



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-AR65
Date: 7 September 2000
Original: English

BEFORE A BENCH OF THE APPEALS CHAMBER

Before: Judge Lal Chand Vohrah, Presiding
Judge Mohamed Shahabuddeen
Judge Rafael Nieto-Navia

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 7 September 2000

PROSECUTOR

v.

**RADOSLAV BRĐANIN
MOMIR TALIĆ**

DECISION ON APPLICATION FOR LEAVE TO APPEAL

Counsel for the Prosecutor:
Ms. Joanna Korner

Counsel for the Defence:
Mr. John Ackerman for Radoslav Brđanin
Mr. Xavier de Roux, Maître Michel Pitron for Momir Talić

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”),

BEING SEIZED of the “Application for Leave to Appeal from Decision on Motion by Radoslav Brdanin for Provisional Release”, filed by Radoslav Brđanin (“the Applicant”) on 1 August 2000 (“the Application for Leave to Appeal”),

NOTING that the Application for Leave to Appeal is made pursuant to sub-Rule 65(D) of the Rules of Procedure and Evidence of the International Tribunal (“the Rules”),

NOTING Trial Chamber II’s “Decision on Motion by Radoslav Brđanin for Provisional Release” issued 25 July 2000 denying the motion,

NOTING the “Prosecution’s Response to ‘Application for Leave to Appeal from Decision on Motion by Radoslav Brdanin (sic) for Provisional Release’”, filed on 11 August 2000,

CONSIDERING that sub-Rules 65(A) and (B) provide that once detained, an accused may not be released except upon an order of a Trial Chamber and that such order may only be made after hearing the host country and only if satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person,

CONSIDERING that sub-Rule 65(D) provides that decisions on provisional release by Trial Chambers are subject to appeal in cases where leave to appeal is granted upon good cause being shown,

CONSIDERING that the Applicant argues that “good cause” under sub-Rule 65(D) of the Rules exists for granting the Application for Leave to Appeal on the grounds that: i) the Trial Chamber erred by placing the burden at all times on the accused to establish his entitlement to provisional release and that, on the contrary, once a prima facie case is made out by the accused the burden shifts to the Prosecutor; ii) the Trial Chamber erred by interpreting Rule 65 to provide detention as the norm and provisional release as the exception in violation of the International Covenant on Civil and Political Rights of 16

December 1966; and iii) the issue raised is one of general importance to both the International Tribunal and to international law generally,

CONSIDERING that “good cause” within the meaning of sub-Rule 65(D) requires that the party seeking leave to appeal under that provision satisfy the Bench of the Appeals Chamber that the Trial Chamber may have erred in making its decision,

CONSIDERING that under sub-Rule 65(B) of the Rules, the burden of proof is on an applicant to satisfy a Trial Chamber that provisional release should be ordered,


CONSIDERING FURTHER that internationally recognised standards relating to release of persons awaiting trial are applicable to proceedings before the International Tribunal, that in applying them account has to be taken of the different circumstances and situations envisaged by those standards which did not visualise the nature and character of the International Tribunal, and that the International Tribunal does not have the same facilities as are available to national courts to enforce appearance,

FINDING that the Applicant has failed to demonstrate that the Trial Chamber may have erred in its application of Rule 65 in holding that the Applicant failed to discharge the burden in this case and, therefore, the Applicant has failed to satisfy the requirement of “good cause” within the meaning of sub-Rule 65(D) of the Rules,

PURSUANT to Rule 65 of the Rules,

HEREBY REJECTS the Application for Leave to Appeal.

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



Judge Lal Chand Vohrah
Presiding

Dated this seventh day of September 2000
At The Hague,
The Netherlands.

[Seal of the Tribunal]