

UNITED
NATIONS



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case Nos. IT-99-36-
AR73.4
AR73.5
AR73.6
Date: 22 March 2001
Original: English

BEFORE A BENCH OF THE APPEALS CHAMBER

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

Registrar: Mr. Hans Holthuis

PROSECUTOR

v.

Radoslav BRĐANIN & Momir TALIĆ

**DECISION ON THE PROSECUTOR'S APPLICATIONS FOR
LEAVE TO APPEAL THE DECISIONS OF TRIAL CHAMBER
II OF 27 OCTOBER, 8 NOVEMBER AND 15 NOVEMBER 2000**

The Office of the Prosecutor:

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

Counsel for the Accused:

Mr. John Ackerman for Radoslav Brđanin
Mr. Javier de Roux, Mr. 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 Bench” and “the International Tribunal” respectively),

BEING SEIZED of the following three applications for leave to appeal filed by the Office of the Prosecutor (“the Prosecution”) pursuant to Rule 73(B)(i) and (ii) of the Rules of Procedure and Evidence (“the Rules”) against the following four decisions issued by Trial Chamber II (together “Applications for Leave to Appeal” and “the Impugned Decisions” respectively):

1. the “Prosecution’s Application for Leave to Appeal Against Trial Chamber Decision of 27 October 2000”, filed on 3 November 2000, seeking leave to appeal the “Decision on Second Motion by Prosecution for Protective Measures”, issued by Trial Chamber II on 27 October 2000;
2. the “Prosecution’s Application for Leave to Appeal Against Trial Chamber Decision of 8 November 2000”, filed on 13 November 2000, seeking leave to appeal the “Decision on Third Motion by Prosecution for Protective Measures”, issued by Trial Chamber II on 8 November 2000;
3. the “Prosecution’s Application for Leave to Appeal Against Two Trial Chamber Decisions of 15 November 2000”, filed on 20 November 2000, seeking leave to appeal the “Decision on Fourth Motion by Prosecution for Protective Measures”, issued by Trial Chamber II on 15 November 2000 and the “Decision on Fifth Motion by Prosecution for Protective Measures”, issued by Trial Chamber II on 15 November 2000;

NOTING the following:

- (i) the “Response to the Prosecution’s Application for Leave to Appeal Against Trial Chamber Decision of 27 October 2000”, filed by Counsel for Radoslav Brđanin (“the Brđanin Defence”) on 16 November 2000;
- (ii) the “Response to the Prosecution’s Application for Leave to Appeal Against Trial Chamber Decision of 8 November 2000”, filed by the Brđanin Defence on 16 November 2000;
- (iii) that the Brđanin Defence has not responded to the “Prosecution’s Application for Leave to Appeal Against Two Trial Chamber Decisions of 15 November 2000”;
- (iv) the “Response to the Prosecutor’s Application for Leave to Appeal Dated 13 November 2000”, filed by counsel for Momir Talić (“the Talić Defence”) on 27 November 2000;
- (v) the “Response to the Prosecutor’s Application for Leave to Appeal Dated 3 November 2000”, filed by the Talić Defence on 29 November 2000; and

- (vi) the “Response to the Prosecutor’s Application for Leave to Appeal Dated 20 November 2000”, filed by the Talić Defence on 30 November 2000;

CONSIDERING that the Applications for Leave to Appeal raise common questions regarding the applicable principles relating to pre-trial protective measures for victims and witnesses and the jurisprudence of the International Tribunal in respect of this area of the law;

CONSIDERING therefore that it would be appropriate to give a single decision on the Applications for Leave to Appeal;

CONSIDERING that it is submitted in the Applications for Leave to Appeal, *inter alia*, that:

- (i) the Trial Chamber erred by failing (a) to sufficiently consider Article 22 of the Statute of the International Tribunal (“the Statute”) governing the protection of victims and witnesses; (b) to take into account the relevant circumstances of the case; and (c) to exercise its discretion in a reasonable manner, when carrying out the required balancing exercise; and
- (ii) there has been no decision by the Appeals Chamber setting down criteria which should be applied in respect of pre-trial requests for protective measures for witnesses and victims and that criteria which have emerged have varied as between Trial Chambers;

CONSIDERING that the Applications for Leave to Appeal are filed pursuant to Rule 73(B) of the Rules which provides that decisions on motions other than preliminary motions 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 International Tribunal or in international law generally;

CONSIDERING that it is for the Prosecution to show the Bench either that the Impugned Decisions would cause such prejudice to its case as could not be cured by the final disposal of the trial including post-judgement appeal, or that the issue in the proposed appeals is of general importance to proceedings before the International Tribunal or in international law generally;

CONSIDERING that although the Prosecution has made certain general submissions as to alleged errors in the Impugned Decisions it has failed to properly specify how or why it believes that the Applications for Leave to Appeal satisfy the requirements of Rule 73(B) of the Rules;

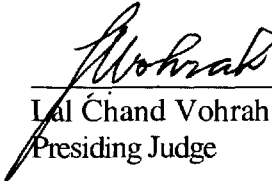
CONSIDERING that the Trial Chamber in the Impugned Decisions analysed in detail the requirements under Article 22 of the Statute, took into account the relevant circumstances of the case and exercised its discretion in reaching its decisions, while balancing the interests of both the accused and the prospective witnesses;

FINDING that the Prosecution has failed to show how the principles laid down in the decisions by Trial Chambers and those in the Impugned Decisions may be inconsistent;

FINDING ALSO that the Prosecution has failed to show that the Impugned Decisions would cause prejudice to its case as described above or that the issue raised in the Applications for Leave to Appeal is of general importance to proceedings before the International Tribunal or in international law generally;

HEREBY DISMISSES the Applications for Leave to Appeal.

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


Lal Chand Vohrah
Presiding Judge

Dated this 22nd day of March 2001
At The Hague,
The Netherlands.

[Seal of the Tribunal]