

**"Decision on 'Motion for Production of Documents - Dzonlic Testimony'  
of 11 March 2002"**

**9 April 2002**

**Trial Chamber II Section A (Judges Agius [Presiding], Janu and Taya)**

**Legal professional privilege - Definition - Scope.**

(1) Definition of legal professional privilege: legal professional privilege is a rule of evidence which provides that confidential communications between legal practitioner and client made for the sole purpose of the client obtaining - or the legal practitioner giving - legal advice or for use in existing or contemplated litigation, cannot be given in evidence nor disclosed by the client or by the legal practitioner without the consent of the client. It is the privilege of the client and not the legal adviser.

(2) Scope of legal professional privilege: legal professional privilege extends only to confidential communications and documents which come into existence or are generated for the purpose of giving or getting legal advice or in regard to prospective or pending litigation.

**Procedural Background**

· On 1 March 2002, Defence counsel for Radoslav Brdjanin cross-examined witness Amir Dzonlic, a lawyer practising in the former Yugoslavia, about documents to which he had referred in his examination. The witness had testified that some of his clients had been dismissed from their employment following certain decisions of the Autonomous Region of Krajina (hereinafter the "ARK") Crisis Staff. He claimed that clients had given him documents proving that they had been dismissed from their employment. He also asserted that the documents had been made available to the investigators of the Prosecution. Counsel for Radoslav Brdjanin contended that the documents had not been disclosed to the Defence. The Prosecution submitted that the documents were not disclosed because they came from client files and were subject to legal professional privilege.

· On 6 March 2002, Defence counsel for Radoslav Brdjanin asked the Trial Chamber to request or order the Prosecution to obtain the documents and make them available to the Defence. The Prosecution replied that the witness would comply if the Trial Chamber made such an order.

· During proceedings on 7 March 2002, the Trial Chamber requested that Defence counsel for Radoslav Brdjanin file a written Motion specifically identifying the documents sought from the witness and giving the Prosecution an opportunity to respond to that Motion.

- On 11 March 2002, Defence counsel for Radoslav Brdjanin filed a Motion in which he requested that the Trial Chamber order the Prosecution to request the witness to produce all documents purported to show that clients were dismissed from their positions on the basis of ARK Crisis Staff orders.
- On 19 March 2002, the Prosecution stated that it would not file a written response to the Motion.

### **The Decision**

The Trial Chamber granted the Motion and ordered that the Prosecution communicate the Decision to the witness and ensure that the documents are provided to the Trial Chamber and to the respective Defence teams for the two co-accused.

### **The Reasoning**

The Trial Chamber defined legal professional privilege as "a rule of evidence, which provides that confidential communications between legal practitioner and client made for the sole purpose of the client obtaining, or the legal practitioner giving, legal advice or for use in existing or contemplated litigation, cannot be given in evidence, nor disclosed by the client or by the legal practitioner, without the consent of the client." The Trial Chamber specified that it "is the privilege of the client and not the legal adviser." It emphasised that "legal professional privilege extends only to confidential communications and documents that come into existence or are generated for the purpose of giving or getting legal advice or in regard to prospective or pending litigation."

The Trial Chamber found that the documents are public and "constitute the original evidence or basis of the claim upon which the clients consulted the witness for legal advice or to commence litigation." In addition, it noted that the witness himself gave details on their content during his testimony. The Trial Chamber expressed the view that "legal professional privilege does not attach to any of the documents" and that there is no reason which would prevent the witness from disclosing them. Accordingly, it required the witness to disclose them to the Defence. However, the Trial Chamber permitted the names of the clients and any other identifying information relating to them to be redacted from the documents.

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## **The Prosecutor v. Radoslav Brdjanin and Momir Talic - Case No. IT-99-36-PT**

**"Decision on 'Motion for Extension of Time to File the Request for Certification pursuant to Rule 73 with regard to the Trial Chamber's 22 March 2002 Decision regarding Rule 90(H)' "**

**• 10 April 2002**

**• Trial Chamber II (Judges Agius [Presiding], Janu and Taya)**

## **Rule 127(A)(ii) - Definition of the notion of "good cause" for variation of time limit - Rule 73(C) - Certification.**

The medical condition of Defence counsel constitutes "good cause" within the meaning of Rule 127(A)(ii) of the Rules of Procedure and Evidence.

### **Procedural Background**

- On 5 April 2002, Defence Counsel for Radoslav Brdjanin filed a Motion seeking (1) an extension of time until 5 April 2002 pursuant to Rule 127(A)(ii) of the Rules<sup>1</sup> because of the medical problems of lead counsel and (2) certification by the Trial Chamber for an interlocutory appeal from the Decision of the Trial Chamber dated 22 March 2002<sup>2</sup> pursuant to Rule 73(C) of the Rules<sup>3</sup>.
- On 8 April 2002 during trial proceedings, the Prosecution stated that it did not object to the Motion.

### **The Decision**

The Trial Chamber granted the Motion.

### **The Reasoning**

The Trial Chamber considered that "the reason advanced by counsel for Brdjanin, namely his medical condition, constitutes good cause" to extend the time limit pursuant to Rule 127(A)(ii)<sup>4</sup>. It also considered that "the proposed interlocutory appeal, relating to a decision involving evidence and procedure, is appropriate for the continuation of the trial".

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1. "Save as provided by paragraph (C), a Trial Chamber may, on good cause being shown by motion, [...] recognize as validly done any act done after the expiration of a time so prescribed on such terms, if any, as is thought just and whether or not that time has already expired".

2. *The Prosecutor v. Radoslav Brdjanin and Momir Tadic* ("Krajina"), Case No. IT-99-36-T, Trial Chamber II, Decision on Motion to Declare Rule 90(H)(ii) Void to the Extent it is a Violation of Article 21 of the Statute of the International Tribunal, 22 March 2002 (summarised in *Judicial Supplement* No. 31 *bis*).

3. Rule 73(C) of the Rules, as amended at the 25th Plenary Session on 12 and 13 December 2001 (IT/199 of 21 December 2001), reads as follows: "The Trial Chamber may certify that an interlocutory appeal during trial from a decision involving evidence or procedure is appropriate for the continuation of the trial, upon a request being made seven days of the issuing of the decision. If such certification is given, a party may appeal to the Appeals Chamber without leave, within seven days of the filing of the certification".

4. See also *The Prosecutor v. Zlatko Aleksovski* ("Lasva River Valley"), Case No. IT-95-14/1-A, Scheduling Order, 30 July 1999 (summarised in *Judicial Supplement* No. 6).