



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-98-29-T
Date: 19 March 2003
Original: English

IN THE TRIAL CHAMBER

Before: Judge Alphons Orie, Presiding
Judge Amin El Mahdi
Judge Rafael Nieto-Navia

Registrar: Mr Hans Holthuis

Decision of: 19 March 2003

PROSECUTOR

v.

STANISLAV GALIĆ

DECISION ON THE DEFENCE REQUEST TO SUMMON WITNESSES

Office of the Prosecutor:

Mr. Mark Ierace

Counsel for the Defence:

**Ms. Mara Pilipović
Mr. Stephane Piletta-Zanin**

TRIAL CHAMBER I Section B (“the 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 (“the Tribunal”);

BEING SEISED OF the “Defence’s Request for Witnesses Summonses” confidentially filed on 9 January 2003 (“the Request”);

NOTING that the Prosecution did not oppose the Request;¹

NOTING that the Defence case started on 7 October 2002;

CONSIDERING that the Trial Chamber finds that, as a principle deriving from the rights of the accused to a fair trial, it is important to hear the witnesses the Defence wants to call;

CONSIDERING that the Trial Chamber, after reviewing the Request, deemed that preliminary steps should be taken before considering to summon the witnesses concerned, and chose to first help the Defence to contact the witnesses concerned in order to have them come to testify;

CONSIDERING that the Defence was thereby able to call one of the witnesses it had first intended to summon;

CONSIDERING that this approach did not result in the appearance of two other witnesses for whom a summon was requested;

CONSIDERING that the Defence maintains its Requests in respect of these two witnesses;²

CONSIDERING that the Appeals Chamber indicated that “[s]ubpoenas should not be issued lightly, for they involve the use of coercive powers and may lead to the imposition of a criminal sanction”;³

¹ Transcript of 17 January 2003.

² Transcript of 7 March 2003, T. 20967.

³ *The Prosecutor v. Radoslav Brđanin and Momir Talić*, Decision on Interlocutory Appeal, Case No. IT-99-36-AR73.9, 11 December 2002, para. 31.

CONSIDERING that the Request, while claiming that “it would be useful for the Trial Chamber to hear” these witnesses, does not specify to what extent they would be important to the Defence case; that the Rule 65ter summaries filed in respect of these witnesses do not lead to a *prima facie* conclusion that they would be of significant importance to its case;

CONSIDERING that it appears from the Request that these witnesses were introduced in the Rule 65ter list of witnesses without being first contacted;

CONSIDERING that the Defence, by the timing of its Request, did not show the diligence that could be expected for witnesses of significant importance to its case;

CONSIDERING that the Trial Chamber cannot conclude out of the above-mentioned considerations that summons are justified in respect of the two witnesses concerned;

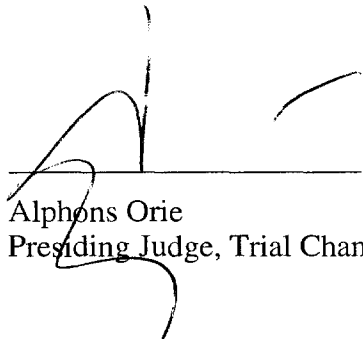
FOR THE FOREGOING REASONS,

PURSUANT TO and Rule 54 of the Rules of Procedure and Evidence;

REJECTS the Request.

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

Dated this Nineteenth of March 2003
At The Hague,
The Netherlands.



Alphons Orié
Presiding Judge, Trial Chamber

[Seal of the Tribunal]