



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-00-39 & 40-PT

Date: 1 June 2001

Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge Mohamed Fassi Fihri

Registrar: Mr. Hans Holthuis

Decision of: 1 June 2001

PROSECUTOR

v.

**MOMČILO KRAJIŠNIK
&
BILJANA PLAVŠIĆ**

**DECISION ON MOTION TO ALLOW DEFENCE TO BE PRESENT AT
VERIFICATION OF STATEMENTS AND TO VIDEO TAPE PROCEEDINGS**

Office of the Prosecutor:

Mr. Mark Harmon
Mr. Nicola Piacente

Counsel for the Accused:

Mr. Deyan Brashich and Mr. Goran Nesković, for Momčilo Krajišnik
Mr. Robert. J. Pavich, for Biljana Plavšić

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 (“International Tribunal”),

BEING SEISED of a “Notice of Motion to Allow the Defense to be Present at the Verification of Statements and to Video Tape Proceedings in the Nature of Examinations before Trial”, filed by the Defence for Momčilo Krajišnik (“the Defence”) on 23 May 2001 (“the Motion”), in which the accused seeks to compel the Office of the Prosecutor (“Prosecution”) to notify the Defence and allow the Defence to be present at the execution and verification of statements before a Presiding Officer and “to be used thereafter by the Prosecutor as evidence pursuant to the provisions of Rule 92 *bis*” and to allow the Defence “to pose questions to be recorded by videotape pursuant to Rule 71, in the nature of depositions, in the interest of justice,

NOTING the reasons stated in support of the Motion, namely that the Defence wishes “to be able to verify that the provisions of Rule 92 *bis* [of the Rules of Procedure and Evidence of the International Tribunal (“Rules”)] have been met and are being met” and further that an order for depositions is sought “so as not to be precluded from cross-examining such witnesses, should its later objections, if made, be not sustained” on the ground that such depositions would “ensure that the Accused’ rights to confrontation and cross examination be preserved”,

CONSIDERING that the purpose of Rule 92 *bis* (B) is to provide a procedure for certifying written statements and not for the examination of testimony; and that the Presiding Officer or authorised person (and not one of the parties) is responsible for ensuring that the procedure is properly carried out,

CONSIDERING, further, that the Defence will have the opportunity of making submissions before the Trial Chamber determines whether to admit any written statement certified according to Rule 92 *bis* (B) and whether it is appropriate for the relevant witness to attend for cross-examination,

PURSUANT TO RULE 54 OF THE RULES

HEREBY DENIES the Motion.

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



Richard May
Presiding

Dated this first day of June 2001
At The Hague
The Netherlands

[Seal of the Tribunal]