



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: 19 July 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: 19 July 2001

PROSECUTOR

v.

**MOMČILO KRAJIŠNIK
&
BILJANA PLAVŠIĆ**

**DECISION ON MOTION FROM MOMČILO KRAJIŠNIK TO COMPEL
DISCLOSURE OF EXCULPATORY EVIDENCE PURSUANT TO RULE 68**

Office of the Prosecutor:

Mr. Mark Harmon
Mr. Alan Tieger

Counsel for the Accused:

Mr. Deyan Brashich, 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 the “Notice of Motion to Compel Disclosure of Exculpatory Evidence Pursuant to Rule 68”, filed by the Defence for Krajišnik on 13 May 2001 (“the Motion”), in which the accused seeks to compel the Office of the Prosecutor (“Prosecution”) to identify the material served on the Defence pursuant to Rule 68, not to simply serve, as it has done, material without such identification,

NOTING the “Response to Notice of Motion to Compel Disclosure of Exculpatory Evidence Pursuant to Rule 68” filed by the Prosecution on 28 May 2001 (“the Response”), in which the Prosecution opposes the Motion, arguing that:

- (a) the plain meaning of Rule 68 does not require the Prosecution to characterise discovered material as inculpatory or exculpatory, it is for the Defence to define the character of the evidence discovered to it;
- (b) the Motion is redundant as the Defence has indicated that it has reviewed the material already disclosed to it and has therefore been able to identify exculpatory material for itself; and
- (c) the Defence is in the best position to identify what material disclosed to it is exculpatory, not the Prosecution,

NOTING the oral submissions of the parties made with respect to the Motion on 10 July 2001,

CONSIDERING

- (a) that while Rule 68 does not specifically require the Prosecution to identify the relevant material, but merely to disclose it;
- (b) nonetheless, as a matter of practice and in order to secure a fair and expeditious trial, the Prosecution should normally indicate which material it is disclosing under the Rule and it is no answer to say that the Defence are in a better position to identify it;
- (c) however, in the instant case, the material has been disclosed and the Defence has had the opportunity of reviewing it and, therefore, no injustice is done to the Defence; and

- (d) therefore, given the resources expended already and the stage of pre-trial development, it would not be efficient or reasonable to order the Prosecution to identify material that has already been disclosed in this way,

PURSUANT TO RULES 54 AND 68 OF THE RULES

HEREBY ORDERS that the Prosecution is not obliged to indicate whether material previously disclosed falls under Rule 68 or not, but that it will be required to do so for all material disclosed from the date of this Decision.

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



Richard May
Presiding

Dated this nineteenth day of July 2001
At The Hague
The Netherlands

[Seal of the Tribunal]