

IN TRIAL CHAMBER II

Before:

**Judge Carmel Agius, Presiding
Judge Hans Henrik Brydensholt
Judge Albin Eser**

Registrar:

Mr. Hans Holthuis

Decision of:

13 December 2005

PROSECUTOR

v.

NASER ORIC

**DECISION ON ONGOING COMPLAINTS ABOUT
PROSECUTORIAL NON-COMPLIANCE WITH RULE 68 OF THE
RULES**

The Office of the Prosecutor:

**Mr. Jan Wubben
Ms. Patricia Sellers Viseur
Mr. Gramsci di Fazio
Ms. JoAnne Richardson**

Counsel for the Accused:

**Ms. Vasvija Vidovic
Mr. John Jones**

BACKGROUND AND SUBMISSIONS

1. 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 seized of various submissions by counsel for Naser Oric (“Defence” and “Accused”, respectively) and the Office of the Prosecutor (“Prosecution”) containing ongoing complaints about alleged non-compliance by the Prosecution with its disclosure obligations pursuant to Rule 68 of the Tribunal’s Rules of Procedure and Evidence (“Rules”).

2. Complaints concerning alleged non-compliance with Rule 68 of the Rules have been a recurrent feature in this case.¹ As explained in more detail below, the Trial Chamber’s prior dealing with a violation of Rule 68 of the Rules gave rise to numerous filings by both parties, as well as to new complaints by the Defence of Rule 68 violations. The Trial Chamber finds it appropriate to address these matters in a single consolidated Decision.

The Trial Chamber’s Previous Decision

3. On 27 October 2005, the Trial Chamber issued a “Decision on Urgent Defence Motion Regarding Prosecutorial non-Compliance With Rule 68” (“Trial Chamber’s Decision”) in which it found that the Prosecution had violated its obligations under Rule 68 of the Rules by not having disclosed to the Defence material which may suggest the innocence or mitigate the guilt of the Accused or affect the credibility of Prosecution evidence (“Rule 68 Material”) relating to a certain named Serb volunteer, as well as other Rule 68 Material related to Serbian ethnic cleansing in the locations covered by the indictment against the Accused (“Indictment”).²
4. As a consequence of that finding, the Trial Chamber ordered the Prosecution to conduct a thorough and complete search for Rule 68 Material relevant to the Defence and to provide the Trial Chamber with a declaration stating what searches have been made, where they have been made and the results of such searches and to immediately disclose to the Defence any further Rule 68 Material in its possession, which had not previously been disclosed.³
5. In order to address any prejudice to the Accused resulting from the non-disclosure of that material, the Trial Chamber also invited the Defence to indicate the names of any Prosecution witnesses it wished to call for further cross-examination in light of the newly disclosed material, as well as the names of any additional

witnesses who may give evidence on these matters.⁴

The Prosecution Declaration

6. On 11 November 2005, the Prosecution filed a partly confidential “Declaration Stating Searches, Location of Searches, and Results of Searches as Ordered by the Trial Chamber on the 27th of October 2005” (“Prosecution Declaration”). Pursuant to the Trial Chamber’s orders, the Prosecution states that it has completed searching the material in its possession as regards witnesses, victims, perpetrating organisations, locations, and other areas in which the Defence had indicated a special interest, with respect to Rule 68 Material.⁵ No additional Rule 68 Material was discovered and disclosed to the Defence. The Prosecution however acknowledges that it is under a continuing obligation to disclose Rule 68 Material to the Defence.⁶

Defence Responses

Response to the Trial Chamber’s Decision

7. In response to the Trial Chamber’s Decision, which contained an invitation to indicate the names of any witnesses it wished to produce as a remedy for the Rule 68 violation acknowledged by the Trial Chamber, the Defence on 17 November 2005 filed a “Defence Response to Decision on Urgent Defence Motion Regarding Prosecutorial non-Compliance with Rule 68” (“Response to the Trial Chamber’s Decision”). The Defence submits that, at the present stage of the proceedings, re-calling Prosecution witnesses would not only disrupt the orderly presentation of Defence evidence, it would even amount to a *de facto* re-trial because it considered that *all* Prosecution witnesses would have to be re-called. According to the Defence, Rule 68 violations by the Prosecution are ongoing, and therefore, witnesses would need to be re-called on a rolling basis, which would be unacceptable in view of the imperative to secure an expeditious trial.⁷
8. As a new example of a Rule 68 violation, the Defence attaches a document concerning responsibility for the detention of Serb detainees, which has not previously been disclosed to it by the Prosecution and the contents of which appear to be exculpatory (“First Incident”).⁸ The Defence, however, does not suggest what concrete measures the Trial Chamber should take in order to

remedy any possible prejudice to the Accused. Rather, the Defence leaves it to the Trial Chamber to “understand what the necessary consequences are of this finding.”⁹

Response to the Prosecution Declaration

9. Also on 17 November 2005, the Defence filed a “Defence Response to Prosecution Declaration Stating Searches, Location of Searches, and Results of Searches as Ordered by the Trial Chamber on the 27th of October 2005” (“Response to the Prosecution Declaration”). Therein, the Defence reiterates previous complaints that the Prosecution has not provided it with Rule 68 Material in relation to various subject-matters, including material concerning the Bosnian Serb strategy of ‘ethnic cleansing’ and different Bosnian Serb paramilitary formations, despite having requested the Prosecution to do so.¹⁰ Again, the Defence does not propose a remedy other than that the Trial Chamber issue “appropriate directions to the Prosecution to ensure immediate compliance with its disclosure obligations.”¹¹

Prosecution Submissions

Reply to the Response to the Trial Chamber’s Decision

10. On 28 November 2005, the Prosecution filed a “Prosecution Response to the Defence Motion Providing its Response to Decision on Urgent Defence Motion Regarding Prosecutorial non-Compliance with Rule 68, and Fresh Violation of Rule 68” (“Reply to the Response to the Trial Chamber’s Decision”),¹² and on 2 December 2005, it filed a corrigendum thereto.¹³ In respect of the new allegations of a Rule 68 violation, the Prosecution concedes that the document concerning Serb prisoners was not disclosed to the Defence due to an oversight.¹⁴ The Prosecution however contends that minimal prejudice to the Accused has been caused because the Defence had knowledge of the events referred to in that document by virtue of other evidence adduced previously during the proceedings.¹⁵ The Prosecution further submits that, since the Defence has not availed itself of the possibility to re-call Prosecution witnesses or to call new witnesses, there is no basis for the imposition of other procedural remedies.¹⁶
11. The Prosecution further submits that the calling of additional

witnesses would in fact be a viable option for the Defence. It rejects the Defence objection to the additional consumption of time, as the fairness of a trial should take precedence over its expediency. Therefore, it is suggested, the Trial Chamber should order the Defence to re-call Prosecution witnesses or to call new witnesses, if this is found to constitute an appropriate remedy.¹⁷

Reply to the Response to the Prosecution Declaration

12. On 24 November 2005, the Prosecution filed a “Prosecution Motion for Leave to Reply to the Defence Response to the Prosecution Declaration Stating Searches, and Results of Searches as Ordered by the Trial Chamber on the 27th of October 2005” (“Reply to the Response to the Prosecution Declaration”), consisting of a request for leave to reply to the Response to the Prosecution Declaration,¹⁸ as well as substantive submissions in reply.
13. The Prosecution denies all allegations made by the Defence in the Response to the Prosecution Declaration with respect to shortcomings in its obligations under Rule 68 of the Rules, and maintains that it has comprehensively provided the Defence with material in its possession covering the areas indicated by the Defence, with further disclosure ongoing.¹⁹ The Prosecution requests that the Trial Chamber refrain from issuing any orders beyond those previously given in the Trial Chamber’s Decision.²⁰

Further submission

Defence Rejoinder to Prosecution Declaration

14. On 2 December 2005, the Defence filed a “Rejoinder to Prosecution Reply Regarding Prosecution Declaration of 11 November 2005 Stating Searches and Results of Searches ” (“Rejoinder Regarding Prosecution Declaration”), in which the Defence characterises the Reply to the Response to the Prosecution Declaration as “non-responsive” to its concerns.²¹ The Defence further requests that the Prosecution (i) produce itemised spreadsheets of each document the disclosure of which has been reviewed, (ii) provide sworn declarations regarding the fate of certain documents the Defence presumes to be Rule 68 Material, which were seized from and subsequently sent back to Banja Luka, and finally, (iii) respond to several of its enquiries.²²

Further Rule 68 Violation

15. On 25 November 2005, the Defence filed a “Further Communication Regarding non -Compliance With Rule 68” (“Further Rule 68 Submission”), claiming that the Prosecution had not disclosed yet another document, the contents of which appears to be exculpatory in relation to responsibility for wanton destruction in Ratkovici (“Second Incident ”).^{[23](#)} Had it been aware of this material earlier, the Defence states that it might have contacted the provider of this exculpatory information.^{[24](#)}
16. On 2 December 2005, the Prosecution filed a “Prosecution Response to the Defence Motion Concerning Further Communication Regarding non-Compliance With Rule 68” (“Response to Further Rule 68 Submission”). The Prosecution concedes that the undisclosed material of the Second Incident falls within the ambit of Rule 68 of the Rules, but claims that no prejudice to the Accused results from that omission, because the information is self-contradictory and also because other witnesses called by the Defence have given evidence even more favourable to the Defence’s case on the issue of responsibility for wanton destruction in Ratkovici than the information contained in the undisclosed document.^{[25](#)} Furthermore, the Prosecution submits that the Defence is bound by Rule 67(C) of the Rules to immediately disclose that evidence or material.^{[26](#)}
17. On 9 December 2005, the Defence filed a “Reply to Prosecution Response to the Defence Motion Concerning Further Communication Regarding non-Compliance With Rule 68” (“Reply to Further Rule 68 Submission”), in which it requests that the Trial Chamber make a finding of a Rule 68 violation.^{[27](#)} With regard to Rule 67(C) of the Rules, the Defence contends that it has no duty to “police the activities of the Prosecution” and submits that it will raise Rule 68 complaints when it is appropriate to do so in the interests of the Accused.^{[28](#)}
18. Also in the Reply to Further Rule 68 Submission, the Defence alleges yet another Rule 68 violation with respect to a different paragraph of the same document which had not been disclosed to the Defence in the Second Incident (“Additional Matter ”).^{[29](#)} The Prosecution responds that even if this new incident is to be found Rule 68 Material, there has been minimal prejudice to the Accused since one of its witnesses has given identical evidence.^{[30](#)}

In reply, the Defence maintains that a Rule 68 violation should be found.^{[31](#)}

DISCUSSION

Has the Prosecution failed to comply with its obligations under Rule 68 of the Rules?

19. Rule 68(i) of the Rules provides:

[T]he Prosecutor shall, as soon as practicable, disclose to the Defence any material which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence[.]

20. The jurisprudence of the Tribunal is clear that, in pursuit of justice, the disclosure of Rule 68 Material to the Defence is of paramount importance to ensure the fairness of proceedings before this Tribunal.^{[32](#)} The determination of what material might fall within the limits of Rule 68 of the Rules is a fact-based judgement made by and under the responsibility of the Prosecution.^{[33](#)} It is this Trial Chamber's firm opinion that in view of the imperative to provide a fair trial to an accused, considerations of fairness must be the overriding factor in making that determination.^{[34](#)}
21. This being said, the Trial Chamber is well aware of the enormous amount of documents contained in the archives of the Prosecution and the practical implications this has for the requirement of disclosure of Rule 68 Material.
22. In the present case, the Prosecution does not contest that the documents underlying the First Incident and the Second Incident constitute Rule 68 Material and thus should have been disclosed to the Defence.^{[35](#)} With respect to the Additional Matter raised in the Defence Reply to Further Rule 68 Submission, the Trial Chamber notes that the allegation concerns non-disclosure of a paragraph within the same document as in the Second Incident. However, bearing in mind that, in pursuit of justice, fairness must be the decisive factor guiding the actions of the Prosecution, the Trial Chamber finds that the document in question should indeed have been disclosed to the Defence earlier.
23. With the exception of the mentioned two incidents, the Trial

Chamber is unable to make a finding that the Prosecution is in violation of its obligations with regard to disclosure of other Rule 68 Material. In the absence of *prima facie* evidence pointing to the contrary, and considering the Prosecution Declaration, which was ordered as a remedy to a previously established Rule 68 violation, the Trial Chamber will assume that the Prosecution acts in good faith and complies with its duties under Rule 68 with respect to other areas where the Defence claims that material is not properly disclosed.^{[36](#)}

What prejudice, if any, has been caused to the Accused?

24. Having found the Prosecution to be in breach of its obligations under Rule 68 of the Rules, as established above, the Trial Chamber will now examine what material prejudice, if any, the Accused has suffered as a result of these violations.^{[37](#)}

First Incident

25. The Defence states that it was deprived of using the document in question during cross-examination of Prosecution witnesses.^{[38](#)} The Prosecution, however, is of the opinion that minimal prejudice results out of the First Incident for the Accused, as the Defence had knowledge of the events described in the undisclosed document through other Defence evidence.^{[39](#)}
26. The Trial Chamber notes that in the First Incident, the Prosecution failed to disclose to the Defence information touching upon the issue of authority over Serb prisoners, which in turn is of immediate relevance to the charges of murder and cruel treatment (counts 1 and 2) in the Indictment. At this juncture, the Trial Chamber will not entertain any speculation regarding the probative value of the undisclosed document, had it been available to the Defence earlier. Suffice it to say that the information given in the undisclosed document is referred to in exactly the same terms in Defence exhibit D245,^{[40](#)} which has been available to the Defence as of February 2005.^{[41](#)}
27. As a general rule, if Rule 68 Material is known and reasonably accessible to the defence, material prejudice cannot be shown.^{[42](#)} The Trial Chamber notes that, on the one hand, when compared to exhibit D245, the undisclosed document in the First Incident provides no additional information as such: both documents note

that the Srebrenica Chief of Police asked a certain Avdic what to do with Serb prisoners captured at Karno. Yet on the other hand, it is true that, had the original document, as opposed to merely a derivative, been available to the Defence during the Prosecution case of the proceedings, it could have been used by the Defence during cross-examination. Therefore, the Trial Chamber finds that the Accused has suffered prejudice, albeit not to any significant extent, by the non-disclosure of the document related to the First Incident.

Second Incident

28. The Defence claims that it was deprived of contacting the provider of the exculpatory information regarding responsibility for wanton destruction in Ratkovici, or to make use of this material otherwise.⁴³ The Prosecution essentially contends that no prejudice has been caused to the Accused in the Second Incident because of the more favourable nature of evidence given by other Defence witnesses.⁴⁴
29. As regards the Second Incident, the Trial Chamber notes that the information contained in the undisclosed document concerns, *inter alia*, the question of responsibility for destruction caused in Ratkovici,⁴⁵ and is thus of relevance to the charges of wanton destruction (counts 3 and 5) in the Indictment. However, bearing in mind the testimony given so far by both Prosecution and Defence witnesses regarding wanton destruction in the village of Ratkovici and its hamlets, the Trial Chamber agrees with the Prosecution that the undisclosed document contains information of a generally similar nature. As a result, the Accused was not prejudiced as a result of the non-disclosure of this document.

Additional Matter

30. As noted by the Trial Chamber before, the alleged Rule 68 violation raised by the Defence in the Additional Matter pertains to the same undisclosed document underlying the Second Incident.⁴⁶ Notwithstanding the Trial Chamber's prior finding that this document as a whole constitutes Rule 68 material and should have, therefore, been made available to the Defence earlier, the Trial Chamber notes that the Defence has raised this complaint only in the Reply to Further Rule 68 Submission.
31. It is true, of course, that the Defence is under no obligation to

make any objection or to monitor the conduct of the Prosecution. At the same time, the Trial Chamber notes that the Defence did not raise the Additional Matter when it filed its Further Rule 68 Submission, which dealt with the failure to disclose precisely the same document. Provided that an alleged non-compliance with the Rules is proved and that it has caused material prejudice to the objecting party, Rule 5(B) of the Rules grants a Trial Chamber the discretion whether or not to grant relief where an objection is not made at the earliest opportunity.⁴⁷ Furthermore, there being no indication of a material prejudice to the Accused considering that the same information was already available to him, the Trial Chamber would not in any event see the need to grant any relief to the Defence.

What measures should be imposed to remedy the prejudice and to prevent further violations of Rule 68 of the Rules?

32. The Trial Chamber recalls its earlier observation that in the practice of this Tribunal, violations of Rule 68 of the Rules is 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 had to contest it.⁴⁸
33. With the exception of the request that the Prosecution be ordered to perform certain activities,⁴⁹ the Defence has only invited the Trial Chamber to draw the appropriate conclusions from these new instances of Rule 68 violations. In this context, the Trial Chamber notes the reasons provided by the Defence for not calling or re-calling further witnesses.⁵⁰
34. The considerable number of submissions giving rise to the present Decision demonstrates that the disclosure practice adopted by the Prosecution during the proceedings has not been satisfactory. The Trial Chamber notes with concern that Rule 68 violations and allegations of such breaches have been a recurrent theme in this case.
35. In light of the above, the Trial Chamber will respond to the Rule 68 violations established above at its definitive evaluation of the evidence presented by the Prosecution, and consider the possibility of drawing the reasonable inferences in favour of the Accused with respect to specific evidence which has been the subject of a Rule 68 violation.

DISPOSITION

36. For the reasons stated above, the Trial Chamber

ENJOINS the Prosecution to make all efforts in the future to comply with all obligations imposed on it pursuant to Rule 68(i) of the Rules and

RESERVES the right to draw the reasonable inferences in favour of the Accused with respect to specific evidence which has been the subject of a violation of Rule 68 of the Rules.

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

Dated this thirteenth day of December 2005,
At The Hague
The Netherlands

Carmel Agius
Presiding Judge

[Seal of the Tribunal]

1 - This far, the Trial Chamber needed to rule on such complaints on five occasions: Oral Decision on 'Confidential Defence Motion to Request an Order for Measures to Ensure that the Prosecution Complies With Rule 68', 28 September 2004; Decision on Urgent Defence Motion Regarding Late Disclosure of Evidence and to Recall a Witness, 30 November 2004; Decision on Motion Regarding Authenticity of Documents and non-Compliance With Rule 68, 17 March 2005; Decision on Defence Complaints Raised Orally During the Proceedings, 29 September 2005; Decision on Urgent Defence Motion Regarding Prosecutorial non-Compliance With Rule 68, 27 October 2005.

2 - Trial Chamber's Decision, p. 2, 4. The Prosecution conceded orally that Rule 68 of the Rules had been violated, T. 12589, 12771.

3 - Trial Chamber's Decision, p. 5.

4 - *Ibid.*, p. 5.

5 - Prosecution Declaration, paras 14-21, 23-35.

6 - *Ibid.*, paras 38-39.

7 - Response to the Trial Chamber's Decision, paras 7, 11, 17, 18.

8 - *Ibid.*, paras 19-36. The document in question bears ERN 03592911 and is an undated note by the Srebrenica SJB Commander to a certain Avdic, asking what should be done with nine Serb prisoners captured at Karno.

9 - *Ibid.*, para. 38.

10 - Response to the Prosecution Declaration, paras 2-33.

11 - *Ibid.*, para. 37.

12 - The Prosecution appears to take the view that the Defence 'Response to the Trial

- Chamber's Decision' is in fact a motion, to which it is entitled to respond.
- 13 - Corrigendum to the Prosecution Response to the Defence Motion Providing its Response to Decision on Urgent Defence Motion Regarding Prosecutorial non-Compliance with Rule 68, and Fresh Violation of Rule 68, 2 December 2005.
- 14 - Reply to the Response to the Trial Chamber's Decision, paras 4-7.
- 15 - Reply to the Response to the Trial Chamber's Decision, paras 9, 11-18. The Prosecution refers specifically to exhibits D245 and D866, as well as the testimony of Prosecution witnesses Hakija Meholic, Bezir Bogilovic and Mustafa Sacirovic.
- 16 - *Ibid.*, paras 10, 23-26.
- 17 - Reply to the Response to the Trial Chamber's Decision, paras 27-32, 36-37.
- 18 - Reply to the Response to the Prosecution Declaration, para. 2.
- 19 - *Ibid.*, paras 4-52.
- 20 - *Ibid.*, para. 56.
- 21 - Rejoinder Regarding Prosecution Declaration, paras 2, 5-11.
- 22 - *Ibid.*, paras 11, 44, 51.
- 23 - Further Rule 68 Submission, paras 2-8. The document in question bears ERN 02147815-02147816 and contains interview notes of a Prosecution investigator with an individual who had stated that Muslim civilians burned the village of Ratkovici.
- 24 - *Ibid.*, para. 7.
- 25 - Response to Further Rule 68 Submission, paras 3, 5, 9, 11-14. The Prosecution refers to Defence witnesses Omer Ramic and Hamid Tiro.
- 26 - *Ibid.*, para. 1. Rule 67(C) of the Rules provides as follows: "If either party discovers additional evidence or material which should have been disclosed earlier pursuant to the Rules, that party shall immediately disclose that evidence or material to the other party and the Trial Chamber."
- 27 - Reply to Further Rule 68 Submission, paras 8-9.
- 28 - *Ibid.*, para. 2.
- 29 - *Ibid.*, paras 4-7. In the interview notes of the Prosecution investigator (cf. fn. 24 supra), there is a paragraph where the interviewee states that "prisoners would first be delivered to the Domavia Hotel" where Hakija Meholic had his headquarters. The Defence contends that this is exculpatory material based on other evidence that Hakija Meholic was not under the command of the Accused (para. 6).
- 30 - Transcript of 9 December 2005 (T.), page 14772, referring to the testimony of Prosecution witness Hakija Meholic.
- 31 - T. page 14773. The Defence further contends that this material would go to undermine the credibility of Hakija Meholic and should thus have been available before his cross-examination.
- 32 - *Prosecutor v. Radoslav Brdjanin*, 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 68bis and Motion for Adjournment while Matters Affecting Justice and a Fair Trial can be Resolved, 30 October 2002 ("*Brdjanin* Decision"), paras 22-25; *Prosecutor v. Tihomir Blaskic*, Case No. IT-95-14-T, Decision on the Production of Discovery Materials, 27 January 1997 ("*Blaskic* Decision"), paras 47-50; *Prosecutor v. Dario Kordic and Mario Cerkez*, Case No. IT-95-14/2-A, Decision on Motions to Extend for Filing Appellants' Briefs, 11 May 2001, para. 14.
- 33 - *Brdjanin* Decision, para. 30.
- 34 - *Prosecutor v. Radislav Krstic*, Case No. IT-98-33-A, Judgement, 19 April 2004 ("*Krstic* Appeal Judgement"), para. 180.
- 35 - Reply to the Response to the Trial Chamber's Decision, paras 4-7; Response to

Further Rule 68 Submission, para. 3.

36 - *Blaskic* Decision, para. 50.

37 - *Prosecutor v. Tihomir Blaskic*, Case No. IT-95-14-A, Judgement, 29 July 2004 (“*Blaskic* Appeal Judgment”), para. 268; *Krstic* Appeal Judgment, para. 153.

38 - Response to the Trial Chamber’s Decision, para. 36.

39 - Reply to the Response to the Trial Chamber’s Decision, paras 9, 11-18.

40 - *Ibid.*, p. 2.

41 - Reply to the Response to the Trial Chamber’s Decision, para. 11.

42 - *Prosecutor v. Tihomir Blaskic*, 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, para. 38.

43 - Further Rule 68 Submission, para. 7.

44 - Response to Further Rule 68 Submission, paras 3, 5, 9, 11-14.

45 - Ratkovici is one of the villages mentioned in the Indictment (para. 30).

46 - Reply to Further Rule 68 Submission, paras 4-7.

47 - Rule 5(B) of the Rules reads: “Where such an objection is raised otherwise than at the earliest opportunity, the Trial Chamber may in its discretion grant relief if it finds that the alleged non-compliance is proved and that it has caused material prejudice to the objection party.” (emphasis added) The Trial Chamber understands that it is this Rule, as opposed to Rule 67(C) of the Rules, which governs the issue.

48 - Trial Chamber’s Decision, p. 3, citing to *Prosecutor v. Tihomir Blaskic*, Case No. IT-95-14-T, Decision on the Defence Motion for Sanctions for the Prosecutor’s Continuing Violation of Rule 68, 28 September 1998, p. 3; *Prosecutor v. Radoslav Brdjanin*, 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 68bis and Motion for Adjournment while Matters Affecting Justice and a Fair Trial can be Resolved, 30 October 2002, para. 23.

49 - Rejoinder to Prosecution Declaration, para. 51.

50 - *See* Response to the Trial Chamber’s Decision, paras 7, 11, 17, 18.