



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: 10 October 2007

Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge O-Gon Kwon
Judge Kimberly Prost, Pre-Trial Judge

Registrar: Mr. Hans Holthuis

Decision of: 10 October 2007

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON TOLIMIR'S SUBMISSION ON VIOLATION OF HIS
RIGHTS SUBMITTED ON 7 SEPTEMBER 2007**

Office of the Prosecutor

Mr. Peter McCloskey

Accused

Mr. Zdravko Tolimir

THIS 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 “The Accused’s Submission to the Registrar and the Pre-Trial Chamber to review the facts and reasons for the violation of guaranteed and discretionary rights of the Accused before the International Tribunal”, submitted by Zdravko Tolimir on 7 September 2007 (“Tolimir’s Submission on violation of his rights”), in which the Accused argues, *inter alia*, that the Registrar has violated his “discretionary rights” by conducting medical examinations without his consent and by arranging “without his knowledge and approval” for the visit of neurosurgeon Dr. Minić,¹ with the intention to “forc[e] the doctors of the Belgrade Medical Academy, on the basis of outdated medical records and diseases [he] suffered from in 1993 which have been cured, to write a diagnosis which they would use to declare [him] procedurally incapable of defending [himself] and to impose counsel”;²

NOTING that Tolimir requests the Registrar and the Trial Chamber “to take all measures within your competence against those who violated [his] discretionary rights, to review the administrative decisions which are based on errors and unlawful acts and not to let them be used to [his] detriment as the accused in proceedings against [him] and to see to it that everyone abides by the basic principle of justice and procedural fairness, thus enabling [him] to enjoy all rights of an accused under Article 21 of the Statute [...]”;³

NOTING the “Registrar’s Submission on the Accused’s Submission of 7 September 2007”, filed on 5 October 2007, in which the Registrar mainly submits that:

1. it is the Registrar’s fundamental duty and obligation to safeguard the health and well-being of the Accused;⁴
2. based on the information before it, and despite the Accused’s repeated allegations that he is in good health, Tolimir’s health condition is “grave, fragile and highly alarming”,⁵
3. the examinations performed on the Accused to date have been “absolutely necessary to ensure the Accused’s health and well-being;”⁶

¹ The Accused’s Submission to the Registrar and the Pre-Trial Chamber to review the facts and reasons for the violations of guaranteed and discretionary rights of the Accused before the International Tribunal”, 14 September 2007 (“Tolimir’s Submission on violation of his rights”), para. 2.

² Tolimir’s Submission on violation of his rights, para. 6.

³ Tolimir’s Submission on violation of his rights, para. 7.

⁴ Registrar’s Submission on the Accused’s Submission of 7 September 2007”, 5 October 2007 (“Registrar’s Submission”), para. 7.

⁵ Registrar’s Submission, para. 5.

4. since his transfer to the UNDU, the Accused has refused to take any prescribed medication for his conditions and that “his refusal increases the risk of an acute heart or cerebral incident” and that “there is a very real and serious risk of the Accused experiencing a life-threatening episode and any time and without warning”;⁷
5. the Accused’s contention that he had no knowledge of and did not consent to the visit of Dr. Minić is unsustainable and the Accused participated in the medical tests voluntarily;⁸

NOTING that the Registrar requests the Trial Chamber to take “any and all appropriate measures to further and more completely assess the medical condition of the Accused, including ordering a medical examination of the Accused pursuant to Rule 74 *bis* of the Rules or, if the Accused refuses to be examined, ordering an analysis of the test results that are already available by an independent medical expert, with a view to helping the Chamber determine whether the Accused is truly capable of representing himself before this Tribunal”;⁹

NOTING the “Submission of the Accused to the Tribunal Concerning the Deception of the Public and the Disturbance to My Family Caused by False Statements made by the Registry and the Political and Media Pressures it has Exerted on the Tribunal”, filed on 9 October 2007 (“Tolimir’s Submission of 9 October”), in which the Accused mainly submits that:

1. despite what the Registry stated in its submission, which also appeared in a press release on the same date, he is “in excellent health condition”;¹⁰
2. the Registry is “exerting media and political pressure on the Tribunal” by calling upon it to challenge his right to self-representation and impose on him counsel who will on his behalf “accept the pleas bargained by the Registry and the Prosecutor’s Office, in a desire to treat [him] as an object rather than as a subject before the [...] Tribunal”;¹¹

NOTING that the welfare of any accused in the custody of the Tribunal is the primary responsibility of the Registrar;¹²

⁶ Registrar’s Submission, para. 5.

⁷ Registrar’s Submission, para. 6.

⁸ Registrar’s Submission, para. 9.

⁹ Registrar’s Submission, para. 15.

¹⁰ “Submission of the Accused to the Tribunal Concerning the Deception of the Public and the Disturbance to My Family Caused by False Statements made by the Registry and the Political and Media Pressures it has Exerted on the Tribunal”, 9 October 2007 (“Tolimir’s Submission of 9 October”), para. 2.

¹¹ Tolimir’s Submission of 9 October, para. 5.

¹² Rule 33 of the Rules of Procedure and Evidence (“Rules”); Rule 2 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal Detention (“Rules of Detention”). *See also*, Rules 30 *et seq.* of the Rules of Detention dealing specifically with “Medical services”.

NOTING the supervisory role of the President of the Tribunal in relation to the activities of the Registry;¹³

NOTING that, pursuant to Articles 20 and 21 of the Statute of the Tribunal, the Trial Chamber has the primary role to ensure the integrity of the proceedings and the right of the accused to a fair and expeditious trial;

NOTING that so far the Registry has taken a number of measures, including medical examinations and requests for assessment of medical records, in order to ensure the Accused's health and well-being;¹⁴

NOTING that the Pre-Trial Judge has raised the health conditions of the Accused with the Accused himself during the initial appearances on 4 June and 3 July 2007 and during the status conference on 14 September 2007;¹⁵

NOTING that the submissions raised by the Accused on 7 September have been addressed by the Registrar in its submission and that the Trial Chamber is satisfied that all measures taken by the Registrar were performed to ensure his health and well-being and that no violations of his rights have occurred;

NOTING that the Registrar has the ability to have medical examinations carried out or to have medical records reviewed by experts as he determines necessary;

NOTING that the Registrar may seek the assistance of the President or the Trial Chamber in the implementation of any specific medical measures, should that be required;

NOTING that the Registrar has provided no information as to what additional medical examinations should be carried out nor as to what experts are required and therefore has not identified any specific medical measures for which the assistance of the Trial Chamber is needed at this time;

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

HEREBY DISMISSES Tolimir's Submission on violation of his rights; and

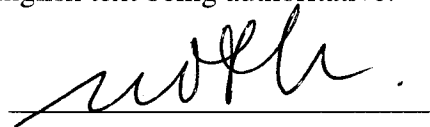
¹³ Rules 19 and 33 of the Rules.

¹⁴ The Registry has adopted a number of measures, such as disposing a thirty-minute interval checks performed daily on the Accused, throughout the day and night; training of UNDU staff in the procedures and use of an Automatic External Defibrillator, to intervene should a cardiovascular event occur; on 6 August 2007, a conference call involving the Commanding Officer of the UNDU, the UNDU Medical Officer and the Accused (through an interpreter) has taken place and as a result of it on 17 August 2007 a neurological examination was conducted on Tolimir.

¹⁵ Initial Appearance, T. 18–19 (4 June 2007); Further Appearance, T. 45–47 (private session) (3 July 2007); Status Conference, T. 101–107 (14 September 2007).

INSTRUCTS the Registry to continue to keep the Trial Chamber informed about any development regarding Tolimir's health conditions.

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



Carmel Agius
Presiding

Dated this tenth day of October 2007
At The Hague
The Netherlands

[Seal of the Tribunal]