



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: 4 September
2003
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. Hans Holthuis

Decision of: 4 September 2003

PROSECUTOR

v.

RADOSLAV BRĐANIN

CONFIDENTIAL

**DECISION ON PROSECUTION'S APPLICATION TO
PRESENT NEW EVIDENCE**

The Office of the Prosecutor:

Ms. Joanna Korner

Counsel for the Accused:

Mr. John Ackerman
Mr. David Cunningham

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 (“the Tribunal”):

BEING SEISED OF the “Prosecution’s Application to Present New Evidence” (“Application”), filed by the Office of the Prosecutor (“Prosecution”) on 29 August 2003, in which the Trial Chamber is requested to allow the Prosecution to call “an extremely important and relevant witness” (“Witness”), thus in effect re-opening the Prosecution case;

NOTING that the Prosecution justifies its Application on the basis that the evidence of the Witness

1. Goes directly to the actions of the Accused Radoslav Brđanin (“Accused”), the existence of the joint criminal enterprise and other issues in dispute in this case; and
2. Was not available to the Prosecution prior to the close of its case on 1 August 2003.

NOTING the oral objection of Counsel for the Accused (“Defence”) to re-opening the Prosecution case, on the basis that

1. The Prosecution case could continue indefinitely as long as they find new witnesses;
2. When the Defence case closes, the Defence would not ever be in a position to bring new witnesses, thus putting the Defence in an unfair position;¹

NOTING the Witness evidence contained in materials filed *ex parte* and confidentially before the Trial Chamber;

CONSIDERING that on a *prima facie* basis the evidence that the Prosecution seeks to tender through the Witness goes to issues central to this case;

CONSIDERING further that no prejudice to the rights of the Defence should result provided that the Defence is given adequate time to prepare for the Witness;

CONSIDERING further that the Defence has not yet started with its case and the Witness can effectively be brought to testify before the beginning of the case of the Defence;

NOTING that the Prosecution has undertaken to disclose the Witness’ information to the Defence 30 days before the Witness testifies;²

¹ T 20772-20773.

FINDING therefore that the Witness may be called without any undue prejudice being suffered by the Accused;

NOTING that the Prosecution estimates that the examination-in-chief of the Witness would take no more than a full court day;

NOTING further that video-link testimony for a different witness has been scheduled for 13 October 2003;

FINDING that the Witness should complete his testimony prior to the opening of the Defence case on 14 October 2003 in order to avoid any unnecessary delay in proceedings;

FOR THE FOREGOING REASONS

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

HEREBY GRANTS the Application and **ORDERS** that

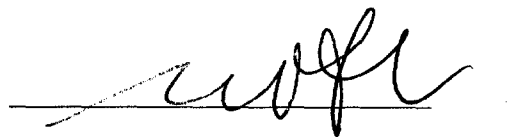
1. The Witness give evidence before this Trial Chamber on 10 and, if necessary, 13 October 2003; and
2. The Prosecution fulfill its disclosure obligations with respect to the Witness 30 days prior to the Witness testifying.

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

Dated this fourth day of September 2003,

At The Hague

The Netherlands



Carmel Agius

Presiding Judge

[Seal of the Tribunal]

² T 20772.