



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-05-88/2-PT

Date: 20 July 2007

Original: English

IN TRIAL CHAMBER II

Before: Judge Kimberly Prost, Pre-Trial Judge

Registrar: Mr. Hans Holthuis

Decision of: 20 July 2007

PROSECUTOR
v.
ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON SUBMISSION OF TOLIMIR REQUESTING
TRANSLATION OF DOCUMENTS AND TRANSCRIPTS**

Office of the Prosecutor

Mr. Peter McCloskey

The Accused

Zdravko Tolimir

I, KIMBERLY PROST, Pre-Trial Judge 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 the “Submission of the Accused for the Delivery of Documents and Transcripts of the Trial in a Script and Language that he Reads and Writes” dated 8 July 2007 and filed by the Accused Zdravko Tolimir on 10 July 2007 (“Motion”), in which the Accused requests that:

- (1) the transcripts of his initial appearance and further appearance which took place on 4 June and 3 July 2007 respectively be translated into the Serbian language and in Cyrillic script so that he “could submit preliminary and other submissions and participate in the proceedings”; and
- (2) all the documents and transcripts during the proceedings be translated into the Serbian language and in Cyrillic script;¹

NOTING the “Prosecution’s Response to Submission of Zdravko Tolimir” filed on 8 July 2007 (“Prosecution’s Response”) in which the Prosecution submits that:

- (1) in order to fulfil its disclosure obligations pursuant to the Rules of the Procedure and Evidence (“Rules”) and the Statute of the Tribunal (“Statute”), the Prosecution is endeavouring to provide the Accused by 20 July 2007 a hard-disk drive and laptop computer containing recordings of trial sessions, witness statements and documentary and video exhibits in *Prosecutor v. Popović et al.*, recordings of trial sessions in *Prosecutor v. Blagojević and Jokić* and *Prosecutor v. Krstić* and the Prosecution will provide the Accused as soon as possible the most relevant documents from the EDS system;²
- (2) all the materials to be disclosed to the Accused will be in BCS and the trial proceedings will be in BCS audio form;³
- (3) there is no obligation under the Statute and the Rules for disclosure to be in the Cyrillic script and the Accused would not be prejudiced by receiving documents in the Cyrillic script;⁴

¹ Motion, p. 1.

² Prosecution’s Response, para. 3.

³ *Ibid.*, para. 4.

⁴ *Ibid.*, para. 4.

NOTING that the Pre-Trial Judge determined at the Further Appearance of the Accused on 3 July 2007 that the Prosecution had fulfilled its obligations as far as possible under Rule 66(A)(i);⁵

NOTING that the “Registry’s Submission on ‘Submission of the Accused for the Delivery of Documents and Transcripts of the Trial in a Script and Language that he Reads and Writes’”, filed by the Registry on 18 July 2007 pursuant to Rule 33 of the Rules (“Registry Submission”), in which the Registry submits that:

- (1) as a matter of long standing policy and practice, the Registry only provides the parties with transcripts of the proceedings in the working languages of the Tribunal;⁶
- (2) a requirement to translate transcripts into BCS would impose such an onerous obligation upon the Conference and Language Services Section (“CLSS”) that it would significantly impact upon the fair trial rights of all accused appearing before the Tribunal and thus the Registry is only able to provide the Accused with audio recordings of his initial and further appearances;⁷
- (3) due to resource limitations, CLSS only translates documents in Roman script and although Cyrillic is the official script of the Republic of Serbia, the Roman script is widely used in Serbia in all print media and was taught in school under the educational system of the former Yugoslavia;⁸
- (4) the provision of translations to the Accused in Roman script would meet the Tribunal’s obligation under Article 21 while still enabling the Registry to meet its other translation obligations;⁹
- (5) the Motion does not clearly indicate which documents the Accused refers to by “all the documents” to be translated into the Serbian language and in Cyrillic script; however, (i) the Prosecution provided supporting material under Rule 66(A) on 27 June 2007 to the United Nations Detention Unit (“UNDU”), though the Accused refused to accept it;¹⁰ (ii) the Accused was provided with a BCS copy of the indictment and its amended indictment, as

⁵ Further Appearance, T. 43–44 (3 July 2007). Rule 66(A)(i) provides that subject to the provisions of Rules 53 and 69, the Prosecutor shall make available to the defence in a language which the accused understands within 30 days of the initial appearance of the accused copies of the supporting material which accompanied the indictment when confirmation was sought as well as all prior statements obtained by the Prosecutor from the Accused.

⁶ Registry Submission, para. 3.

⁷ *Ibid.*, para. 5.

⁸ *Ibid.*, para. 6.

⁹ *Ibid.*, para. 6.

¹⁰ *Ibid.*, para. 7.

well as with all orders and decisions filed, though the Accused refused to accept the amended indictment and the Order on Filing Regarding Joinder Motion, filed on 3 July 2007;¹¹ and (iii) “represented accused are entitled to receive in a language they understand only key documents such as the indictment, orders, decisions, and judgements”, while for a self-representing accused, “the Registry will decide on a case by case basis which documents should be translated giving due consideration to the very limited CLSS resources, the translation requirements of other accused, and whether counsel has been assigned or not”;¹² and

- (6) the assignment on 4 June 2007 by the Deputy Registrar of duty counsel to represent the Accused remains in force and although the role of duty counsel is limited the Accused can consult him during this phase of the proceedings;¹³

NOTING that Rule 65 *ter*(B) provides that a pre-trial Judge must ensure that “the proceedings are not unduly delayed and shall take any measure necessary to prepare the case for a fair and expeditious trial”;

NOTING that Rule 3(A) provides that “the working languages of the Tribunal are English and French”;

NOTING that Article 21(4), which enshrines the right of the accused to a fair trial, provides, *inter alia*, that:

[i]n the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

- (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- ...
- (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;

CONSIDERING that neither Rule 3 nor Article 21 of the Statute entitle the accused to receive all documents in a language he understands;¹⁴

¹¹ *Ibid.*, para. 8.

¹² *Ibid.*, para. 9.

¹³ *Ibid.*, para. 10.

CONSIDERING that the Motion is unclear as to what “other” documents Tolimir requests to have translated;

CONSIDERING that the Trial Chamber is satisfied that at this stage Tolimir has been provided with relevant documents in a language which he understands in order to guarantee his rights under Article 21 of the Statute, and that Tolimir’s refusal to accept certain documents is his choice;

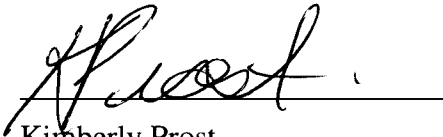
CONSIDERING that since the Registry submits that it can provide the Accused with audio recordings of his initial and further appearance and it would be in the interests of justice for him to be provided such recordings in BCS;¹⁵

PURSUANT TO Rules 3, 65*ter* of the Rules and Article 21 of the Statute,

HEREBY ORDERS that the Registry make arrangements for the Accused to be provided with the audio tapes of his initial appearance and further appearance in BCS, as well as relevant equipment to enable him to listen to the audio tapes;

AND DISMISSES the Motion in all other respects.

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



Kimberly Prost
Pre-Trial Judge

Dated this twentieth day of July 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁴ See *Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Tolimir, Miletić, Gvero, Pandurević, and Trbić*, Case No. IT-05-88-PT, Decision on Joint Defence Motions Requesting the Translation of The Pre-Trial Brief and Specific Motions, 24 May 2006, para. 9 (citing *Prosecutor v. Naletilić and Martinović*, Case No. IT-98-34-T, Decision on Defence’s Motion Concerning Translation of All Documents, 18 October 2001, p. 3); *Prosecutor v. Delalić, Mucić, Delić, and Landžo*, Case No. IT-96-21-T, Decision on Defence Application for Forwarding the Documents in the Language of the Accused, para. 8.

¹⁵ Registry Submission, para. 5.