



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-AR73
Date: 23 December 1999
Original: English

BEFORE A BENCH OF THE APPEALS CHAMBER

Before: Judge Lal Chand Vohrah, Presiding
Judge Mohamed Shahabuddeen
Judge Wang Tieya

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 23 December 1999

PROSECUTOR

v.

**RADOSLAV BRĐANIN
MOMIR TALIĆ**

DECISION ON APPLICATION FOR LEAVE TO APPEAL

The Office of the Prosecutor:

**Ms. Joanna Korner
Mr. Michael Keegan
Ms. Ann Sutherland**

Counsel for the Appellant:

Mr. John Ackerman for Radoslav Brđanin

THIS BENCH of the Appeals 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 International Tribunal” and “the Bench”, respectively),

BEING SEIZED OF an “Application for Leave to Appeal from Decision on Petition for a Writ of Habeas Corpus Filed on Behalf of Radoslav Brđanin or Petition for a Writ of Mandamus to Trial Chamber II”, filed by the accused Radoslav Brđanin (“the Appellant”) on 15 December 1999 (“the Application”);

NOTING the “Prosecution’s Response to ‘Application for Leave to Appeal from Decision on Petition for a Writ of Habeas Corpus filed on Behalf of Radoslav Brđanin or Petition for a Writ of Mandamus to Trial Chamber II’”, filed on 17 December 1999;

NOTING that the Appellant did not file by 21 December 1999 a reply in accordance with Article 6 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the International Tribunal (IT/155);

DECIDING, therefore, to proceed with the Application without further submissions from the parties;

NOTING that the Application was filed against a “Decision on Petition for a Writ of Habeas Corpus on Behalf of Radoslav Brđanin” issued by Trial Chamber II on 8 December 1999, wherein the Appellant’s petition was dismissed as a motion based on Rule 73 of the Rules of Procedure and Evidence of the International Tribunal (“the Decision”, “the Petition”, and “the Rules”, respectively);

CONSIDERING, therefore, the Application as arising from proceedings under Rule 73;

NOTING that the Application is seeking leave to appeal the Decision, or, alternatively, applying to the Appeals Chamber to grant a writ of *mandamus*;

CONSIDERING that Rule 73 only allows the Bench to consider the granting or refusal of leave;

CONSIDERING, therefore, that the Bench has no jurisdiction over the matter of writs of *mandamus*, without passing on whether the Tribunal may issue such writs;

CONSIDERING that sub-Rule 73 (B) provides that decisions on motions filed under sub-Rule 73 (A) “are without interlocutory appeal save with the leave of a bench of three Judges of the Appeals Chamber which may grant such leave

- (i) if the decision impugned would cause such prejudice to the case of the party seeking leave as could not be cured by the final disposal of the trial including post-judgement appeal;
- (ii) if the issue in the proposed appeal is of general importance to proceedings before the Tribunal or in international law generally.”


CONSIDERING that the Petition sought to have the supporting materials in relation to the indictment against the Appellant heard *inter partes*, prior to the amendment of the indictment;

CONSIDERING, further, that this is a matter clearly regulated by the Rules and frequently considered in the existing jurisprudence of the International Tribunal;

CONSIDERING, therefore, that the Decision will not cause such prejudice to the case of the Appellant as could not be cured by the final disposal of his trial including post-judgement appeal, and that the issue raised by the Petition and the Application does not have general importance to proceedings before the International Tribunal or in international law generally;

HEREBY DECIDES to refuse leave in respect of the Application.

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



Lal Chand Vohrah
Presiding Judge

Dated this twenty-third day of December 1999
At The Hague,
The Netherlands.

[Seal of the Tribunal]