

IT-99-36-AR72.4  
A30-A26  
18 JANUARY 2002

30 KB

UNITED  
NATIONS



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-AR72.4

Date: 18 January 2002

Original: English

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**BEFORE A BENCH OF THREE JUDGES OF THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney

**Registrar:** Mr. Hans Holthuis

**Decision of:** 18 January 2002

**PROSECUTOR**

v

**RADOSLAV BRĐANIN  
MOMIR TALIĆ**

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**DECISION ON APPLICATION FOR LEAVE TO APPEAL**

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**Counsel for the Prosecutor:**

**Ms. Joanna Korner  
Mr. Andrew Cayley**

**Counsel for the Defence:**

**Mr. John Ackerman for Radoslav Brđanin  
Mr. Xavier de Roux, M. Michel Pitron for Momir Talić**

**THIS BENCH** of the Appeals Chamber (“the Bench”) 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 Tribunal”),

**BEING SEIZED** of the “Demande d’autorisation d’interjeter appel contre la décision du 23 novembre 2001” (“the Application”), filed by counsel for Momir Talić (“the Applicant” or “the Accused”) on 29 November 2001, seeking leave to appeal pursuant to Rule 72(B)(ii) of the Rules of Procedure and Evidence (“the Rules”);

**NOTING** Trial Chamber II’s “Decision on Form of Fourth Amended Indictment”, in which the Trial Chamber denied the Applicant’s “Preliminary Motion Based on the Defects in the Form of the Indictment of 5 October 2001”;

**NOTING** the “Prosecution’s Response to ‘Application for Leave to Appeal Against the Decision of 23 November 2001’ Filed by the Accused Momir Talić”, filed on 29 November 2001;

**NOTING** the Applicant’s “Memorandum” and its annex, filed on 20 December 2001;

**CONSIDERING** that the Bench is satisfied that the present Application invokes Rule 72(A)(ii) concerning a preliminary motion alleging defects in the form of the indictment;<sup>1</sup>

**NOTING** that, pursuant to Rule 72(B) of the Rules, decisions on preliminary motions are without interlocutory appeal save (apart from motions challenging jurisdiction), where, as provided by sub-paragraph (ii), leave to appeal is granted by a bench of three Judges of the Appeals Chamber upon “good cause” being shown;

**CONSIDERING** that “good cause” within the meaning of Rule 72(B)(ii) of the Rules requires that the party seeking leave to appeal under that provision satisfies the Bench that the Trial Chamber arguably committed an error, abused its discretion, or that its application raises an issue of great significance for the Tribunal or international law;<sup>2</sup>

<sup>1</sup> See *Prosecutor v. Galić*, Decision on Application by Defence for Leave to Appeal, 30 November 2001, par 11.

<sup>2</sup> *Prosecutor v. Brđjanin and Talić*, Decision on Request to Appeal, 16 May 2000 and *Prosecutor v. Krajišnik*, Decision on Application for Leave to Appeal the Trial Chamber’s Decision Concerning Preliminary Motion on the Form of the Indictment, 13 September 2000. See also *Prosecutor v. Delalić et al.*, Decision on Application for Leave to Appeal (Separate Trials), 14 October 1996.

**NOTING** that the Applicant alleges that paragraph 20.1 of the Fourth Amended Indictment (“the Indictment”) fails to identify the basis upon which the accused is to be found guilty for his participation in the ARK Crisis Staff, which he asserts violates the rights of the accused to know the nature of the charges against him;

**CONSIDERING** that, in the context of a challenge to the form of the indictment, a Trial Chamber must be satisfied that the indictment sufficiently identifies the nature of the case which the accused has to meet at trial and that the material facts identifying the basis of the criminal responsibility of the accused are pleaded in the indictment;<sup>3</sup>

**NOTING** that the Prosecution’s case in respect of the Accused’s membership of the ARK Crisis Staff is pleaded in the following manner in the Indictment:

20.1 General Momir Talić was publicly named as one of the members of the ARK Crisis Staff. The Crisis Staff, later renamed War Presidency, was one of the structures put in place by the leadership of the Bosnian Serbs in order to achieve the common purpose of the joint criminal enterprise further described in paragraph 27, *infra*. General Momir Talić and other members of the ARK Crisis Staff were co-perpetrators in this joint criminal enterprise and, as such, their participation in the execution of the common purpose of the enterprise included activities of the Crisis Staff. The accused General Momir Talić is criminally responsible for conduct of other participants in the joint criminal enterprise, including members of the ARK Crisis Staff and those implementing its decisions, when their conduct was within the common purpose of the enterprise or was a natural and foreseeable consequence of the execution of the common purpose.

**NOTING** that the Prosecution made it clear that its case concerning the Accused’s criminal responsibility for his membership of the ARK Crisis Staff, as pleaded in the Indictment, is limited to his being a member thereof and to his implementing its decisions and is *not* that he participated in making the decisions of the Crisis Staff;<sup>4</sup>

<sup>3</sup> *Prosecutor v. Kupreškić et al.*, Judgement, 23 October 2001, par 88.

<sup>4</sup> “Prosecution’s Response to ‘Preliminary Motion Based on the Defects in the Form of the Indictment of 5 October 2001’ Filed by the Accused Momir Talić, 9 Nov 2001”, par 1. *See impugned Decision*, par 5.

**NOTING** that the Trial Chamber proceeded upon the basis of the case as pleaded in the Indictment and that, on that basis, it came to the conclusion that paragraph 20.1 of the Indictment sufficiently pleads the nature of the case which the Accused has to meet at trial, namely, that he was a member of the ARK Crisis Staff and that, in that capacity, he implemented its decisions;<sup>5</sup>

**NOTING** also that the Trial Chamber showed appropriate attention to the importance of sufficiently pled indictments, having regard to amendments previously made with the leave of the Trial Chamber;

**CONSIDERING** that the Applicant failed to establish that the Trial Chamber arguably committed an error in coming to its conclusion or that it exercised its discretion improperly;

**CONSIDERING** that the Applicant's argument in respect of the "sufficiency of the facts of the case" is in fact an argument concerning the legal sufficiency of the Prosecution case, namely, that the facts pleaded in the indictment, even if established by evidence, do not disclose an offence over which the Tribunal has jurisdiction;

**CONSIDERING FURTHER** that an objection to the form of the indictment does not comprehend an objection that the facts pleaded in the indictment, even if established by evidence, do not disclose a cognisable offence;

**CONSIDERING** that the Applicant also failed to argue, let alone to establish, that the present issue is one of great significance to the Tribunal or to international law;<sup>6</sup>

**FINDING** that "good cause" within the meaning of Rule 72(B)(ii) of the Rules has not been shown,

**HEREBY REJECTS** the Application.

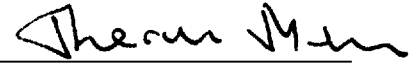
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<sup>5</sup> Impugned Decision, par 6.

<sup>6</sup> *Prosecutor v. Krajišnik*, Decision on Application for Leave to Appeal the Trial Chamber's Decision Concerning Preliminary Motion on the Form of the Indictment, 13 September 2000.

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

Dated this 18<sup>th</sup> day of January 2002,  
At The Hague,  
The Netherlands.



Judge Theodor Meron  
Presiding

[Seal of the Tribunal]