



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-00-39 & 40-AR65
Date: 14 December 2001
Original: English

BEFORE A BENCH OF THE APPEALS CHAMBER

Before: Judge Mehmet Güney, Presiding
Judge Mohamed Shahabuddeen
Judge Fausto Pocar

Registrar: Mr. Hans Holthuis

Decision of: 14 December 2001

PROSECUTOR

v.

**MOMČILO KRAJIŠNIK
&
BILJANA PLAVŠIĆ**

DECISION ON APPLICATION FOR LEAVE TO APPEAL

Counsel for the Prosecutor:

Mr. Mark Harmon
Mr. Alan Tieger

Counsel for the Defence:

Mr. Deyan Ranko Brashich and Mr. Goran Nešković, for Momčilo Krajišnik
Mr. Robert J. Pavich and Mr. Eugene O'Sullivan, for Biljana Plavšić

A handwritten signature in black ink, appearing to be 'M. Güney'.

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 Krajišnik Defense’s Notice of Motion for Leave to Appeal” (“the Application”), filed by counsel for Momčilo Krajišnik (“the Applicant”) on 11 October 2001;

NOTING Trial Chamber III’s “Decision on Momčilo Krajišnik’s Notice of Motion for Provisional Release” (“the Impugned Decision”), filed on 8 October 2001, which by majority, Judge Patrick Robinson dissenting, rejected the Applicant’s request for provisional release;

NOTING “The Krajišnik Defense’s Notice of Motion for Leave to Appeal - Corrected”, filed on 19 October 2001;

NOTING the “Prosecution’s Response to Motion of the Applicant Momčilo Krajišnik for Leave to Appeal filed on 11 October 2001”, filed on 22 October 2001;

NOTING “The Krajišnik Defense’s Reply to Prosecution’s Response to Motion for Leave to Appeal” and the “Addendum to the Krajišnik Defense’s Notice of Motion for Leave to Appeal”, filed on 25 October 2001 and 31 October 2001, respectively;

NOTING the “Prosecution Response to ‘Addendum to the Krajišnik Defense’s Notice of Motion for Leave to Appeal’ filed on 31 October 2001”, filed on 13 November 2001;

NOTING that Rule 64 of the Rules of Procedure and Evidence of the International Tribunal (“the Rules”) provides that, upon being transferred to the seat of the International Tribunal, the accused shall be detained;

NOTING that Rules 65 (A) and (B) of the Rules 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 the Trial Chamber is satisfied that the

accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person;

NOTING that Rule 65(D) of the Rules provides that decisions on provisional release by a Trial Chamber shall be subject to appeal in cases where leave to appeal is granted upon good cause being shown;

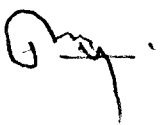
NOTING that the Applicant argues that the Application be granted on the grounds that: i) the current practice of the International Tribunal is in derogation of customary international law that detention on remand must not be the general rule; ii) the Trial Chamber erred by holding that the amendment in 1999 of Rule 65 (B) of the Rules does not alter the position that provisional release continues to be the exception and not the rule; iii) the Trial Chamber erred by holding that the amendment in 1999 of Rule 65 (B) of the Rules does not in any way alter the burden of the accused to satisfy the requirements under that rule; and iv) the Trial Chamber erred in the determination whether sufficient evidence has been given to satisfy the Trial Chamber of the requirements under Rule 65 (B);

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

CONSIDERING that the substance of the Appellant’s arguments at i) to iii) of the immediately preceding paragraph but one was considered by a three-member bench of the Appeals Chamber in the matter of *Radoslav Brdanin et al.*¹, in which that Bench refused leave to appeal and, that the Applicant has not shown either that his case does not fit into the parameters set out in that decision, or that that decision should be overruled;

FINDING therefore, that in the light of that case and the facts of this case, good cause has not been shown within the meaning of Rule 65(D) of the Rules for the granting of leave for the appeal to be heard by the full Appeals Chamber,

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.



Mehmet Güney
Judge - Presiding

Dated this 14th day of December 2001
At The Hague,
The Netherlands.

[Seal of the Tribunal]

¹ *Prosecutor v. Radoslav Brdanin et al.* IT-99-36-AR65, Decision on Application for Leave to Appeal, filed on 7 September 2000.