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UNITED
NATIONS

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:	IT-99-36-PT
	Date:	9 March 2000
	Original:	English

IN TRIAL CHAMBER II

Before: Judge David Hunt, Presiding
Judge Florence Ndepele Mwachande Mumba
Judge Fausto Pocar

Registrar: Mrs Dorothee de Sampayo Garrido-Nijgh

Decision of: 9 March 2000

PROSECUTOR

v

Radoslav BRĐANIN & Momir TALIĆ

DECISION ON MOTIONS BY MOMIR TALIĆ FOR A SEPARATE TRIAL AND FOR LEAVE TO FILE A REPLY

The Office of the Prosecutor:

Ms Joanna Korner
Mr Michael Keegan
Ms Ann Sutherland

Counsel for Accused:

Mr John Ackerman for Radoslav Brđanin
Maître Xavier de Roux and Maître Michel Pitron for Momir Talić

I Introduction

1. The accused – Radoslav Brđanin ("Brđanin") and Momir Talić ("Talić") – are jointly charged in the amended indictment with a number of crimes alleged to have been committed in the area of Bosnia and Herzegovina now known as *Republika Srpska*. Those crimes may be grouped as follows:

(i) genocide[1] and complicity in genocide;[2]

(ii) persecutions,[3] extermination,[4] deportation[5] and forcible transfer (amounting to inhumane acts),[6] as crimes against humanity;

(iii) torture, as both a crime against humanity[7] and a grave breach of the Geneva Conventions;[8]

(iv) wilful killing[9] and unlawful and wanton extensive destruction and appropriation of property not justified by military necessity,[10] as grave breaches of the Geneva Conventions; and

(v) wanton destruction of cities, towns or villages or devastation not justified by military necessity[11] and destruction or wilful damage done to institutions dedicated to religion,[12] as violations of the laws or customs of war.

Each count alleges that each of the accused is responsible both individually pursuant to Article 7(1) of the Tribunal's Statute and as a superior pursuant to Article 7(3). The indictment defines individual responsibility as including the commission of a crime by the accused both personally and by way of aiding and abetting the commission of a crime by others.[13]

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1 Count 1, Article 4(3)(a) of the Tribunal's Statute.
2 Count 2, Article 4(3)(e).
3 Count 3, Article 5(h).
4 Count 4, Article 5(b).
5 Count 8, Article 5(d).
6 Count 9, Article 5(i).
7 Count 6, Article 5(f).
8 Count 7, Article 2(b).
9 Count 5, Article 2(a).
10 Count 10, Article 2(d).
11 Count 11, Article 3(b).
12 Count 12, Article 3(d).
13 Amended Indictment, par 25. Compare *Prosecutor v Krnojelac*, Case IT-97-25-PT, Decision on Preliminary Motion on Form of Amended Indictment, 11 Feb 2000, pars 18, 59-60.

II The application

2. Talić has filed a motion seeking a separate trial in relation to the amended indictment ("Motion").[14] The application is made by way of a preliminary motion pursuant to Rule 72 of the Tribunal's Rules of Procedure and Evidence, and within the period permitted by Rule 50(C). He relies upon Rule 82(B), which provides:

> The Trial Chamber may order that persons accused jointly under Rule 48 be tried separately if it considers it necessary in order to avoid a conflict of interests that might cause serious prejudice to an accused, or to protect the interests of justice.

Rule 48 permits persons accused of the same or different crimes committed in the course of the same transaction to be jointly charged and tried.

3. It is argued on behalf of Talić that a joint trial is not justified because neither the witnesses nor the documents will be the same in relation to the prosecution case against each of the accused,[15] that separate trials are required in order to avoid any conflict of interest likely to cause serious prejudice, and that only separate trials would ensure a proper administration of justice.[16] Before referring to the detail of that argument, and in order more fully to understand the nature of the conflict of interest and of the likely prejudice asserted, it is necessary first to identify, as succinctly as possible, the case now pleaded by the prosecution against the two accused jointly.

III The pleaded case

4. The amended indictment alleges that:

(i) In 1992, the Assembly of the Serbian People in Bosnia and Herzegovina adopted a declaration on the Proclamation of the Serbian Republic of Bosnia and Herzegovina, an entity which eventually became known as *Republika Srpska*.[17]

(ii) The significant Bosnian Muslim and Bosnian Croat populations in the areas claimed for the new Serbian territory were seen as a major problem in the creation of such a territory in those areas, and the removal of nearly all of those populations (or "ethnic cleansing") was part of the overall plan to create the new Serbian territory.[18]

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[14] Motion for Separation of Trials, 9 Feb 2000 ("Motion").
[15] Motion (English translation), p 4.
[16] *Ibid*, p 3.
[17] Amended Indictment, par 6.
[18] *Ibid*, par 7.

(iii) To achieve this goal, the Bosnian Serb authorities initiated and implemented a course of conduct which included:

(a) the creation of impossible conditions (involving pressure and terror tactics, including summary executions) which would have the effect of encouraging the non-Serbs to leave the area;

(b) the deportation and banishment of those non-Serbs who were reluctant to leave; and

(c) the liquidation of those non-Serbs who remained and who did not fit into the concept of the Serbian state.[19]

(iv) Between April and December 1992, forces under the control of the Bosnian Serb authorities seized possession of those areas deemed to be a risk to the accomplishment of the overall plan to create a Serbian state within Bosnia and Herzegovina. By the end of 1992, the events which took place in these take-overs had resulted in the death of hundreds, and the forced departure of thousands, from the Bosnian Muslim and Bosnian Croat populations from those areas.[20] Those events constitute the crimes with which the two accused are charged jointly to have both individual responsibility and responsibility as a superior.

(v) The forces *immediately* responsible for those events (which are referred to in the indictment collectively as the "Serb forces") comprised the army, the paramilitary, and territorial defence and police units.[21] The Bosnian Serb authorities under whose control the Serb forces acted are not identified in the indictment beyond including the two accused.[22] These authorities had authority and control over:

(a) attacks on non-Serb villages and areas in the Autonomous Region of Krajina ("ARK");

(b) destruction of villages and institutions dedicated to religion;

(c) the seizure and detention of the Bosnian Muslims and Bosnian Croats;

(d) the establishment and operation of detention camps;

(e) the killing and maltreatment of Bosnian Muslims and Bosnian Croats; and

(f) the deportation or forcible transfer of the Bosnian Muslims and Bosnian Croats from the area of the ARK.

The Bosnian Serb authorities also had power to direct a body identified only as "the regional CSB" – which appears to be the Regional Centre for Public Security – and the

[19] *Ibid*, par 8.
[20] *Ibid*, par 16.
[21] *Ibid*, par 16.
[22] *Ibid*, par 8.

Public Prosecutor to investigate, arrest and prosecute any persons believed to have committed crimes within the ARK.[23]

(vi) Brđanin was the President of the ARK Crisis Staff, one of the bodies responsible for the co-ordination and execution of most of the operational phase of the plan.[24] As such, he had executive authority in the ARK and was responsible for managing the work of the Crisis Staff and the implementation and co-ordination of Crisis Staff decisions.[25]

(vii) Talić was the Commander of the 5th Corps/1st Krajina Corps, which was deployed in the ARK into, or near, areas predominantly inhabited by Bosnian Muslims and Bosnian Croats.[26] He had authority to direct and control the actions of all forces assigned to the 5th Corps/1st Krajina Corps or within his area of control, and all plans for military engagement and attack plans had to be approved by him in advance. Troops under his command took part in the events which constitute the crimes with which the two accused are charged with responsibility.[27] His approval or consent was required for any significant activity or action by forces under the command or control of the 5th Corps/1st Krajina Corps, all units under his command were required to report their activities to him, and he had power to punish members of those units for any crimes they may have committed.[28] In addition (in municipalities such as Prijedor and Sanski Most within the ARK), he had power to direct and control the actions of the territorial defence units, the police and paramilitary forces,[29] which were immediately responsible for the events which occurred there.[30]

(viii) Talić was also a member of the ARK Crisis Staff,[31] and he and Brđanin, as such members, participated individually or in concert in the operations relating to the conduct of the hostilities and the destruction of the Bosnian Muslim and Bosnian Croat communities in the ARK area. The ARK Crisis Staff worked as a collective body to co-ordinate and implement the overall plan to seize control of and "ethnically cleanse" the area of the ARK. After the dissolution of the ARK Crisis Staff, Brđanin and Talić continued with the implementation of this overall plan.[32]

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[23] *Ibid*, par 22.
[24] *Ibid*, pars 14, 19. The various Crisis Staffs were re-designated as War Presidencies and later as War Commissions, but were still commonly referred to as Crisis Staffs: *ibid*, par 15.
[25] *Ibid*, par 19.
[26] *Ibid*, pars 11, 20.
[27] *Ibid*, par 20.
[28] *Ibid*, pars 20-21.
[29] *Ibid*, par 21.
[30] *Ibid*, par 16.
[31] *Ibid*, par 18.
[32] *Ibid*, par 23.

IV The submissions

5. In support of his argument that a joint trial is not justified, Talić has submitted that, whereas Brđanin is presented as a civilian and politician with broad powers in both these roles who did not exercise any command or "subordinate" functions in respect of Talić, Talić is presented only as a military man and, as such, subject to the military hierarchy. The only link alleged between them, it is said, is their membership of the Crisis Staff. It is submitted that neither the indictment nor the supporting material demonstrates any participation by Talić in the Crisis Staff, and even less any joint action by him with Brđanin. The supporting material for the indictment, it is said, demonstrates that the action of the civilian and military bodies was not co-ordinated (as alleged in the indictment) because, "for many reasons", communication between the two bodies was almost non-existent.[33]

6. In its response to the Motion ("Response"), the prosecution concedes that Brđanin and Talić each played a different role in the execution of the overall plan to create the new Serbian territory, but points out that proof of the particular events for which each of them is jointly charged with criminal responsibility is the same so far as the case against each of them is concerned, that each of them is charged with the same crimes and that all of the crimes were committed in the course of the same transaction. It also says that the supporting material does show a link in authority between the Crisis Staff and the military, quoting from a Crisis Staff minute (but not of the ARK Crisis Staff) which provides:

> The relationship of the military authorities to the civilian authorities should be such that the military will execute the orders of the civilian authorities while the civilian authorities will not interfere with the way these orders are carried out.

The prosecution says that the supporting material includes proof of meetings between the two accused on at least ten occasions.[34]

7. After an unexplained delay, Talić sought leave to file a Reply to the prosecution's Response.[35] Although some of the matters which he wished to raise in Reply were not, strictly, matters in reply and should have been raised in the Motion, the Trial Chamber has granted leave for the Reply to be filed. It proposes, however, to refer only to those matters in the Reply which

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[33] Motion (English Translation), p 4.
[34] Prosecution's Response to "Motion for Separation of Trials" filed by Counsel for the Accused Momir Talić, 22 Feb 2000 ("Response"), pars 4-8.
[35] Application for Leave to Reply and the Reply to the Prosecutor's Response of 22 February 2000, 6 Mar 2000 ("Reply").

relate to the issues raised in the prosecution's Response referred to in this Decision. The Reply does not call for any further response from the prosecution.

8. Talić points out that all Serbian persons charged with crimes before this Tribunal are accused of having participated in the creation of the greater Serbia but not all of them are accused of the same offences.[36] He further points out that, of the supporting material upon which the prosecution relies to show a link in authority between the Crisis Staff and the military, the Crisis Staff whose minute has been quoted was not within his zone of command, and the document establishing the meeting between Brđanin and himself has been provided only in a redacted form and accordingly, it is said, cannot serve as any kind of proof.[37]

9. In support of his argument that separate trials are required in order to avoid any conflict of interest which may cause serious prejudice and that only separate trials will ensure a proper administration of justice, Talić has submitted that there is a risk that a joint trial would deprive him of rights which would be his if he were tried separately.

10. It is said that, as the deadlines for filing motions, responding to motions and seeking leave to appeal differ for each of the accused,[38] and as a consequence Brđanin always files his documents before Talić does, the Trial Chamber makes its determinations relating to both accused without Talić having "the opportunity to exercise his right to respond".[39] That is the only right to which express reference is made in the present Motion, although it does refer to "rights" in the plural, and the right said to have been denied by the different deadlines is introduced by the phrase "*inter alia*" and it is concluded by the qualifying description "in particular."

11. However, in support of an earlier motion by Talić, which sought separate trials in relation to the original indictment, it was said that the defences of each accused would be "totally different", and that each of the accused "has a fundamentally differing approach in the conduct of his defence".[40] Attention was drawn to statements made on behalf of Brđanin in a motion to

[36] Reply, par 1.
[37] *Ibid*, par 2.
[38] This submission appears to be based upon the Order for Filing Motions, 31 Aug 1999 (as amended by the Decision on Motion to Translate Procedural Documents into French, 16 Dec 1999), which provides that the time for filing a response to a motion commences to run from the receipt of the translation of the motion into the working language in which the receiving party has been filing its documents in these proceedings. That Order does not, however, extend any time for filing motions or applications for leave to appeal.
[39] Motion (English Translation), p 4.
[40] Motion to Separate Trials, 14 Oct 1999 ("Earlier Motion"), par 5.

dismiss the original indictment which, it was suggested, demonstrated that Brđanin placed the sole responsibility for certain events upon Talić, and the submission was made on behalf of Talić that in a joint trial with Brđanin he could be incriminated by "a person having a personal interest in the matter", contrary to the interests of justice within the meaning of Rule 82(B).[41]

12. The Trial Chamber has therefore considered the submissions made by Talić in his present Motion as asserting as well that a joint trial would deprive him of both a right to be tried without incriminating evidence being given against him by his co-accused and also (it may be) a right Talić has, without fear of contradiction, to blame Brđanin and others for the orders which the prosecution may establish that he followed – not in order to escape criminal responsibility but in order to mitigate punishment, pursuant to Article 7(4) of the Tribunal's Statute.

13. In its Response, the prosecution submits there is no merit in the assertion by Talić that a joint trial will deprive him of rights which would be his if he were tried separately. In relation to his claim that, because of the differing deadlines for filing documents, he is denied his right to respond, the prosecution points out that on one occasion Talić filed an application for leave to appeal without waiting for a French translation of the decision disputed, and on another occasion he filed a response to a prosecution motion without waiting for a French translation of the motion. In any event, the prosecution says, Talić has no automatic right to respond to a motion by Brđanin, and where he wishes to respond to something in a response by Brđanin to a prosecution motion he may always seek leave to do so.[42]

14. In reply, Talić has given as an example of the prejudice he says that he has suffered in this way an order made in relation to the prosecution's motion for protective measures which had been made before he had filed his response to the motion and which is said to be binding on both Brđanin and himself.[43]

15. The prosecution says that the interests of justice would not be served by separating the trials because of the possibility that each of Brđanin and Talić would at a joint trial blame each other.[44] The importance of a joint trial, the prosecution says, is not merely the saving of time and money, it also affects the public interest that there should be no inconsistencies in verdicts, and

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[41] *Ibid*, par 6, referring to the Motion to Dismiss Indictment (filed on behalf of Brđanin), 31 Aug 1999, and apparently to pars 11-15 thereof.
[42] Response, pars 19-20.
[43] Reply, par 6.
[44] Response, par 13.

the desirability that the same verdict should be returned and the same treatment afforded to those found to have been concerned in the same offence.[45]

16. Talić replies that this last submission illustrates his fear that the possible guilt of one of the accused may automatically be ascribed to the other, and that the responsibility of each accused must be evaluated individually upon the basis of his own acts and not in the light of the acts of the other accused.[46]

17. The prosecution also says that, if separate trials are ordered, the trial of one of the two accused will be delayed, jeopardising that accused's right to a fair and expeditious trial.[47] Talić replies that the fairness of his trial takes precedence over its expedition.[48]

V Discussion and findings

18. The first challenge, although not expressly so identified, is to the propriety of the two accused being jointly charged in accordance with Rule 48. That Rule provides:

> Persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried.

Each of the two accused are charged with exactly the same crimes. The prosecution asserts, moreover, that the crimes were committed in the course of the same transaction.

19. The word "transaction" is also used in Rule 49, which permits two or more crimes to be joined in the one indictment if the series of acts committed together form the same transaction, and the crimes are committed by the same accused. A transaction is defined by Rule 2 as a number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan.

20. A joinder of counts under Rule 49 has been approved in the Appeals Chamber upon the basis that they "relate in substance to the same campaign of destruction, the same people, the

[45] *Ibid*, par 12.
[46] Reply, par 4.
[47] Response, par 9.
[48] Reply, par 3.

same period of time, the same area [...]. It is not necessary for all the facts to be identical".[49] In another case concerning the equivalent of Rule 49 in the Rules of Procedure and Evidence of the Rwanda Tribunal, that statement was identified in the Appeals Chamber as an example of the jurisprudence of this Tribunal which justifies a joinder of counts, and the further statement was made that "[w]here possible public interest and the concern for judicial economy would require joint offences to be tried together".[50] The Trial Chamber adopts all these statements as relevant also to the issue raised under this Tribunal's Rule 48. In a third case, one which concerned Rule 48, a Trial Chamber said:

> To justify joinder [under Rule 48] what has to be proved is that (a) there was a common scheme or plan, and (b) that the accused committed crimes during the course of it. It does not matter what part the particular accused played provided that he participated in a common plan. It is not necessary to prove a conspiracy between the accused in the sense of direct coordination or agreement. The transaction referred to in Rule 48 does not reflect the law of conspiracy found in some national jurisdictions. [...] The fact that evidence will be brought relating to one accused (and not to another) is a common feature of joint trials. On the basis of the submissions and the allegations in the indictment the Trial Chamber is of the view that this in itself will not cause serious prejudice to [the applicant for a separate trial]. [...] [T]he Trial Chamber considers that it is in the interests of justice, of which judicial economy in the administration of justice under the Statute of the Tribunal is an element, that these accused, charged as they are with offences arising from the same course of conduct, should be tried together.[51]

In a fourth case, one which concerned this Tribunal's Rules 48 and 82, a Trial Chamber was not satisfied that the fact that one accused was a member of the military forces whereas his co-accused were members of the civilian authorities gave rise to a conflict of interests within the meaning of Rule 82(B).[52]

21. The case pleaded against these two accused clearly asserts the existence of the one campaign (for the execution of which both accused are charged with criminal responsibility), carried out by the same people, against the same people, during the one period of time and in the same area. The Trial Chamber is satisfied that, in accordance with Rule 48, it was proper to have charged the two accused jointly. The issue nevertheless remains as to whether, in the circumstances of this case, it is appropriate for them to be tried jointly. The Trial Chamber turns, therefore, to the matters raised by Talić supporting his allegation that separate trials are required

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[49] *Prosecutor v Kovačević,* Case IT-97-24-AR73, Decision Stating Reasons for Appeals Chamber's Order of 28 May 1998, 2 July 1998, Separate Opinion of Judge Shahabuddeen, p 3. The Decision itself did not discuss the meaning of "transaction" (dealing only with the effects of the delay in adding further charges), but its reasoning is not inconsistent with that of Judge Shahabuddeen.

[50] *Anatole Nsengiyumva v The Prosecutor,* Case ICTR-96-12-A, Joint and Separate Opinion of Judge McDonald and Judge Vohrah, p 12.

[51] *Prosecutor v Kordić & Čerkez,* Case IT-95-14/2-PT, Decision on Accused Mario Čerkez's Application for Separate Trial, 7 Dec 1998, pars 10-11. In that case, Kordić was charged as a high-ranking political and military leader, whereas Čerkez was charged merely as an HVO Brigade commander in a single municipality involved in small-scale and local operational decisions (par 4).

[52] *Prosecutor v Simic,* Case IT-95-9-PT, Decision on Motion for Separate Trial for Simo Zarić, pp 2, 4.

in order to avoid any conflict of interest which may cause serious prejudice and that only separate trials will ensure a proper administration of justice.

22. The challenge by Talić to various allegations in the indictment concerning his participation in the Crisis Staff and his association with Brđanin, based upon what is said to be the absence of any evidence in the supporting material, is not one which is relevant to the present application. Subject to the accused being informed of the nature of the case he is to meet, and to the obligations of the prosecution to provide disclosure pursuant to Rules 66-68, it (the prosecution) is limited in the evidence which can be given at the trial by the allegations made in the indictment, not by those made in the supporting material. What must be looked at in this application are the allegations made in the indictment, and the Trial Chamber sees no need to resolve the dispute between the parties as to what the supporting material establishes.

23. The fact that the two accused played different roles in the hierarchy of command (or even in different hierarchies of command) does not matter, as the jurisprudence of the Tribunal makes clear.

24. The objection by Talić that neither the witnesses nor the documents will be the same in relation to the prosecution case against each of the accused is borne out only to a slight extent. The bulk of the evidence in the trial will be to establish the particular events – or the actions of the army, the paramilitary, and the territorial defence and police units – for which the two accused are charged with criminal responsibility. There is no suggestion made that these events will not be greatly in dispute. Although there may well be different witnesses and different documents required to establish the differing roles alleged to have been played by each of the accused, the evidence relevant solely to each of the accused has not, in the circumstances of the case as put forward in this application, been shown to be likely to cause serious prejudice to the other accused.

25. The Trial Chamber sees no realistic possibility of prejudice resulting from the differing deadlines for filing responses to motions. At the request of Talić,[53] the Order for Filing Motions was varied so that the time for filing a response to a motion commences to run from the receipt of the translation of the motion into the working language in which the receiving party has been filing its documents in these proceedings.[54] Hence, when the prosecution files a motion in the

[53] Motion to Translate Procedural Documents into French, 29 Oct 1999.
[54] See footnote 35, *supra*.

English language, the time for filing a response by Brđanin – who has been filing his documents in English – commences to run from the date the motion was filed (it is faxed to his counsel the same day), and the time for filing a response by Talić – who has been filing his documents in French – commences to run from when the French translation is faxed to him, which is usually two or three days after the English original was filed.

26. Although it may be assumed that, generally, Brđanin will file his response before Talić, that does not mean that Talić is denied the opportunity to respond to the prosecution's motion. Although so far it has not been necessary in the present case to determine a motion by the prosecution which relates to *both* accused,[55] it is both normal and necessary procedure in relation to *any* motion to wait before a decision is reached until the opportunity has been given for all the respondents to the motion to file their responses. There is therefore no possibility that the Trial Chamber will issue a decision relating to both Brđanin and Talić without Talić having the opportunity to exercise his right to respond.

27. The example given by Talić of where this is alleged to have happened already is misconceived. The order in question was a scheduling order.[56] It did not determine the prosecution's motion; it merely ordered the prosecution to elaborate upon the need for certain of the measures sought before any determination was made. The only effect of that order upon either of the accused was to assist them to file a proper response to the motion. It did not bind either of the accused in any way.

28. Should the situation arise that Talić does not receive the French translation of a response by Brđanin before he files his own response, and he discovers upon receipt of the French translation that a submission made by Brđanin is prejudicial to him, it is always open to Talić to seek leave to file a further response. He would need to file the proposed further response with the application for leave.[57] If he is concerned that a decision may be given in the meantime, he need only contact the Senior Legal Officer of the Trial Chamber to inform him that such an application is to be filed. This would be a very rare situation, and is not caused by the differing

[55] The one prosecution motion which does relate to both accused, the Motion for Protective Measures, will not be determined until after oral submissions have been heard.

[56] Scheduling Order on the Confidential Prosecution Motion for Protective Measures of 10 January 2000, 27 Jan 2000.

[57] Talić has already correctly followed such a procedure when seeking leave to file a Reply: Decision on Motions by Momir Talić (1) to Dismiss the Indictment, (2) for Release, and (3) for Leave to Reply to Response of Prosecution to Motion for Release, 1 Feb 2000, par 17.

deadlines; it is a situation which could arise whenever there are two accused. There is no possibility of the serious prejudice which Rule 82(B) envisages.

29. Nor does the Trial Chamber see any possibility of serious prejudice resulting from the prospect that Brđanin may give evidence which incriminates Talić or that Talić will be unable, without fear of contradiction, to blame Brđanin and others for the orders which the prosecution may establish that he followed. A joint trial does not require a joint defence, and necessarily envisages the case where each accused may seek to blame the other. The Trial Chamber will be very alive to the "personal interest" which each accused has in such a case. Any prejudice which may flow to either accused from the loss of the "right" asserted by Talić here to be tried without incriminating evidence being given against him by his co-accused is not ordinarily the type of serious prejudice to which Rule 82(C) is directed. The Trial Chamber recognises that there could possibly exist a case in which the circumstances of the conflict between the two accused are such as to render unfair a joint trial against one of them, but the circumstances would have to be extraordinary. It is not satisfied that the present is such a case.

30. The Trial Chamber considers that it would be contrary to the interests of justice were only half of the whole picture to be exposed in each trial if separate trials are ordered. Should, for example, Brđanin attempt to blame Talić (and we are by no means persuaded that was what was being attempted in Brđanin's motion to dismiss the original indictment), it is in the interests of justice that Talić should be able to give evidence refuting that attempt. Similarly, it is in the interests of justice that Brđanin should be able to give evidence refuting any attempt by Talić to place the blame on Brđanin. Again, the Trial Chamber will be very alive to the "personal interest" which each of the accused has in the matter.

31. There is, moreover, a fundamental and essential public interest in ensuring consistency in verdicts. Nothing could be more destructive of the pursuit of justice than to have inconsistent results in separate trials based upon the same facts. The only sure way of achieving such consistency is to have both accused tried before the same Trial Chamber and on the same evidence – unless (as Rule 82(B) requires) there is a conflict of interests which might cause serious prejudice to an accused, or separate trials are otherwise necessary to protect the interests of justice. Neither matter has been established by Talić in this case.

32. Both the suggestion by Talić that he may automatically be found guilty if Brđanin is found guilty and his assertion that the responsibility of each of them must be evaluated

individually overlook the fact that trials in this Tribunal are conducted by professional judges who are necessarily capable of determining the guilt of each accused individually and in accordance with their obligations under the Statute of the Tribunal to ensure that the rights of each accused are respected. It is surprising that such a suggestion should be made or that it was thought necessary to make such an assertion.

33. The Trial Chamber accepts the argument of Talić that the prospect that his may be the trial which is delayed if separate trials are ordered should not be taken into account against his application for a separate trial if he is prepared to accept that delay in order to achieve a fair trial. The Trial Chamber does not, however, accept that a joint trial will be unfair to him.

34. The application by Talić for a separate trial of each accused in the amended indictment must accordingly be dismissed.

VI The earlier motion for separate trials

35. The Earlier Motion by Talić, for separate trials of the original indictment, has not been disposed of. In the present Motion, Talić says that it is "no longer applicable".[58] It is, however, unsatisfactory to leave a motion on the file without a determination.[59] If pursued, the Earlier Motion would have been dismissed, for the reasons given in this decision. It, too, must therefore be dismissed.

[58] Motion, par 2.
[59] Decision on Motions by Momir Talić (1) to Dismiss the Indictment, (2) for Release, and (3) for Leave to Reply to Response of Prosecution to Motion for Release, 1 Feb 2000, par 10.

VII Disposition

36. For the foregoing reasons, the Trial Chamber:

(i) dismisses the Motion to Separate Trials, filed 14 October 1999; and

(ii) dismisses the Motion for Separation of Trials, filed 9 February 2000.

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

Dated this 9th day of March 2000,
At The Hague,
The Netherlands.

David Hunt

Judge David Hunt
Presiding Judge

[Seal of the Tribunal]