



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-05-87-T
Date: 8 November 2006
Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Ali Nawaz Chowhan
Judge Tsvetana Kamenova
Judge Janet Nosworthy, Reserve Judge

Registrar: Mr. Hans Holthuis

Order of: 8 November 2006

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

**PRELIMINARY ORDER ON SECOND JOINT DEFENCE MOTION TO COMPEL
DISCLOSURE OF RULE 66 AND 68 MATERIAL**

Office of the Prosecutor

Mr. Thomas Hannis
Mr. Chester Stamp

Counsel for the Accused

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

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 (“Tribunal”) is seised of the confidential “Second Joint Defence Motion to Compel Disclosure of Rule 66 and Rule 68 Material,” filed on 17 October 2006 (“Motion to Compel Disclosure”), requesting the Trial Chamber to order the Prosecution to disclose material purportedly subject to Rules 66 and 70.¹

1. On 17 October 2006, the Prosecution informed the Chamber that it already had disclosed “Rule 68/Rule 70 materials” pursuant to its disclosure obligation under Rule 68, as well as the confidential “Order on Motion for Order of Non-Disclosure” issued by the Chamber on 15 August 2006.² In its Motion to Compel Disclosure, the Defence submits that, although the Prosecution had indeed provided information to the Defence, the information lacked any original material and that the information provided was only in summary form.³

2. The Chamber notes that the jurisprudence of the Tribunal, in general, provides that, within the context of a fair trial, the obligation to disclose exculpatory material under Rule 68 implies the disclosure of the material in its original form, minus redactions that the Prosecution deems appropriate, rather than disclosure in the form of a summary.⁴

3. Despite careful review of all relevant filings (including the material attached to the Prosecution’s filing dated 17 October 2006), it is difficult for the Chamber to ascertain the exact nature of the information provided to the Defence by the Prosecution. In order to decide the Motion to Compel Disclosure, the Chamber requires further clarification from the Prosecution regarding the exact nature of the information provided to the Defence.

¹ Previously, on 15 August 2006, the Chamber issued its confidential “Order on Motion for Order of Non Disclosure,” ordering the Prosecution to disclose all potentially exculpatory material furnished by a Rule 70 provider pursuant to Rule 70(B) to the Accused and their respective Defence teams as soon as possible. On 19 September 2006, the Defence filed its “Joint Defence Motion to Compel Rule 68 Disclosure,” in which the Defence informed the Chamber that the Prosecution had not yet disclosed “any Rule 68 material pursuant to the Order” and requested the Chamber to order the Prosecution to execute the order and disclose all relevant Rule 68 material immediately.

² Partly confidential Prosecution’s Notice of Filing Confidential Annex A to Submissions re: General Ojdanić’s Submissions Concerning Disclosure of Rule 70 Material, 17 October 2006.

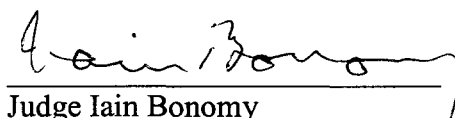
³ See supra note 1.

⁴ See, e.g., *Prosecutor v. Brđanin*, Case No. IT-99-36-T, Decision on 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, 30 October 2002, para. 26; *Prosecutor v. Strugar*, Case No. IT-01-42-PT, Decision on the Defence Motion to Suspend All Time Limits & Protect the Basic Rights of the Accused and the Defence Motion for an Extension of Time, 18 September 2003, pp. 4–5 (holding that right to fair trial suggests that Prosecution’s summary of evidence [which was previously disclosed] is insufficient and whole document or those extracts containing the exculpatory material should be disclosed provided that those extracts are sufficiently cohesive, understandable, and usable).

4. The Chamber notes that the parties should be conducting this matter on the public record, to the extent possible, and requests that future submissions be filed publicly, as long as confidential information is being adequately protected. Where a confidential submission is necessary, the parties should indicate to the Chamber the reason therefor.

5. For the foregoing reasons, the Chamber, pursuant to Rules 54, 66, 68, and 70, hereby ORDERS the Prosecution, by 10 November 2006, to make a written, *inter partes* submission clarifying the exact nature of the information that was provided to the Defence pursuant to its disclosure obligation under Rule 68, as well as the confidential "Order on Motion for Order of Non-Disclosure," issued by the Trial Chamber on 15 August 2006.

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



Judge Iain Bonomy
Presiding

Dated this eighth day of November 2006
At The Hague
The Netherlands

[Seal of the Tribunal]