

17 FEBRUARY 1997

D371 - D369

371

mej

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46

1

**THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA  
IN THE TRIAL CHAMBER**

**CASE NO. IT-96-19-Misc.1**

**Friday, 29th March 1996**

Before:

**CLAUDE JORDA  
(The Presiding Judge)**

**JUDGE FUAD RIAD  
JUDGE ODIO BENITO**

**IN THE MATTER OF ALEKSA KRSMANOVIC**

**MR. JUDGE RICHARD GOLDSTONE and MR. ERIC OSTBERG appeared on  
behalf of the Prosecution**

**MR. IGOR PENTALIC appeared on behalf of the Defendant**

---

**DECISION OF THE TRIAL CHAMBER**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

THE PRESIDING JUDGE: Reading of the Decision, the Trial Chamber.

Having regard to Rules 54 and 90 *bis* of the Rules of Procedure and Evidence Rules; having heard Colonel Krsmanovic, his counsel, the Prosecutor and the representative of Bosnia and Herzegovina as Amicus Curiae at the hearing today; considering that, under the terms of two decisions rendered respectively on 7th and 27th February 1996, the High Court of Sarajevo ordered that Colonel Krsmanovic should be detained until 4th May 1996; considering that in its decision of 12th February 1996 a Judge of the Tribunal ordered the transfer of Colonel Krsmanovic to the detention unit of the Tribunal, so that pursuant to the terms of Rules 54, 56 and 90 *bis* of the rules his deposition might be recorded in respect of an investigation by the Prosecutor into crimes falling under the jurisdiction of the Tribunal;

Considering that in the orders dated 12 and 24th February 1996, a Judge pursuant to Rules 54 and 90 *bis* of the Rules the Tribunal ordered the temporary detention of Colonel Krsmanovic at the Detention Unit of the Tribunal;

Considering that by the order dated 29th February 1996 the detention of Colonel Krsmanovic at the Detention Unit of the Tribunal has been extended until 4th April 1996, so that he may enjoy sufficient time to consult his counsel and so that the Prosecutor may conclude his investigation;

Considering that the applications presented on 19th and 27th March 1996 by Mr. Igor Pantelic, counsel for Colonel Krsmanovic, challenged the presence of his client as a witness pursuant to the terms of Rule 90 *bis* of the Rules;

Considering that during the hearing Colonel Krsmanovic stated that he was not prepared to appear as a witness before the Tribunal in any case submitted to it;

Considering that the Prosecutor believes that the evidence currently in his possession as of this time does not permit the conclusion that there exists the presumption of crimes falling under the jurisdiction of the Tribunal;

Considering that it should be pointed out that the Prosecutor, Colonel Krsmanovic and his counsel agree that the presence of Colonel Krsmanovic as a witness is no longer justified by the terms of Rule 90 *bis* of the Rules;

1  
2  
3 Considering that the application reviewed today as claimed by the  
4 Defence, does not fall under Rule 9 of the Rules on deferral but under Rule 90 *bis* on  
5 the transfer of a detained witness;

6 Considering that pursuant to sub-paragraphs (A) and (E) of Rule 90 *bis*  
7 of the Rules, any detained person whose personal appearance as a witness has been  
8 ordered  
9 by the Tribunal shall be transferred temporarily to the Detention Unit of the Tribunal  
10 conditional on his return within the period decided by the Tribunal, that on expiration  
11 of that period the detainee shall be remanded to the authorities of the requested state;

12 Considering that the conditions which, pursuant to the terms of Rule 90  
13 *bis* of the Rules, justify the transfer and detention of Colonel Krsmanovic in the  
14 Detention Unit of this Tribunal are no longer satisfied, and that pursuant to decisions  
15 of the High Court of Sarajevo dated 7th and 27th February it is, therefore, proper to  
16 remand Colonel Krsmanovic to the competent authorities of Bosnia-Herzegovina;

17 Considering that the Registrar must take all the necessary measures to  
18 ensure the transfer of Colonel Krsmanovic to those authorities it is being understood  
19 that the shall transfer shall be carried out at latest by 3rd April 1996 at 24 hours.

20 For these reasons, the Trial Chamber states that the applications  
21 submitted by the Defence counsel are well-founded in so far as the presence of  
22 Colonel Krsmanovic pursuant to Rule 90 *bis* of the Rules as witness is no longer  
23 required, orders that Colonel Krsmanovic be remanded to the competent authorities  
24 of Bosnia-Herzegovina, instructs the Registrar in concert with all the relevant  
25 authorities to ensure with all speed and at the latest before 3rd April 1996 at 24 hours  
26 the transfer of Colonel Krsmanovic to the authorities of Bosnia-Herzegovina, rejects  
27 the other requests.

28 Thus ordered this 29th day of March 1996 at the Hague.

29 The court stands adjourned.

30  
31 (The hearing adjourned).  
32