



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: 6 December
2002
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. Hans Holthuis

Decision of: 6 December 2002

PROSECUTOR

v.

RADOSLAV BRĐANIN

DECISION ON TALIC MOTIONS

The Office of the Prosecutor:

Ms. Joanna Korner
Mr. Andrew Cayley

Counsel for the Accused:

Mr. John Ackerman
Mr. Milan Trbojević

Counsel for Momir Talić:

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 two motions filed by Counsel for General Talić, notably the “Motion to Grant Access to all Trial Transcripts and Documents” of 15 October 2002 (“Motion for Access”) and the “Motion to Prevent the Prosecution from Introducing Evidence Relating to General Talić in Brđjanin Case” of 22 October 2002 (“Motion to Prevent”), in which Counsel for Talić seeks orders:

1. Granting access to all transcripts and other documents introduced as evidence in the Brđjanin case; and
2. Preventing the Prosecution from introducing evidence relating to Talić in the Brđjanin case from the date the trials of Brđjanin and Talić were separated.

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 Talić trial and the provisional release of Talić, 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 1 November 2002 (“Prosecution’s Response to Motion to Prevent”), in which the Prosecution opposes the Motion to Prevent on the basis that:

1. Talić has no standing in the instant case and provides no legal basis for the relief requested;

2. There is no danger of prejudice to Talić from evidence which is introduced in the Brđanin case;
3. The issue is moot due to his health situation which has led to the suspension of his trial;
4. The motion is frivolous and a waste of the Tribunal's resources.

CONSIDERING that counsel for Brđanin has indicated orally before the Trial Chamber that he does not intend to respond to either the Motion for Access or the Motion to Prevent;

CONSIDERING that Momir Talić is neither an accused in nor a party to the instant case;

CONSIDERING that, as a result, Talić has no standing to challenge the Prosecution's introduction of evidence to support its case in the instant case;

FINDING therefore that the Motion to Prevent is not properly before this Chamber;

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

CONSIDERING that, as a result, the case *Prosecutor v Talić* (IT-99-36/1-T) is currently suspended 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 Brđanin and Talić* in which the Trial Chamber clearly indicated that motions with respect to the Talić case are untimely in view of Talić's condition, a situation which will change only if his medical condition improves and he can stand trial;

FINDING therefore that not only is the Motion for Access premature, but that both motions now put before this Trial Chamber are frivolous and that Counsel for Talić have been forewarned that such actions will not be tolerated;

FOR THE FOREGOING REASONS

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

HEREBY ORDERS THAT

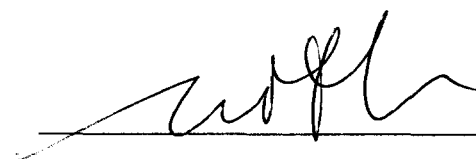
1. The Prosecution's Response to Motion for Access is not recognised as validly filed;
2. The Motion for Access and the Motion to Prevent are both dismissed; and
3. The Registrar is to withhold payment of the whole of fees associated with the Motion for Access and the Motion to Prevent.

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

Dated this 6th day of December 2002,

At The Hague

The Netherlands



Carmel Agius

Presiding Judge

[Seal of the Tribunal]