



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-99-36-T
Date: 30 October 2002
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge Ivana Janu
Judge Chikako Taya

Registrar: Mr. Hans Holthuis

Decision of: 30 October 2002

PROSECUTOR

v.

RADOSLAV BRĐANIN

**DECISION ON "MOTION FOR RELIEF FROM RULE 68
VIOLATIONS BY THE PROSECUTOR AND FOR SANCTIONS
TO BE IMPOSED PURSUANT TO RULE 68BIS AND MOTION
FOR ADJOURNMENT WHILE MATTERS AFFECTING
JUSTICE AND A FAIR TRIAL CAN BE RESOLVED"**

The Office of the Prosecutor:

Ms. Joanna Korner
Mr. Andrew Cayley

Counsel for the Accused:

Mr. John Ackerman
Mr. Milan Trbojević

TRIAL CHAMBER II (“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 “Motion for Relief from Rule 68 Violations by the Prosecutor and for Sanctions to Be Imposed Pursuant to Rule 68*bis* and Motion for Adjournment while Matters Affecting Justice and a Fair Trial Can Be Resolved”, filed on behalf of the Accused Radoslav Brđanin (“Brđanin”) on 17 October 2002 (“Motion”).

I. INTRODUCTION

1. On 17 October 2002 Defence Counsel for Brđanin (“Defence”) filed, annexed to the Motion, a “Motion for Leave to Filed (*sic*) the Attached Motion in Excess of the 10-Page Limit”, in which he seeks leave of the Trial Chamber to file his Motion. During the hearing on 17 October 2002, the Trial Chamber granted the request.¹

2. At the hearing of 17 October 2002 and pursuant to a request by the Trial Chamber, the Prosecution responded orally to the Motion. During the same hearing, the Defence clarified its submissions and replied orally to the Prosecution’s oral submissions.

3. On 22 October 2002, the Prosecution filed the “Prosecution’s Request for an Oral Hearing” and attached Annexes (“Request”). In this Request the Prosecution asked the Trial Chamber to convene an oral hearing on 23 October 2002. The Request referred to a decision of the Appeals Chamber rendered in the *Prosecutor v. Rutaganda* case during an appeals hearing held on 4 July 2002 (“Rutaganda Decision”).² The Prosecution annexed the Rutaganda Decision to the Request. According to the Prosecution, the Rutaganda Decision could have implications for the application made in Brđanin’s Motion. The Trial Chamber did not see the need for such an oral hearing and rejected the Prosecution’s Request in the “Decision on Prosecution’s Request for Oral Hearing”, dated 22 October 2002 (“Hearing Decision”). In the Hearing Decision, the Trial Chamber also ordered the Defence to file its remarks in writing on the relevance or otherwise of the Rutaganda Decision by not later than 23 October 2002.

4. After issuing the Hearing Decision, the Trial Chamber received from the Registry a copy of the “Opposition to Prosecution’s Request for an Oral Hearing”, filed on behalf of Brđanin in the course of 22 October 2002, in which the Defence opposed the Prosecution’s Request and made

¹ Unofficial Transcript of Hearing on 17 October 2002, T. 10889.

² *Prosecutor v. Rutaganda*, Case No. ICTR-96-03-A, Oral Decision, 4 July 2002, Unofficial Transcript of Appeals Hearing on 4 July 2002, T. 18.

submissions on the relevance of the Rutaganda Decision (“Opposition”). The Trial Chamber was not aware of the existence and the content of Brđanin’s Opposition at the time it rendered its Hearing Decision. On 23 October 2002, the Defence filed its “Memorandum in Response to Decision on Prosecution’s Request for Oral Hearing”, requesting the Trial Chamber to treat the Opposition as Brđanin’s response to the Hearing Decision.

II. SUBMISSIONS

A. Rule 68 disclosure

5. In its Motion, the Defence argued that the Prosecution has not fulfilled its disclosure obligations pursuant to Rule 68 of the Rules of Procedure and Evidence. The Defence pointed out that on 15 October 2002, it was advised by the Prosecution of the existence of Rule 68 material in the form of a taped interview of Vinko Kondić conducted by representatives of the Prosecution, without being furnished a transcript in redacted or unredacted form. Indicating that the interview took place on 30 August and 1 October 2002, the Defence requested an explanation as to why the interview was not disclosed until 15 October 2002. The Defence alleged that the Prosecution deliberately took their time to disclose the exculpatory material, waiting for certain witnesses to complete their testimony.

6. The Defence also indicated that the issue of lateness of disclosure has been raised previously before this Trial Chamber. The Defence noted that, during the status conference of 6 September 2001, Pre-Trial Judge Hunt directed the Prosecution to supply the Defence with Rule 68 material with respect to persons interviewed by the Prosecution in Banja Luka, including the transcripts of the interviews (“Interviews”). The Defence asserted that it had only been provided with summaries of the Rule 68 material included in the interviews, which in its view did not satisfy the requirements of Rule 68. In support of its submission that the actual transcripts should be supplied, the Defence referred to an Appeals Chamber Decision in the *Prosecutor v. Blaškić* (“Blaškić Decision”).³

7. Furthermore, the Defence contended that the Prosecution has conducted a substantial number of other interviews without ever supplying the Defence with Rule 68 material.

8. For that reason, the Defence requested the Trial Chamber to:

³ *Prosecutor v. Blaškić*, Case No. IT-95-14-A, Decision on the Appellant’s Motions for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings, 26 September 2000.

- order the Prosecution to advise the Trial Chamber in writing how and to what extent it has complied with the Orders of Judge Hunt and Judge Agius as Pre-Trial Judges regarding Rule 68 arising from the Interviews;
- decide, pursuant to Rule 68*bis*, on sanctions to be imposed on the Prosecution for failing to perform disclosure obligations under Rule 68, suggesting that the Trial Chamber order the Prosecution to provide the Defence with a list of all persons interviewed by the Prosecution in connection with the Brđanin case, that the Prosecution file the full transcripts of all such recorded interviews with the Registry and that the Defence be given redacted transcripts of exculpatory material contained in the interviews;
- provide time to the Defence to review the transcripts and to inform the Trial Chamber which witnesses need to be recalled for additional cross-examination upon proper justification for such recall;
- stay the trial and the presentation of evidence until all the issues raised in the Motion have been resolved.

9. In addition, the Defence submitted that the Trial Chamber should order the Prosecution to submit a signed, sworn affidavit to certify that it is aware of its continuing obligations under Rule 66 (A) (ii) and Rule 68 and has produced to the Defence all material required by the Rules. In the course of the hearing on 17 October 2002, the Defence withdrew this request.⁴

10. In its oral response, the Prosecution argued in essence that Rule 68 compels the Prosecution to disclose not only the existence of the exculpatory material, but also the nature of the exculpatory material. The Prosecution asserted that it has satisfied Rule 68 by disclosing a summary of the nature of the material, which falls within the purview of Rule 68. The Prosecution strongly believed that Rule 68 does not require it to actually provide the Defence with redacted transcripts of the exculpatory material. It pointed out that the Blaškić Decision does not require the Prosecution to disclose verbatim transcripts and stated that, in accordance with the Blaškić Decision, it has never disclosed portions of verbatim transcript of any interviews that are the subject of Brđanin's Motion.

11. However, the Prosecution acknowledged late disclosure of the exculpatory material contained in the interview of Vinko Kondić.⁵ The Prosecution explained that, as it has accumulated large quantities of interviews in relation to the Prijedor municipality, it decided to conduct a thorough search to determine if the interviews of persons who were not called as witnesses

⁴ Unofficial Transcript of Hearing on 17 October 2002, T. 10947.

⁵ Unofficial Transcript of Hearing on 17 October 2002, T. 10894-10895 and T. 10897.

contained any material fact that contradicted the statements of witnesses whom it intended to call. The Prosecution admitted that the interview of Vinko Kondić came up during that search, but refuted the allegation that the delayed disclosure of the exculpatory material contained in this interview was deliberate. The Prosecution confirmed that in principle it would not object to witnesses being recalled as a remedy for delayed disclosure of exculpatory material.

12. The Prosecution also fundamentally disagreed with the Defence's assertion that it has not fulfilled its Rule 68 disclosure obligations, stating that it has disclosed all known exculpatory material. The Prosecution assured the Trial Chamber that all the exculpatory material contained in the Interviews had been disclosed in the form of summaries, together with all other Rule 68 material in its possession, with two possible exceptions. First, the Prosecution had not yet disclosed exculpatory material contained in interviews with persons interviewed in conditions of confidentiality. In addition the Prosecution had not yet provided the Defence with Rule 68 material of interviews conducted in relation to the Stakić case.

13. The Prosecution undertook to continue to honour its obligation under Rule 68. Moreover, the Prosecution assured the Trial Chamber and the Defence that it would check – once again - all interviews for exculpatory material and to disclose this pursuant to Rule 68.

14. The Prosecution further submitted that the Defence is not entitled to a list of the names of all the persons interviewed by the Prosecution in relation to the issues in the Brđanin case.

15. During the hearing on 17 October 2002, the Prosecution firmly contended that the presentation of evidence should not cease pending the resolution of all issues raised in Brđanin's Motion.

B. Preparation Problem

16. In its Motion, the Defence argued that the Trial Chamber's decision to sever the trials of Brđanin and General Momir Talić has created severe difficulties with respect to its preparation.⁶ The Defence submitted that it would need more time in order to review the military documents and to prepare properly for the military aspect of the trial, formerly the task of Counsel for Talić. In addition, the Defence argued that it would need more time to prepare for the Prijedor phase of this

⁶ *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-T, Decision on Prosecution's Oral Request for the Separation of Trials, 20 September 2002 ("Severance Decision").

trial, since the workload now falls on one person, i.e. Brđanin's lead counsel, as a result of the Severance Decision. Therefore, the Defence requested the Trial Chamber to:

- provide time and direct that the Defence determine the amount of material that needs to be read and processed in order to become familiar with the military aspect of the case;
- provide time and direct that the Defence determine the amount of material that needs to be read and processed in order to become familiar with the Prijedor phase of the trial.

17. In addition and linked to these requests, the Defence asked the Trial Chamber to order the Registry to suspend hour restrictions on the Defence and its necessary staff. During the hearing on 17 October 2002, the Trial Chamber took note of this request without further allowing a debate on its merits.⁷ The Trial referred to its oral decision of 8 October 2002, in which it directed Mr. Christian Rodhe to enter a memo on the Decision of the Registry to curtail on the hours that can be recognised for remuneration.⁸

18. During the hearing of 17 October 2002, the Prosecution contended that the decision taken by the Defence not to read the military documents which have been disclosed in this case, was negligent. According to the Prosecution, it is the duty of the Defence to read the documents supplied. The Prosecution further argued in respect of the workload of the case that the Defence is in that position because of the way it has decided to conduct its case. As a result, the Prosecution opposed Brđanin's requests, as set out in paragraphs 16 and 17 above.

C. Rule 66 (B) disclosure

19. In the Prosecution's Request, the Prosecution stated that the Rutaganda Decision could "well alter the application made by the [D]efence on 17 October 2002", arguing that the Rutaganda Decision would appear to apply when the provisions of Rule 66 (B) are brought into effect. No further submissions were made by the Prosecution in respect of either the applicability of Rule 66 (B) or the meaning of the Rutaganda Decision.

20. In its Opposition, the Defence disagreed with the Prosecution's submission that the Rutaganda Decision might have an effect on the requests contained in Brđanin's Motion. The Defence contended that the Rutaganda Decision deals solely with the Prosecution's disclosure obligations pursuant to Rule 66 (B), while the Defence alleged a failure of the Prosecution to

⁷ Unofficial Transcript of Hearing on 17 October 2002, T. 10947-10948.

comply with Rule 68, not Rule 66 (B). The Defence stressed once again that it requested disclosure of exculpatory material enclosed in interviews in the form of redacted transcripts pursuant to Rule 68.

III. DISCUSSION

A. Rule 68 disclosure

21. Rule 68 provides:

Disclosure of Exculpatory Material

The Prosecutor shall, as soon as practicable, disclose to the defence the existence of material known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence.

22. The rationale behind Rule 68 was discussed in the case of *Prosecutor v. Blaškić* in the Decision on the Production of Discovery Materials rendered on 27 January 1997:

There is no doubt that the obligation to disclose evidence which might exculpate the accused is the responsibility of the Prosecutor alone, if for no other reason than the fact that she is the one in possession of the materials.⁹

23. The disclosure to the Defence of evidence which in any way tends to suggest the innocence or mitigate the guilt of the accused is one of the most onerous responsibilities of the Prosecution. The Prosecution alone is responsible for identifying which evidence might be exculpatory and for disclosing Rule 68 material, under the control of the Trial Chamber which will duly respond to an established failure to comply, particularly at trial, and provide the necessary remedies.¹⁰ Pursuant to the jurisprudence of the Tribunal, if the Defence believes that the Prosecution has not complied with Rule 68, the Defence must first establish that the requested information is indeed in the possession of the Prosecution, and must second “present a *prima facie* case which would make probable the exculpatory nature of the materials sought.”¹¹ This is the test to be applied for discovery under Rule 68. If the Defence satisfies the Trial Chamber that there has been a failure by

⁸ Unofficial Transcript of Hearing on 8 October 2002, T. 10330.

⁹ *Prosecutor v. Blaškić*, Case No. IT-95-14-PT, Decision on the Production of Discovery Materials, 27 January 1997, para. 47.

¹⁰ *Prosecutor v. Blaškić*, Case No. IT-95-14-PT, *supra* note 9 at para. 50

the Prosecution to comply with Rule 68, the Trial Chamber in addressing the aspect of appropriate remedies will examine whether or not the Defence has been prejudiced by non-compliance and will provide accordingly pursuant to Rule 68*bis*; in this context the “sanction approach” is not the primary option:

the possible violations of Rule 68 are governed less by a system of ‘sanctions’ than by the Judges’ definitive evaluation of the evidence presented by either of the parties, and the possibility which the opposing party will have to contest it.¹²

24. The Trial Chamber is of the opinion that the meaning of Rule 68 must also be placed in the broader context of securing the fair trial rights of the accused as enshrined in Articles 20 and 21 of the Statute of the Tribunal. The fair trial concept demands not only that the Prosecution, pursuant to the plain language of the Rule, disclose to the Defence in sufficient time “the existence of evidence”, but also, as the Prosecution has rightly pointed out, that it actually provide the Defence with all of the exculpatory evidence in question “as soon as practicable”. The question arises, however, whether the Prosecution satisfactorily complies with the meaning and scope of Rule 68 when it discloses to the Defence exculpatory evidence in a summarised form. In short, the following question needs to be clarified: is the Prosecution obliged under Rule 68 to disclose exculpatory material in its original form or may the Prosecution disclose exculpatory material in a summarised form?

25. In resolving this question, the Trial Chamber recalls the Blaškić Decision of 26 September 2000, which was raised by the parties during the discussion on Brđanin’s Motion and in which the Appeals Chamber held that:

it does not make sense that the Prosecution can stop short of providing exculpatory evidence in its possession, having pointed out to the Defence that it possesses such evidence. If the evidence is in the sole possession of the Prosecution, it is obvious that if the fourth reason were upheld, the Defence would be hindered from discovering it, thus frustrating the principle of a fair trial.¹³

26. The Trial Chamber strongly believes that if a rule is created and intended to have some value, especially if it creates a right, than the remedy must be an effective one. The principle of a fair trial has the following implications with respect to the meaning of Rule 68. *First*, the principle

¹¹ *Prosecutor v. Blaškić*, Case No. IT-95-14-PT, *supra* note 9 at para. 50.

¹² *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Decision on Defence Motion for Sanctions for Prosecutor’s Continuing Violation of Rule 68, 28 September 1998, page 3.

of a fair trial requires that disclosure of exculpatory material be made in sufficient time. Thus, if the Prosecution has the statement of a person which contains exculpatory evidence and does not intend itself to call that person as a witness, disclosure as soon as practicably possible is a must to ensure that the Defence has an opportunity to subpoena that witness or to use that exculpatory material during the cross-examination of witnesses whom the Prosecution intends to call. It stands to reason that where disclosure is not made within sufficient time, the Defence should be in the position to recall witnesses who have already testified, if it establishes to the satisfaction of the Trial Chamber that the lateness of the disclosure prejudiced the preparation or presentation of his defence. *Second*, within the context of a fair trial the obligation to disclose exculpatory material implies the disclosure of the exculpatory material in its original form, and not in the form of a summary. The *raison d'être* behind the disclosure rules is undoubtedly to permit the accused to make effective use of that material. The Trial Chamber is of the view that if the exculpatory material is enclosed in a statement, it is the statement that needs to be disclosed. The Defence rightly pointed out in its Motion that “[t]he ‘material’ contemplated by Rule 68 in this instance are the words of the witnesses as recorded in the statements not the Prosecutor’s impressions of those statements.”¹⁴ Indeed, in order to make real use of the material, the Defence is entitled to be provided with the exculpatory material in its original form, minus redactions the Prosecution deem appropriate. The redacted versions of exculpatory material that will be disclosed should however be “sufficiently cohesive, understandable and usable”.¹⁵ The Trial Chamber underlines once again that only the sections that contain the exculpatory material should be provided to the Defence, not the whole document.

27. The Trial Chamber stresses that the system suggested and adopted by the Prosecution, *i.e.* to give the Defence a summary of the nature of the exculpatory material in its possession, apart from being laborious in itself, essentially deprives the Defence from being in a position to assess the real value of the exculpatory material for itself. The Trial Chamber is of the opinion that disclosing exculpatory material in summarised form is not in compliance with Rule 68. Therefore, the Trial Chamber, using its powers of supervision over disclosure and pursuant to Rule 68*bis*, instructs the Prosecution to verify the exculpatory material previously disclosed to the Defence in the form of summaries and to disclose to the Defence the redacted transcripts which fall within the purview of Rule 68. The Trial Chamber will set a time limit of two weeks within which the Prosecution must comply with this order.

¹³ *Prosecutor v. Blaškić*, Case No. IT-95-14-A, *supra* note 3 at para. 41.

¹⁴ Brdanin’s Motion, para. 24.

¹⁵ *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Decision on the Defence Motion for “Sanctions for Prosecutor’s Repeated Violations of Rule 68 of the Rules of Procedure and Evidence”, 29 April 1998, para. 19.

28. The Trial Chamber now turns to consider the specific allegations made by the Defence in relation to delayed disclosure. First, the Defence contended that the Prosecution deliberately waited to disclose the interview of Vinko Kondić until certain witnesses had completed their testimony and returned to their place of residence. The Prosecution acknowledged the delayed disclosure and provided the Trial Chamber with an explanation for it. The Trial Chamber is convinced that the delayed disclosure was not malicious or deliberate as suggested by the Defence.

29. Furthermore, the Defence alleged that additional interviews have been conducted with respect to which no exculpatory material in any form has been supplied. Although the Prosecution firmly refutes this allegation insofar as it concerns exculpatory material, it admitted that it has yet to disclose exculpatory material contained in interviews either with persons interviewed in conditions of confidentiality (“Confidential Interviews”) or conducted in relation to the Stakić case (“Stakić Interviews”). There would appear to be two reasons for this delayed disclosure: heavy workload and confidentiality. While the Trial Chamber recognises the workload of the Prosecution in this case, it believes that this is not a justification for any further delay. With respect to confidentiality as a justification for delayed disclosure, the Trial Chamber notes that the issue of disclosure of confidential material has arisen previously. In this respect, the Trial Chamber stated in a previous decision that “Rule 70, which is entitled ‘matters not subject to disclosure’, [...] does not relieve the Prosecution from disclosing material that it would otherwise be required to disclose pursuant to Rule 68”.¹⁶ Therefore, the Trial Chamber instructs the Prosecution pursuant to Rule 68*bis* to disclose, as soon as practicably possible, the exculpatory material contained in the Confidential Interviews and the Stakić Interviews. The Trial Chamber will set a time-limit of one week within which the Prosecution has to disclose the Rule 68 material as described in this paragraph along the lines indicated above.

30. The Trial Chamber emphasises that there is nothing to substantiate the general allegation of the Defence that numerous additional interviews have been conducted or that the existence of any exculpatory material has not been provided. With the exception of the two disclosures still to be made as described in the previous paragraph, the Trial Chamber has not found any indication that the Prosecution violated its Rule 68 disclosure obligation as such. In the absence of *prima facie* evidence from the accused, the Trial Chamber must assume that the Prosecution acts in good faith with respect to its Rule 68 obligation. The Trial Chamber points out - once again - that the issue of what evidence might be exculpatory evidence is primarily a facts-based judgement made by and under the responsibility of the Prosecution. As a result, the Trial Chamber sees no reason to order

¹⁶ *Prosecutor v. Brdanin and Talić*, Case No. IT-99-36-T, Public Version of the Confidential Decision on the Alleged Illegality of Rule 70 of 6 May 2002, 23 May 2002, para. 20.

the Prosecution to provide the Defence with a list of all persons interviewed by the Prosecution in connection with the Brđanin case or to file the full transcripts of all such recorded interviews with the Registry. However, pursuant to what has been decided in the previous paragraphs of this decision and in accordance with Rule 68*bis*, the Trial Chamber instructs the Prosecution to provide the Defence with the original portions of exculpatory material, which the Prosecution previously has disclosed in summarised form, and to disclose the original portions of exculpatory material contained in the Confidential Interviews and the Stakić Interviews.

31. The Trial Chamber stresses that the decision to instruct the Prosecution to disclose Rule 68 material in its original form is being taken without prejudice to the rights of the Defence to recall witnesses for additional cross-examination, if it establishes to the satisfaction of this Trial Chamber that the lateness of the disclosure of the said documents prejudiced the preparation or presentation of his defence. The Trial Chamber recalls that the Prosecution has in principle no objection to this.

B. Preparation Problem

32. The Trial Chamber has carefully considered the Defence request to be allotted additional time in order to adequately prepare its case. In relation to the military aspect of the case, the Trial Chamber believes that the request to be given appropriate time to become familiarised with the military aspect of the case is completely unfounded and cannot be entertained. The decision to divide responsibilities with respect to conducting this case was a decision that the Defence took freely and is therefore in no position to escape from the inevitable consequences of this decision. The Trial Chamber is of the opinion that it would be abusing the process if it would entertain requests for delays based on such grounds.

33. The Defence also argues that it needs more time to prepare the Prijedor stage of the trial.¹⁷ The Trial Chamber agrees with the Defence that “expediency must not replace justice”¹⁸. The Trial Chamber recalls, however, that this matter has been previously discussed and debated, and sufficient time off was allocated and even extended. No new justification has been advanced by the Defence which would merit further delay. The Trial Chamber fails to see why it should extend the number of days it has allotted to the Defence to be adequately prepared for Prijedor and notes that the date on which the Prijedor stage of the trial would start was set in close consultation and with the agreement of the Defence.¹⁹ Therefore, the Trial Chamber is of the opinion that there is no

¹⁷ See Unofficial Transcripts of Hearings on 17 September 2002, 7 October 2002 and 10 October 2002.

¹⁸ Brđanin’s Motion, para. 41.

¹⁹ Unofficial Transcripts of Hearing on 10 October 2002, T.10506, T. 10513 and T. 10589.

unfairness to the Defence in rejecting Brđanin's request. Rather it believes that more than sufficient time has been available to the Defence to be prepared for the Prijedor municipality stage of the trial.

C. Rule 66 (B) disclosure

34. The Trial Chamber recalls that the Defence has invoked Rule 68 in its Motion, alleging a failure of the Prosecution to comply with this provision. As a result the Defence has requested the Prosecution to disclose all exculpatory material in its possession in its original form but redacted. The Prosecution has submitted that the scope of the Defence demand in fact amounts to a Rule 66 (B) request resulting in the applicability of the Rutaganda Decision.

35. The Trial Chamber considers that its decision should be restricted to the Motion at hand and the requests contained in it. As the Defence rightly points out in its Opposition, Brđanin's Motion is restricted to the application of Rule 68. Therefore, the Trial Chamber does not deem it necessary or relevant to address issues outside the scope of Rule 68, when they are obviously inapplicable.

IV. DISPOSITION

For the foregoing reasons,

PURSUANT to Rule 54, Rule 68 and Rule 68*bis*,

TRIAL CHAMBER II HEREBY

INSTRUCTS the Prosecution to disclose the original versions, redacted as necessary, of any exculpatory material previously disclosed in summarised form by not later than Wednesday, 13 November 2002;

INSTRUCTS the Prosecution to disclose the original versions, redacted as necessary, of any exculpatory material contained in the Confidential Interviews and the Stakić Interviews, by not later than Wednesday, 6 November 2002;

STATES that this decision is being taken without prejudice to the rights of the Defence to recall witnesses for additional cross-examination;

STATES that Brđanin's requests are not requests within the meaning of Rule 66 (B);

RECALLS the oral decision rendered by this Trial Chamber on 17 October 2002, in which the Trial Chamber decided not to stay the presentation of evidence pending the resolution of issues raised in Brđanin's Motion;²⁰

REJECTS all other aspects of the requests contained in Brđanin's Motion.

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

Dated this 30th day of October 2002,

At The Hague

The Netherlands



Carmel Agius

Presiding Judge

[Seal of the Tribunal]

²⁰ Unofficial Transcript of Hearing on 17 October 2002, T. 10948.