



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-AR73

Date: 25 October 2001

Original: English

**BEFORE A BENCH OF THE APPEALS CHAMBER**

**Before:** Judge Lal Chand Vohrah, Presiding  
Judge Rafael Nieto-Navia  
Judge Mehmet Güney

**Registrar:** Mr. Hans Holthuis

**Decision of:** 25 October 2001

**PROSECUTOR**

v.

**MOMČILO KRAJIŠNIK  
&  
BILJANA PLAVŠIĆ**

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**DECISION ON NOTICE OF MOTION FOR LEAVE TO APPEAL**

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**Counsel for the Prosecutor:**

**Mr. Mark B. Harmon**

**Counsel for the Accused:**

**Mr. Deyan Ranko Brashich, for Momčilo Krajišnik  
Mr. Robert J. Pavich, for Biljana Plavšić**

**THIS BENCH** of the Appeals 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 (“the Bench” and “the International Tribunal” respectively),

**BEING SEISED** of the “Notice of Motion for Leave to Appeal” filed by counsel for Momčilo Krajišnik (“the Defence”) on 23 July 2001 (“the Application”) and the “Motion to Join the Notice for Leave to Appeal Filed by Momčilo Krajišnik on 20 July 2001” filed by counsel for Biljana Plavšić on 26 July 2001 (“the Notice of Joinder”);

**NOTING** the “Decision on Motion from Momčilo Krajišnik to Compel Disclosure of Exculpatory Evidence Pursuant to Rule 68” issued by Trial Chamber III on 19 July 2001 (“the Impugned Decision”);

**NOTING** that the Impugned Decision found, *inter alia*, that: (i) Rule 68 of the Rules of Procedure and Evidence of the International Tribunal (“the Rules”) does not specifically require the Office of the Prosecutor (“the Prosecution”) to identify the relevant material, but merely to disclose it; (ii) 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 Rule 68 of the Rules; and (iii) no injustice was done to the Defence in the instant case because the relevant material had been disclosed by the Prosecution and the Defence had the opportunity of reviewing it;

**NOTING** that the Impugned Decision required the Prosecution to indicate whether the material disclosed from the date of the Impugned Decision falls under Rule 68 of the Rules or not;

**NOTING** the “Prosecution Response to ‘Notice of Motion for Leave to Appeal’ filed by Momčilo Krajišnik (Rule 73(D) of Rules of Procedure and Evidence)” filed on 30 July 2001 (“the Response”);

**NOTING** that the Application is filed pursuant to Rule 73(D)(i) and (ii) of the Rules, which provides for interlocutory appeals in the following two instances:

- (i) if the decision impugned would cause such prejudice to the case of the party seeking leave as could not be cured by the final disposal of the trial including post-judgement appeal; or

- (ii) if the issue in the proposed appeal is of general importance to proceedings before the Tribunal or in international law generally;

**NOTING** Rule 73(E) of the Rules, which provides, *inter alia*, that applications “for leave to appeal shall be filed within seven days of the filing of the impugned decision”;

**NOTING** that the Application was filed within time;

**NOTING** that the Application submits, *inter alia*, that: (i) the Impugned Decision by not requiring the Prosecution to indicate whether material already disclosed falls under Rule 68 of the Rules or not, causes prejudice to the Defence in that it does not permit a proper and timely preparation of its case prior to trial; and (ii) the issue of whether the Prosecution is obliged to indicate which material it is disclosing under Rule 68 of the Rules, is of general importance pursuant to Rule 73(D)(ii) of the Rules, because it impacts on the right of the Defence to a fair trial and there is still uncertainty as to the scope the Prosecution’s obligations under Rule 68 of the Rules;

**NOTING** that the Response submits, *inter alia*, that: (i) the Defence did not suffer any prejudice because it had ample opportunity to review the disclosed material; and (ii) the issue of whether the Prosecution should identify which material is disclosing under Rule 68 of the Rules is not of general importance pursuant to Rule 73(D)(ii) of the Rules, because it relates to the particular nature of the disclosure process in the instant proceedings and it only involves ordinary trial matters;

**CONSIDERING** that it is for the Defence to satisfy the Bench, either that the Impugned Decision would cause such prejudice to the case of the party seeking leave as could not be cured by the final disposal of the trial including post-judgement appeal, or that the issue in the proposed appeal is of general importance to proceedings before the International Tribunal or in international law generally;


**CONSIDERING** that no prejudice will be caused to the Defence in future disclosures under Rule 68 of the Rules because the Prosecution has to indicate whether the material falls under that Rule or not;

**FINDING** that the Defence has failed to show any incurable prejudice arising from the Impugned Decision or that the issue in the proposed appeal is of general importance to proceedings before the International Tribunal or in international law generally;

**HEREBY DISMISSES** the Application and the Notice of Joinder.

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

Dated this twenty-fifth day of October 2001  
At The Hague,  
The Netherlands.

  
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Judge Lal Chand Vohrah  
Presiding

**[Seal of the Tribunal]**