

IT-99-36-1/T  
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**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 No. IT-99-36/1-T  
Date: 26 November  
2002  
Original: English

**IN TRIAL CHAMBER II**

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

**Registrar:** Mr. Hans Holthuis

**Decision of:** 26 November 2002

**PROSECUTOR**

v.

**MOMIR TALIĆ**

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**DECISION ON MOTIONS**

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**The Office of the Prosecutor:**

Ms. Joanna Korner  
Mr. Andrew Cayley

**Counsel for the Accused:**

Mr. Slobodan M. Zecevic  
Ms. Natacha Ivanovic Fauveau

**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”):

**BEING SEISED OF** three motions filed by Counsel for General Momir Talić (“Accused”), notably the “Motion to Grant Access to all Trial Transcripts and Documents” of 15 October 2002 (“Motion for Access”), the “Motion to Prevent the Prosecution from Introducing Evidence Relating to General Talić in Brđanin Case” of 22 October 2002 (“Motion to Prevent”), and the “Motion to Disregard Evidence Introduced in Brđanin Case” of 22 October 2002 (“Motion to Disregard”) (collectively the “Defence Motions”) in which the Accused seeks orders:

1. Granting access to all transcripts and other documents introduced as evidence in the Brđanin case;
2. Preventing the Prosecution from introducing evidence relating to the Accused in the Brđanin case from the date the trials of Brđanin and the Accused were separated; and
3. Disregarding all evidence that has been and may be produced against the Accused in the Brđanin case from the date the trials of Brđanin and the Accused were separated.

**AND BEING SEISED OF** the “Prosecution’s Request for Leave to Amend Indictment” filed on 18 November 2002 (“Prosecution’s Request”) in which the Prosecution requests leave to amend the indictment in order to, *inter alia*, make it specific to the Accused;

**NOTING** the “Prosecution’s Response to the Pleading Entitled the “Motion to Grant Access to all Trial Transcripts and Documents” filed by Counsel for the Accused Momir Talić on 15 October 2002” filed on 1 November 2002 (“Prosecution’s Response to Motion for Access”), in which the Prosecution takes no position on the Motion for Access but notes that, given the suspension of the trial of the Accused and his provisional release, the motion is premature and could result in a waste of resources;

**NOTING** that the Prosecution’s Response to Motion for Access was filed out of time, but that the Prosecution requests that, in the interests of justice, it be recognised as validly filed pursuant to Rule 127(A)(ii);

**CONSIDERING** that the Prosecution has not provided sufficient justification for filing its Response to Motion for Access out of time, and that the Trial Chamber does not find that it is in the interests of justice to recognise it as validly filed;

**NOTING** the “Prosecution’s Response to the Pleading Entitled “Motion to Prevent the Prosecution from Introducing Evidence Relating to General Talić in Brđjanin case” filed by Counsel for the Accused Momir Talić on 22 October 2002” filed on 31 October 2002 (“Prosecution’s Response to Motion to Prevent”), in which the Prosecution submits that it has fully responded to the Motion to Prevent in the Brđjanin case, and that it is for the Trial Chamber in that case to decide on whether or not evidence is admitted or excluded;

**NOTING** the “Prosecution’s Response to the Pleading Entitled “Motion to Disregard Evidence Introduced in Brđjanin Case” filed by Counsel for the Accused Momir Talić on 22 October 2002” filed on 31 October 2002 (“Prosecution’s Response to Motion to Disregard”), in which the Prosecution submits that the motion is unnecessary, frivolous and premature;

**CONSIDERING** that the Motion for Access and the Motion to Prevent are concerned with the admission of or access to evidence in a case other than the instant one, and that therefore this Trial Chamber is not competent to rule on these motions;

**CONSIDERING** that the Motion to Disregard concerns evidence in a case other than the instant one, evidence which is not before this Chamber, and that the motion simply and unnecessarily requests the Trial Chamber to carry out its functions in its normal, professional manner;

**CONSIDERING** that, prior to the separation of the trials of Brđjanin and the Accused, Counsel for the Accused consistently submitted that the Accused is unfit to stand trial and that his condition can only deteriorate with time;

**CONSIDERING** that, as a result, the instant case is provisionally suspended due to health concerns for the Accused and that it is not certain that the case will ever resume;

**NOTING** the “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”” filed on 3 October 2002 in *Prosecutor v Brđjanin and Talić* (IT-99-36-T) in which that Trial Chamber clearly indicated that motions with respect to the Accused’s case are untimely in view of the Accused’s condition, a situation which will change only if his medical condition improves and he can stand trial;

**FINDING** therefore that the Defence Motions now put before this Trial Chamber are frivolous and that Counsel for the Accused have been forewarned that such actions will not be tolerated;

**CONSIDERING** that the state of the Accused's health consequently makes it impossible for him to discuss legal issues with defence counsel, take on his own position related to the issue and to appear, if necessary, with respect to the amended indictment attached to the Prosecution's Request;

**NOTING** the "Decision on the Motion for Provisional Release of the Accused Momir Talić" filed on 20 September 2002, pursuant to which the Registrar has appointed a medical expert to assess the state of the Accused's health and to provide on a monthly basis a written report to the Tribunal on such state of health, which will allow all parties to the instant case to follow any developments in this regard;

**FOR THE FOREGOING REASONS**

**PURSUANT TO** Rules 46(C), 54 and 126*bis* of the Rules of Procedure and Evidence;

**HEREBY ORDERS THAT**

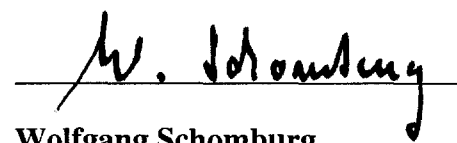
1. The Prosecution's Response to Motion for Access is not recognised as validly filed;
2. The Defence Motions are all dismissed;
3. The Registrar is to withhold payment of the whole of fees associated with the Motion for Access, the Motion to Prevent and the Motion to Disregard;
4. The case against the Accused remains suspended and adjourned *sine die* pending a change in the Accused's health, and the Trial Chamber is not prepared to accept any other motions not related to the issue whether to continue or re-start the case; and
5. The Prosecution's Request is consequently dismissed without prejudice.

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

Dated this 26<sup>th</sup> day of November 2002,

At The Hague

The Netherlands



**Wolfgang Schomburg**

**Presiding Judge**

**[Seal of the Tribunal]**