



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-98-34-T  
Date: 18 April 2002  
Original: English

**BEFORE TRIAL CHAMBER I SECTION A**

**Before:** Judge Liu Daqun, Presiding  
Judge Maureen Harding Clark  
Judge Fatoumata Diarra

**Registrar:** Mr. Hans Holthuis

**Decision of:** 18 April 2002

**PROSECUTOR**

v.

**MLADEN NALETILIĆ aka "TUTA"  
and  
VINKO MARTINOVIĆ aka "ŠTELA"**

**DECISION ON THE DEFENCE MOTION FOR DISCLOSURE OF ANY  
DEFENCE WITNESS STATEMENTS IN POSSESSION  
OF THE OFFICE OF THE PROSECUTOR**

**The Office of the Prosecutor:**

**M. Kenneth Scott  
M. Douglas Stringer  
M. Vassily Poriouvaev  
M. Roeland Bos**

**Counsel for the Accused:**

**Mr Krešimir Krsnik, for Mladen Naletilić  
M. Branko Šerić, for Vinko Martinović**

**TRIAL CHAMBER I, SECTION A** (“the 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 Tribunal”),

**BEING SEISED OF** the accused Mladen Naletilić’s “Motion for Disclosure of Any Statements of Any Defence Witnesses in Possession of the Office of the Prosecutor”, filed on 22 March 2002 (“the Motion”);

**NOTING** the “Prosecution’s Response to the Defence Motion for Disclosure of Any Statements of Any Defence Witnesses in Possession of the Office of the Prosecutor”, filed on 28 March 2002 (“the Response”);

**NOTING** the “Accused Naletilić’s Reply to the Prosecution’s Response to Defence Motion for Disclosure of Statements of Defence Witnesses in Prosecutions Possession”, filed on 2 April 2002 (“the Reply”);

**NOTING** that in the Motion, the Defence for the accused Mladen Naletilić requests that the Trial Chamber order the Prosecution to disclose to the Defence copies of all prior statements of Defence witnesses which it has in its possession, or has access to;

**NOTING** that in its Response, the Prosecution opposes the Motion, on the ground that Rule 66 (A) (ii) of the Rules of Procedure and Evidence (“the Rules”) does not apply to such statements and that Rule 66 (B) can not be invoked as the Defence has not triggered reciprocal disclosure pursuant to Rule 67 (C);

**NOTING** that the Prosecution further asserts that it continues to comply with its obligation, under Rule 68, to provide any exculpatory material;

**NOTING** that in its Reply, the Naletilić Defence argues that the Prosecution is not in a position to determine what is relevant to the Defence case under Rule 68 and that the Defence should be allowed to do so, after being provided with the requested material;

**CONSIDERING** that Rule 66 (A) (ii) provides that the Prosecutor shall disclose “... copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial, and copies of all statements taken in accordance with Rule 92 *bis*; copies of the statements of additional prosecution witnesses shall be made available to the Defence when a decision is made to call those witnesses”, and that the Prosecution was not and is not obliged, under this rule, to disclose any statements of witnesses that it has not called or intended to call to testify;

**CONSIDERING** that Rule 66 (B) and Rule 67 (C) are not applicable to the present proceedings, the Defence having stated clearly that it did not want to invoke reciprocal disclosure;

**CONSIDERING** that Rule 68 imposes a continuous obligation on the Prosecutor to disclose material which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence;

**CONSIDERING** that, in its jurisprudence, the Tribunal has constantly reiterated that the Prosecution bears the sole responsibility for determining whether evidence is exculpatory,<sup>1</sup> and that in the absence of further evidence that the Prosecution abused its judgement, the Chamber will not intervene in the exercise of this discretion;<sup>2</sup>

**CONSIDERING** that the Defence has not presented any evidence tending to show that the requested statements would in fact contain exculpatory material;

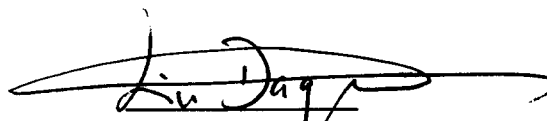
**FOR THE FOREGOING REASONS,**

**PURSUANT** to Rules 54, 66, 67 and 68 of the Rules,

**HEREBY DENIES** the Motion.

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

Dated this eighteenth day of April 2002,  
At The Hague,  
The Netherlands

  
Judge Liu Daqun  
Presiding Judge

[Seal of the Tribunal]

<sup>1</sup> *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Decision on the Production of Discovery Material, 27 January 1997; *Prosecutor v. Delalić and others*, Case No. IT-96-21-T, Decision on the Request of the Accused Pursuant to Rule 68 for Exculpatory Information, 24 June 1997; *Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-PT, Decision on Motion by Momir Talić on Disclosure of Evidence, 27 June 2000.

<sup>2</sup> See *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.