



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: 23 January 2002
Original: English

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Decision of: 23 January 2002

PROSECUTOR

v.

**MOMČILO KRAJIŠNIK
&
BILJANA PLAVŠIĆ**

DECISION ON MOTION FOR PRODUCTION OF STATEMENTS BY CO-ACCUSED

The Office of the Prosecutor:

Mr. Mark Harmon
Mr. Alan Tieger

Counsel for the Accused:

Mr. Deyan Brashich and Mr. Nikola Kostich, for Momčilo Krajišnik
Mr. Robert J. Pavich and Mr. Eugene O'Sullivan, 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 (“the International Tribunal”),

BEING SEISED of a “Motion for Production of Statements made by Accused Plavšić” filed by counsel for the accused, Momčilo Krajišnik, (“the Defence”) on 29 November 2001 (“the Motion”), seeking an Order for production by the Office of the Prosecutor (“Prosecution”) of transcripts and video- and audio-tapes in its possession of any statements or interviews made by the co-accused, Biljana Plavšić, and the response of the Prosecution filed on 11 December 2001,

NOTING that the Defence asserts that these materials are subject to disclosure pursuant to Rule 66 (A)(i) of the Rules of Procedure and Evidence of the International Tribunal (“the Rules”), relying, *inter alia*, upon the decision issued in *Prosecutor v. Delalić et al.*, Case No. IT-96-21, on 26 December 1996, and specifically states that it is not invoking reciprocal disclosure pursuant to Rule 66 (B) and Rule 67 (C) of the Rules of Procedure and Evidence of the International Tribunal (“the Rules”),

NOTING that the Defence further asserts that these materials are subject to disclosure as potential mitigating or exculpatory material pursuant to Rule 68 or that they should be disclosed in order to permit the Defence to determine whether they would give rise to a motion for separate trials under Rule 82,

CONSIDERING that Rule 66 (A)(i) provides for disclosure of “the supporting material which accompanied the indictment when confirmation was sought as well as all prior statements obtained by the Prosecution from the accused” and that, in the view of the Trial Chamber, this provision requires disclosure to an accused of his or her own prior statements and not those of a co-accused,

CONSIDERING that the responsibility to identify and disclose exculpatory or mitigating material pursuant to Rule 68 rests with the Prosecution¹,

¹ Decision on the Motion to Compel the Production of Discovery Materials, *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14, 27 Jan. 1997.
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CONSIDERING that the decision in *Prosecutor v. Delalić et al.* may be distinguished on the ground that, in that case, a request had been made under Rule 66 (B), thus triggering reciprocal disclosure, and that the matter was disposed of as a motion for discovery under that paragraph of the Rule,

CONSIDERING that, in the absence of a request for the Prosecution to permit the defence to inspect items which are “material to the preparation of the defence”, there is no obligation on the Prosecution to disclose material other than that required to be disclosed pursuant to Rule 66 (A) and Rule 68,

CONSIDERING that Rule 82 does not give rise to a right of the Defence to examine material in the possession of the Prosecution which is not otherwise subject to disclosure,

PURSUANT TO Rule 66

HEREBY DISMISSES THE MOTION.

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



Richard May
Presiding

Dated this twenty-third day of January 2002
At The Hague
The Netherlands

[Seal of the Tribunal]