



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-T
Date: 12 September 2002
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge Ivana Janu
Judge Chikako Taya

Registrar: Mr. Hans Holthuis

Decision of: 12 September 2002

PROSECUTOR

v.

**RADOSLAV BRĐANIN
And
MOMIR TALIĆ**

CONFIDENTIAL
**ORDER ON PROSECUTION'S ORAL REQUEST TO
POSTPONE DEBATE ON MOTION FOR PROVISIONAL
RELEASE**

The Office of the Prosecutor:

Ms. Joanna Korner
Mr. Andrew Cayley

Counsel for the Accused:

Mr. John Ackerman and Mr. Milan Trbojević, for Radoslav Brđanin
Mr. Slobodan Zečević and Ms. Natacha Fauveau-Ivanović, for Momir Talić

TRIAL CHAMBER II (“Trial 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 (“Tribunal”) is seised of the “Confidential Motion for Provisional Release” (“Motion”), filed by the Accused Momir Talić (“Talić”) on 10 September 2002 and an oral request (“Request”) made by the Office of the Prosecutor (“Prosecution”) in the course of the hearing of 11 September 2002.

I. INTRODUCTION

1. Two closely inter-related issues are presently raised before this Trial Chamber. The first is a Motion by Talić by means of which he asks that pursuant to Rule 65 of the Rules of Procedure and Evidence (“Rules”), this Trial Chamber grants him provisional release under the terms and conditions outlined by him in the Motion. The second is a Request made by the Prosecution during yesterday’s sitting to postpone the debate on the Motion until Tuesday, 17 September 2002.

II. DISCUSSION

2. Talić requests provisional release on the basis of his ill-health which, as described in the Motion itself and the accompanying documents, warrants in his opinion the need for his immediate release. These documents, in particular the medical report of the Medical Officer of the United Nations Detention Unit (“UNDU”) as communicated to the Registrar of this Tribunal (“Registrar”) and subsequently to this Trial Chamber, indeed required that the Motion be given immediate attention, particularly since the said report indicates that Talić is unfit to stand trial and to remain detained in the UNDU.

3. In the course of the hearings of the last three days, the Trial Chamber heard submissions on Talić’s current state of health and also had an opportunity to hear the testimony of the Medical Officer of UNDU himself as well as to examine the documents which he produced, namely reports of medical and laboratory examinations and tests carried out, on which he based his conclusions and subsequently his report to the Registrar.

4. The Trial Chamber, upon the request of the Prosecution, and through the intervention of the Registrar, chose to have a second opinion, this time by two leading experts on the medical condition that Talić is reported to be suffering from.

5. The two experts examined Talić in course of yesterday, 11 September 2002, and testified in closed session before this Trial Chamber. In the course of their testimony they openly disagreed with the Medical Officer of UNDU when he states that presently Talić is unfit to attend hearings or to remain in the UNDU, although they indicated that the situation may change and deteriorate possibly even after a few weeks at which point a re-assessment of the situation would become necessary. They also explained to this Trial Chamber what the situation could likely be in case Talić starts receiving the treatment to which reference was made in the report of the Medical Officer of UNDU and by them in their evidence if Talić is still being detained in UNDU at the time. In particular they explained how this treatment may affect his ability to be present at this on-going trial.

6. In view of the testimony of these two specialists, the Senior Trial Attorney of the Prosecution requested that, before this Trial Chamber proceeds with hearing the submissions on the Motion, the Prosecution in this case be granted time to discuss the various implications involved with the Prosecutor, who presently is abroad on official business and will be returning on Monday, 16 September 2002.

7. The Trial Chamber considers that following the testimony of the two experts during yesterday's hearing, the overall picture surrounding Talić's present state of health presents complications which involve not only the question whether provisional release ought to be granted as requested but also the future of this trial. The Trial Chamber is of the opinion that, basing itself on the declaration of the two experts, there is no clear and present danger or prejudice attached to Talić's continued detention in the UNDU for a short period pending the discussion and the determination of the Motion, and further that the Prosecution's Request for a delay of a few days for the concluding debate on Talić's Motion is justified.

III. DISPOSITION

For the foregoing reasons,

PURSUANT to Rule 54 of the Rules,

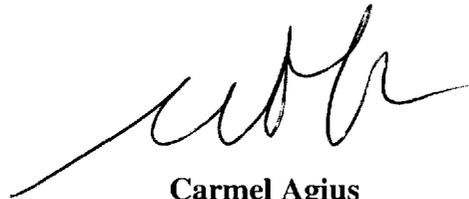
TRIAL CHAMBER II HEREBY:

Grants the Prosecution's Request and adjourns the hearing on the Motion to Tuesday, 17 September 2002 at 2.15pm.

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

Dated this twelfth day of September 2002,

At The Hague, The Netherlands



Carmel Agius

Presiding Judge

[Seal of the Tribunal]