



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: 3 October 2002
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. Hans Holthuis

Decision of: 3 October 2002

PROSECUTOR

v.

RADOSLAV BRĐANIN
And
MOMIR TALIĆ

**DECISION ON "REQUEST FOR CERTIFICATION TO
APPEAL AGAINST THE DECISION TO SEPARATE TRIALS"
AND ON "MOTION TO EXTEND TIME-LIMIT FOR FILING
BRIEF IN SUPPORT OF REQUEST FOR CERTIFICATION TO
APPEAL"**

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 “Request for Certification to Appeal Against the Decision to Separate Trials” (“Request”) and “Motion to Extend Time-Limit for Filing Brief in Support of Request for Certification to Appeal” (“Motion”), filed by the Accused Momir Talić (“Talić”) on 27 September 2002 pursuant to Rule 73 (B) and (C) of the Rules of Procedure and Evidence (“Rules”).

I. INTRODUCTION

1. On 20 September 2002 the Trial Chamber rendered its “Decision on Prosecution’s Oral Request for the Separation of Trials” (“Decision”), pursuant to which the proceedings against Talić were separated from those against the Accused Radoslav Brđanin (“Brđanin”), who is charged under the same indictment, upon the completion of the testimony of witness Muhamed Filipović. The Trial Chamber ruled that it is in the interest of justice to sever the Trials in the circumstances that one of the Accused, namely Talić, has been certified by a panel of medical experts as being unfit to stand trial.

2. Talić now seeks certification from the Trial Chamber to appeal the Decision pursuant to Rule 73 (B) of the Rules, arguing that “the impugned decision might seriously affect the fair conduct of the proceedings and the outcome of General Talić’s Trial and is not in the interests of justice”. Moreover, pursuant to Rule 73 (C) of the Rules, Talić asks for an extension of time to file a brief in support of the Request.

3. On 30 September 2002 the Office of the Prosecutor (“Prosecution”) filed its “Prosecution’s Response to the Pleadings Entitled “Demande de certification d’appel contre la décision relative à la disjonction d’instances” and “Requête aux fins de prorogation du délai pour déposition du mémoire soutenant la demande de certification d’appel” Filed by Counsel for the Accused Momir Talić on 27 September 2002” (“Response”). The Prosecution submits that the Request is based upon a fundamental misinterpretation of the law with regard to joint criminal enterprise and consequently asserts that the Request and the Motion are without merit and should be dismissed.

4. On 1 October 2002, Counsel for Brđanin gave notice to the Trial Chamber and the Prosecution that Brđanin is planning to file motions which might have implications for the presentation of evidence in the proceedings against Brđanin during the week of 6 October and perhaps thereafter. Following this notice, the Trial Chamber received a “Motion to Stay Evidentiary Proceedings”, in which Brđanin requests the Trial Chamber to delay any decision on Talić’s Request and Motion until the English translations have been provided to Counsel for Brđanin and

until there has been proper time to respond to Talić's filings, should he consider it appropriate to do so. In addition, Brđanin requests the Trial Chamber to stay the evidentiary hearings in the proceedings against Brđanin until the issues raised by the Talić filings are resolved.

5. Upon receipt of Brđanin's filings, the Trial Chamber sent a fax to Counsel for Brđanin on 1 October 2002 granting him 24 hours from the moment of receipt of that fax to file a Response to Talić's Request and Motion. The Trial Chamber attached a copy of the English translations of Talić's Request and Motion, which were filed on the same day. Counsel for Brđanin was directed to acknowledge receipt of that fax as soon as he received it.

6. Defence for Brđanin responded through 2 faxes. The first fax acknowledged receipt of the English translations of Talić's filings. The second fax stated that the Defence for Brđanin will not respond to Talić's Request and Motion.

7. On 1 October 2002, the Prosecution submitted its "Prosecution's Response to the Pleadings Entitled "Motion to Stay Evidentiary Proceedings" Filed by Counsel for the Accused Radoslav Brđanin on 1 October 2002", in which it asked the Trial Chamber to instruct Defence for Brđanin to respond to Talić's filings by 4 p.m. on 2 October 2002.

II. DISCUSSION

A. Talić's Request

8. In view of what will be stated in the following paragraphs, the submission of Talić that as a result of the Decision of this Trial Chamber to sever the Trials might seriously affect the fair conduct of the proceedings and the outcome of Talić's Trial, does not call for any consideration and will not be considered by this Trial Chamber. Nor will the Prosecution's Response on this issue be considered. Talić's Request for certification, as will be explained, cannot be accepted for the reasons that will be stated and which are strong enough as not to leave place for other considerations. Indeed if as the Defence for Talić submits and maintains, Talić is unfit to stand trial, the submission that his Trial may be prejudiced as a result of the Decision sought to be appealed is an untimely one. If his medical condition improves and he can stand trial, appropriate submissions can be made at that time.

9. In judging the merit of the Request, the Trial Chamber recalls the statement by the Defence for Talić at the Hearing on 19 September 2002 that "[a]s to the severance of the case, we leave that

in the hands of the Trial Chamber”¹. In the view of the Trial Chamber, the Defence for Talić hereby recognized explicitly and in accordance with the jurisprudence of this Tribunal the judicial discretion of the Trial Chamber to determine the matter of severance of Trials in the circumstances of the case before it. Moreover, during the Hearing on 26 September 2002, the Defence for Talić acknowledged that “the Trial has to be separated”², admitting implicitly that the interests of justice required the Trials to be severed pursuant to Rule 82 (B) of the Rules.

10. Given the present as well as the prognosed medical condition of Talić, and the insistence of his Defence throughout that he is unfit to stand trial and that his condition can only deteriorate with time, his request to this Trial Chamber to go back on its Decision to sever the two Trials can only be seen and considered with the loudest disapproval. What Talić is asking for is to ultimately bring chaos in this case and a situation where the Trial itself will necessarily come to a halt and would require severance in any case. This Trial Chamber cannot but look at this as a blatant abuse of process. It should have been obvious to the Defence of Talić that what is in the interest of justice is the Decision to sever the two Trials and not the opposite.

11. The Trial Chamber consequently finds that this Request is not only without merit, but also manifestly ill-founded and frivolous. Pursuant to Rule 46 (C) of the Rules, the Trial Chamber decides to subject the bringing of this frivolous Request to a sanction.

B. Talić’s Motion

12. In the context of the frivolous character of Talić’s Request, the Trial Chamber sees no reason why the Defence for Talić should be given an extension of time to file a brief in support of the Request for certification to appeal. The Motion is therefore rendered otiose.

13. However, the Motion is indicative of what situation the Defence of Talić wants this Trial Chamber to embark itself in, namely a situation where the Trial itself will necessarily come to a halt and would require severance just the same. For that reason, the Trial Chamber cannot but see that the Motion too is frivolous and will apply to it the sanction pursuant to Rule 46 (C) of the Rules.

¹ Unofficial Transcript of the Hearing on 19 September 2002, T. 9938.

² Unofficial Transcript of the Hearing on 26 September 2002, T. 10144.

III. DISPOSITION

For the foregoing reasons,

PURSUANT to Rule 46 (C) and Rule 73 (B) and (C) of the Rules,

TRIAL CHAMBER II HEREBY ORDERS THAT

1. The Request of Talić is dismissed and the certification is declined, and the Trial of the Prosecutor v. Brđanin will proceed as decided i.e. separately from that against Talić.
2. The Motion of Talić is dismissed.
3. The Registrar is directed to withhold payment of the whole of fees associated with the Request and the Motion of Talić and/or costs thereof.

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

Dated this 3rd day of October 2002,

At The Hague

The Netherlands



Carmel Agius

Presiding Judge

[Seal of the Tribunal]