourth and Twenty-Sixth Motions, paras. 42, 44; Decision on Forty-Ninth and Fiftieth Motions, paras. 53–54.

³⁷ Decision on Eighteenth to Twenty-First Motions, para. 43; Decision on Twenty-Second, Twenty-Fourth and Twenty-Sixth Motions, para. 33; Decision on Twenty-Ninth Motion, paras. 13, 16; Decision on Forty-Ninth and Fiftieth Motions, para. 49.

of such significance and the Accused had sufficient time to review that material before the testimony of the affected witnesses;³⁸ (2) the Accused already possessed similar if not identical material, failed to use that material during his cross-examination or some of the material had already been admitted into evidence;³⁹ (3) the Accused had already cross-examined witnesses on the subject matter of the disclosed material;⁴⁰ (4) the Accused would have the opportunity to tender the material during his defence case, from the bar table or through another witness;⁴¹ (5) the material pertained to reserve, 92 *bis* or 92 *quater* witnesses which did not require additional time to prepare for cross-examination;⁴² or (6) the Accused could seek to recall a witness if he showed good cause.⁴³ In light of these findings and the measures taken by the Chamber in relation thereto, there is no basis for the Accused's renewed claim that the Prosecution's disclosure violations, even in a cumulative sense, have caused him prejudice. In the absence of

³⁸ Decision on Third to Sixth Motions, paras. 31, 41, 43; Decision on Seventh and Eighth Motions, paras. 17, 21; Decision on Ninth and Tenth Motions, paras. 19, 21; Decision on Accused's Eleventh to Fifteenth Motions for Finding of Disclosure Violation and for Remedial Measures, 24 September 2010, paras. 29, 31, 37, 40, 44; Decision on Twenty-Second, Twenty-Fourth and Twenty-Sixth Motions, paras. 28, 32; Decision on Accused's Seventeenth *bis* and Twenty-Eighth Disclosure Violation Motions, 16 December 2010 ("Decision on Seventeenth *bis* and Twenty-Eighth Motions"), paras. 21, 24; Decision on Twenty-Ninth Motion, para. 16; Decision on Accused's Thirtieth and Thirty-First Disclosure Violation Motions, 3 February 2011 ("Decision on Thirtieth and Thirty-First Motions"), para. 13; Decision on Accused's Thirty-Second, Thirty-Third, Thirty-Fifth and Thirty-Sixth Disclosure Violation Motions, 24 February 2011 ("Decision on Thirty-Second to Thirty-Sixth Motions") paras. 19, 22; Decision on Accused's Thirty-Seventh to Forty-Second Disclosure Violation Motions with Partially Dissenting Opinion of Judge Kwon, 29 March 2011, ("Decision on Thirty-Seventh to Forty-Second Motions") paras. 26, 35; Decision on Forty-Third to Forty-Fifth Motions, para. 35; Decision on Accused's Forty-Sixth Disclosure Violation Motion, 20 April 2011 ("Decision on Forty-Sixth Motion"), para. 9; Decision on Accused's Forty-Eighth Disclosure Violation Motion, 30 May 2011, para. 12; Decision on Forty-Ninth and Fiftieth Motions, para. 47; Decision on Accused's Fifty-First and Fifty-Second Disclosure Violation Motions, 7 July 2011 ("Decision on Fifty-First and Fifty-Second Motions"), paras. 15, 18; Decision on Accused's Fifty-Third and Fifty-Fourth Disclosure Violation Motions, 22 July 2011 ("Decision on Fifty-Third and Fifty-Fourth Motions"), para. 15; Decision on Accused's Fifty-Fifth Disclosure Violation Motion, 19 August 2011 ("Decision on Fifty-Fifth Motion"), para. 12; Decision on Accused's Sixtieth, Sixty-First, Sixty-Third, and Sixty-Fourth Disclosure Violation Motions, 22 November 2011, ("Decision on Sixtieth to Sixty-Fourth Motions") paras. 32–35; Decision on Accused's Sixty-Fifth Disclosure Violation Motion, 12 January 2012, para. 23; Decision on Accused's Sixty-Seventh and Sixty-Eighth Disclosure Violation Motions, 1 March 2012, paras. 31–35; Decision on Seventy-First Motion, para. 12; Decision on Accused's Seventy-Second Disclosure Violation Motion, 27 June 2012 ("Decision on Seventy-Second Motion"), para. 10.

³⁹ Decision on Third to Sixth Motions, paras. 31, 43; Decision on Seventeenth *bis* and Twenty-Eighth Motions, paras. 24, 26; Decision on Thirtieth and Thirty-First Motions, paras. 10, 12; Decision on Thirty-Second to Thirty-Sixth Motions, para. 15; Decision on Thirty-Seventh to Forty-Second Motions, paras. 29, 35; Decision on Forty-Third to Forty-Fifth Motions, para. 29; Decision on Forty-Sixth Motion, para. 9; Decision on Forty-Seventh Motion, paras. 17–18; Decision on Forty-Ninth and Fiftieth Motions, para. 48; Decision on Fifty-Fifth Motion, para. 12; Decision on Sixtieth to Sixty-Fourth Motions, para. 32; Decision on Seventy-First Motion, para. 12; Decision on Seventy-Second Motion, para. 10.

⁴⁰ Decision on Thirtieth and Thirty-First Motions, para. 10; Decision on Forty-Third to Forty-Fifth Motions, paras. 33, 35; Decision on Seventy-First Motion, para. 12; Decision on Seventy-Second Motion, para. 10; Decision on Sixtieth to Sixty-Fourth Motions, paras. 34–35.

⁴¹ Decision on Eighteenth to Twenty-First Motions, para. 32; Decision on Twenty-Second, Twenty-Fourth and Twenty-Sixth Motions, para. 34; Decision on Thirty-Second to Thirty-Sixth Motions, para. 20; Decision on Thirty-Seventh to Forty-Second Motions, paras. 27, 30, 36; Decision on Forty-Third to Forty-Fifth Motions, para. 30; Decision on Fifty-Third and Fifty-Fourth Motions, para. 15; Decision on Fifty-Fifth Motion, para. 12; Decision on Seventy-First Motion, para. 12.

⁴² Decision on Eighteenth to Twenty-First Motions, paras. 35, 37, 44; Decision on Twenty-Seventh Motion, para.14; Decision on Twenty-Ninth Motion, para. 14; Decision on Forty-Sixth Motion, para. 9.

⁴³ Decision on Forty-Ninth Motion, para. 13.

prejudice to the Accused there is no basis to order the exceptional measure of a new trial as a remedy.

18. Furthermore, the Chamber notes that in asking for a new trial, the Accused is effectively asking for every witness to be recalled and yet he has failed to show good cause to recall even a single witness for reason of disclosure violation. While the Accused has filed several motions to recall multiple witnesses, in no case was he able to show that the disclosed material was of such significance that it warranted the recall of a witness.⁴⁴

19. Finally, the Accused has repeated his request for a sanction against the Prosecution for its multiple disclosure violations even though the Chamber has previously rejected such requests given that the Accused had not been prejudiced by these violations.⁴⁵ Apart from the cumulative effect of the violations, which the Chamber has already considered, the Accused has not proffered any other reason why a sanction would now be warranted. Considering the measures which have been taken during the course of the trial to secure the fair trial rights of the Accused and the absence of prejudice to the Accused the Chamber finds that such a sanction is not warranted.

⁴⁴ Sarajevo Recall Decision, para. 22; Municipalities Recall Decision, para. 24.

⁴⁵ *See for example* Fifty-Second Motion for Finding of Disclosure Violation and for Sanction: Rule 66(A)(ii), 21 June 2011, para. 6; Decision on Fifty-First and Fifty-Second Motions; Fifty-Third Motion for Finding of Disclosure Violation and for Sanctions (June 2011), 1 July 2011, paras. 13–14; Decision on Fifty-Third and Fifty-Fourth Motions, para. 16; 69th Motion for Finding of Disclosure Violation and for Sanctions (February 2012), 29 February 2012, oral ruling, T. 26316–26317, 15 March 2012; 71st Motion for Finding of Disclosure Violation (April 2012), para. 7; Decision on Seventy-First Motion, para. 13; 72nd Motion for Finding of Disclosure Violation (May 2012), 29 May 2012, para. 6; Decision on Seventy-Second Motion, paras. 11–12.

IV. Disposition

20. For the foregoing reasons, and pursuant to Articles 20(1) and 21(4)(c) of the Statute and Rule 54 and 68 *bis* of the Rules, the Trial Chamber hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this third day of September 2012
At The Hague
The Netherlands

[Seal of the Tribunal]