



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-PT

Date: 18 January 2002

Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Wolfgang Schomburg, Presiding  
Judge Florence Ndepele Mwachande Mumba  
Judge Carmel Agius

**Registrar:** Mr. Hans Holthuis

**Decision of:** 18 January 2002

**THE PROSECUTOR**

v.

**Radoslav BRĐANIN & Momir TALIĆ**

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**DECISION ON "REQUEST TO DISMISS CHARGES" FILED BY MOMIR TALIĆ  
ON 29 NOVEMBER 2001**

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**The Office of the Prosecutor:**

**Ms Joanna Korner  
Mr Andrew Cayley**

**Counsel for the Accused Radoslav Brđanin:**

**Mr John Ackerman  
Ms. Milka Maglov**

**Counsel for the Accused Momir Talić**

**Mr. Xavier de Roux  
Mr. Michel Pitron**

**TRIAL CHAMBER II** 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”);

**NOTING** the “Request to Dismiss Charges” of 29 November 2001 filed by the defendant Talić (Talić’s Request) in which he seeks the dismissal of the charges contained in the Fourth Amended Indictment based on his alleged membership of the ARK Crisis Staff;

**NOTING** the “Prosecution’s Response to “Request to Dismiss Charges” Filed by the Accused Momir Talić” of 18 December 2001;

**NOTING** also the “Application for Leave to Reply and Reply to Prosecutor’s Response of 18 December 2001” filed by the defendant Talić on 20 December 2001 (Talić’s Reply);

**EMPHASISING**, however, that “a reply is permitted only to permit the moving party to answer issues raised by the respondent to the motion which go beyond the issues raised by the motion itself”;<sup>1</sup>

**NOTING** that the material contained in Talić’s Reply merely reiterates and, to some extent, elaborates upon the arguments made in Talić’s Request and is, therefore, not a proper reply;

**CONSIDERING** that, in the Decision on Form of Fourth Amended Indictment of 23 November 2001 (“23 November Decision), the Trial Chamber squarely addressed the issue raised in Talić’s Request and stated, at paragraph 8, that

The legal sufficiency of a prosecution case is an issue which usually arises at the trial, either at the conclusion of the prosecution case or at the conclusion of the trial. In some cases, relief other than a challenge to the form of the indictment might appropriately be sought prior to the trial, but such relief would not usually be granted where there is in any event a substantial case for trial against the accused upon a different basis of alleged responsibility. As there is a substantial case for trial pleaded against Talić as Commander of the 1<sup>st</sup> Krajina Corps, it would not be appropriate in this case to consider the legal sufficiency of the case against Talić as a member of the ARK Crisis Staff before the trial.

**EMPHASISING** therefore, that the Trial Chamber has already made it clear that the relief sought in Talić’s Request is not appropriate in the present case;

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<sup>1</sup> Further Decision on Petition for a Writ of Habeas Corpus on Behalf of Radoslav Brdanin, 9 December 1999, para. 3.

**EMPHASISING** further that, in the present circumstances, the Trial Chamber does not consider it appropriate to review its position as stated in the 23 November Decision;

**HEREBY:**

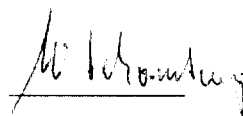
1. Refuses leave for the filing of Talić's Reply;
2. Dismisses Talić's Request.

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

Dated this 18th day of January 2002,

At The Hague,

The Netherlands



**Wolfgang Schomburg**

Presiding Judge

**[Seal of the Tribunal]**