

**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 No.: IT-99-36-AR73.2

Date: 29 March 2000

Original: English

BEFORE A BENCH OF THE APPEALS CHAMBER

Before: Judge Lal Chand Vohrah, Presiding
Judge Wang Tieya
Judge Rafael Nieto-Navia

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 29 March 2000

PROSECUTOR

v.

**RADOSLAV BRĐANIN
MOMIR TALIĆ****DECISION ON REQUEST FOR INFORMATION****The Office of the Prosecutor:**

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

Counsel for the Appellant Momir Talić:

Mr. Xavier de Roux
Mr. Michel Pitron

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 a “Request for Information relating to the Authority of the Pre-Trial Judge further to the Decision of 1 March 2000 (paragraph 5 of the Request of General Talić of 4 February 2000”, filed by the accused Momir Talić (“the Appellant”) on 6 March 2000 in French and on 8 March 2000 in English (“the Request”);

NOTING that the Request of General Talić of 4 February 2000 was filed against “point 2” of a decision issued on 1 February 2000 by the pre-trial Judge of Trial Chamber II pursuant to sub-Rule 65ter (D) and Rule 73 of the Rules of Procedure and Evidence of the International Tribunal (“the Decision” and “the Rules”, respectively), wherein the Appellant’s Motion for Release, filed on 21 January 2000, was dismissed as a motion based on Rule 73 (“the Release Motion”);

NOTING “point 2” of the Decision to be point 2 of the Disposition which relates specifically to the Release Motion;

NOTING also that the Bench has by its decision of 1 March 2000 rejected the Request of General Talić of 4 February 2000 on the ground that it was based on a misunderstanding of the Rules;

CONSIDERING therefore that the interlocutory appeal arising from the Request of General Talić of 4 February 2000 has been disposed of;

RECALLING that the Appellant defined the issue subject to the interlocutory appeal to be “point 2” of the Decision;

RECALLING that the Bench did not regard it necessary to deal with each and every paragraph of the Request of General Talić of 4 February 2000, except for those closely related to the issue raised for its decision;

NOTING that the Request does not rely on any Rule, and that this omission would justify its dismissal by the Bench;

CONSIDERING, however, that, as the issue contained in the Request is of some importance as to whether a pre-trial judge can deal with a motion for release “*within the meaning of Sub-rules 65ter (B) or (D)*”, the Bench feels necessary to address it in this decision;

NOTING that sub-Rule 65ter (B) provides that:

The pre-trial Judge shall, under the authority and supervision of the Trial Chamber seized of the case, coordinate communication between the parties during the pre-trial phase. The pre-trial Judge shall ensure that the proceedings are not unduly delayed and shall take any measure necessary to prepare the case for a fair and expeditious trial;

NOTING that sub-Rule 65ter (D) provides that:

The pre-trial Judge may be entrusted by the Trial Chamber with all or part of any pre-trial functions set forth in Rule 66, Rule 73 and Rule 73 bis, or with all or part of the pre-defence functions set forth in Rule 73 ter;

CONSIDERING that, in the “Motion for Leave to Reply and the Reply to the Response of the Prosecution dated 21 January 2000”, filed in French by the Appellant on 26 January 2000 and in English on 31 January, the release of the Appellant, which was also the subject of the Release Motion, was sought on the basis of Rule 73 of the Rules, rather than Rule 65;

CONSIDERING that the Release Motion was rejected in the Decision as a Rule 73 motion;

CONSIDERING that, in any case, there is a distinction between provisional release under Rule 65 and release sought under Rule 73, the latter being in the nature of unconditional release from custody;

REAFFIRMING, therefore, that the Release Motion was a motion based on Rule 73, and that the Decision was correctly made within the powers of sub-Rule 65 ter (D);

CONSIDERING therefore that the issue alleged in the Request did not arise in the proceedings in this case;

CONSIDERING further that the issue alleged in the Request was not raised before the Trial Chamber of which the pre-trial Judge was a member, either before or after the Decision was handed down;


CONSIDERING that sub-Rule 73 (A) allows either party to a case to move before a Trial Chamber, to which the case is assigned, by way of motion, not being a preliminary motion, for appropriate ruling or relief, and that sub-Rule 73 (B) allows appeal from decisions of the Trial Chamber on such motions on condition that leave be sought from a bench of three Judges of the Appeals Chamber;

CONSIDERING, therefore, that the issue raised in the Request is not properly before the Bench, absent a decision on it by the relevant Trial Chamber;

PURSUANT to Rule 73 of the Rules,

HEREBY REJECTS the Request.

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



Lal Chand Vohrah
Presiding Judge

Dated this twenty-ninth day of March 2000
At The Hague,
The Netherlands.

[Seal of the Tribunal]