



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: 15 November 2001
Original: English

IN TRIAL CHAMBER II

Before: Judge David Hunt, Pre-Trial Judge

Registrar: Mr Hans Holthuis

Decision of: 15 November 2001

PROSECUTOR

v

Radoslav BRĐANIN & Momir TALIĆ

DECISION ON APPLICATION BY RADOSLAV BRĐANIN TO EXCLUDE EVIDENCE

The Office of the Prosecutor:

**Ms Joanna Korner
Mr Andrew Cayley
Mr Nicolas Koumjian
Ms Anna Richterova
Ms Ann Sutherland**

Counsel for the Accused:

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

1. The accused Radoslav Brđanin (“Brđanin”) has filed a motion to exclude a witness (identified as witness 7.207) and an exhibit (apparently with the same number) from the prosecution case.¹ He also seeks an extension of time within which to file his Pre-Trial Brief until 16 December or until thirty days after he has received a full English translation of the exhibit in question.²

2. The basis for the application to exclude the evidence is that, on or about 29 October last, counsel for Brđanin was provided with a diary compiled by the witness which has been described by the prosecution as “most important”. The diary is in B/C/S and it has not yet been translated into English, but an English summary prepared by the prosecution indicates that the diary makes several references to Brđanin. The diary is 1800 pages long, and the prosecution has informed Brđanin’s counsel that only approximately 600 pages of this can be translated by 21 January 2002, the date upon which the trial is to commence.³

3. Brđanin submits that the whole of the diary needs to be translated for use during the cross-examination of witness 7.207, and not just the part which the prosecution considers to be relevant, and that such translation must be completed before the trial commences. He objects to any delay in the commencement of the trial, and for this reason he says that the only remedy is to exclude the evidence of the witness and his diary from the prosecution case as not having been “timely and properly” provided to the Defence.⁴

4. The prosecution claims that the diary was disclosed on 26 October,⁵ but the point which Brđanin makes remains the same even if that were to be so. The prosecution also submits that this disclosure was “timely” because it had received the diary from witness 7.207 in August but had received the English summary only on the day it was disclosed to the Defence.⁶ Whether the disclosure was “timely”, however, must be judged by reference to the trial date. It is the duty of the prosecution to disclose this type of material in sufficient time to enable the accused to be ready for

¹ Motion to Exclude Witness and Exhibit 7.207 and Request for Extending Date for Filing Defence Pre-Trial Brief, 8 Nov 2001 (“Motion”).

² Motion, p 2.

³ *Ibid*, pars 1-2.

⁴ *Ibid*, pars 3-6.

⁵ Prosecution’s Response to “Motion to Exclude Witness and Exhibit 7.207 and Request for Extending Date for Filing Defence Pre-Trial Brief” Filed by the Accused Radoslav Brđanin, 12 Nov 2001 (“Response”), par 2, as amended by Corrigendum to Prosecution’s Response to “Motion to Exclude Witness and Exhibit 7.207 and Request for Extending Date for Filing Defence Pre-Trial Brief” Filed by the Accused Radoslav Brđanin, 13 Nov 2001, pars 1-2.

⁶ Response, par 2.

trial. Considering that the trial has been fixed to commence on 21 January 2002, this disclosure could never be described as “timely” in relation to that date. But that is not an end of the matter.

5. It is certainly only fair that counsel for Brđanin should have the entire diary translated into English in sufficient time before he has to cross-examine witness 7.207, but no reason has been demonstrated as to why the trial cannot commence in the meantime. Whilst the estimates as to the length of the trial have varied and they remain uncertain, what is certain is that the prosecution case in chief will last for a very substantial part of 2002. The prosecution anticipates that witness 7.207 will be called towards the end of that case. The issue as to whether it should be permitted to call witness 7.207 at all in the circumstances which have been related can only be determined at the stage it is known when the entire diary will be or has been translated into English, and an assessment can be made as to how long Brđanin’s counsel will reasonably need to read it for the purpose of cross-examining the witness.

6. No indication has been given as to how the general trial strategy of the Brđanin Defence could be affected by the contents of this diary. If anything is found in the diary which might otherwise significantly have been used in the cross-examination of other prosecution witnesses, an application to have those witnesses re-called for that purpose would be sympathetically received by the Trial Chamber. No persuasive reason has been demonstrated for delaying the time set for the filing of Brđanin’s Pre-Trial Brief, which must presently be filed by 20 November 2001. He will be able to add something relating to witness 7.207 to it, if need be, at a later stage.

7. The relief sought by Brđanin is refused.

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

Dated this 15th day of November 2001,
At The Hague,
The Netherlands.



Judge David Hunt
Pre-Trial Judge

[Seal of the Tribunal]