



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: 18 October 2007

Original: English

IN TRIAL CHAMBER II

Before: Judge Kimberly Prost, Pre-Trial Judge
Registrar: Mr. Hans Holthuis
Decision of: 18 October 2007

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON MOTION FOR SUSPENSION OF TIME LIMIT FOR
FILING OF PRELIMINARY MOTIONS**

Office of the Prosecutor
Mr. Peter McCloskey

The Accused
Zdravko Tolimir

I, KIMBERLY PROST, 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 Accused’s Motion to the Pre-Trial Chamber to Suspend the Decision on the Filing of Preliminary Motions until the Abduction of the Accused is Resolved, the Prosecution Material Disclosed, and the Decision Made on the Motion by the Accused Concerning the Financing of his Defence in Accordance with Article 21 of the Statute of the International Criminal Tribunal for the Former Yugoslavia”, submitted by Zdravko Tolimir on 25 September 2007 (“Motion”);¹

NOTING that during the status conference held on 14 September 2007, a deadline of 45 days starting from 17 September 2007 was set for the Accused to file preliminary motions pursuant to Rule 72 (A) of the Rules of Procedure and Evidence (“Rules”),² which motions include those (i) challenging jurisdiction, (ii) alleging defects in the form of the indictment, and (iii) seeking the severance of counts joined in one indictment under Rule 49 (“Decision concerning the filing of preliminary motions”);³

NOTING that a deadline for the Accused to file a motion on his alleged illegal arrest has not yet been set in light of the possible future receipt of material from Serbia on the arrest and transfer of the Accused;⁴

NOTING that in the Motion the Accused submits:

1. the Pre-Trial Chamber did not grant the Accused’s requests made during his initial appearance and the status conference, seeking to clarify all the circumstances surrounding his abduction and surrender to the jurisdiction of the Tribunal (“first submission”);⁵

¹ The Accused’s Motion to the Pre-Trial Chamber to Suspend the Decision on the Filing of Preliminary Motions until the Abduction of the Accused is Resolved, the Prosecution Material Disclosed, and the Decision Made on the Motion by the Accused Concerning the Financing of his Defence in Accordance with Article 21 of the Statute of the International Criminal Tribunal for the Former Yugoslavia, 25 September 2007 (original version in BCS), 27 September 2007 (English translation) (“Motion”), para. 6.

² Status Conference, T. 99–100 (14 September 2007). During the further appearance held on 3 July 2007, a thirty-day time limit for filing preliminary motions pursuant to Rule 72 (A) was suspended since no permanent counsel had yet been appointed at that time. *See* Further Appearance, T. 44–45 (3 July 2007).

³ Status Conference, T. 98, 100 (14 September 2007). As stated in the status conference, a motion raising objections based on the refusal of a request for assignment of counsel made under Rule 45 (C), which is provided for in Rule 72 (A)(iv), is not relevant at this time.

⁴ *Ibid.*, T. 87–90 (14 September 2007).

⁵ Motion, para. 2.

2. the supporting material under Rule 66 has not been disclosed to the Accused in the Cyrillic script⁶ and “[i]mposing a language and alphabet which are not officially used in Serbia creates difficulties for the Accused and the defence team in their communication with the Tribunal and the Prosecution” (“second submission”);⁷ and
3. the Registry has not made a decision on the appointment and financing of his legal advisors and defence team (“third submission”);⁸

NOTING the “Registrar’s Submission on the Accused’s Motion dated 25 September 2007”, filed on 3 October 2007 (“Registrar’s Submission”), in which the Registrar submits with regard to the third submission of the Accused that his office has engaged in discussions with the Accused on this matter;⁹

NOTING the “Prosecution’s Response to Submission by the Accused dated 25 September 2007, with Appendix”, filed on 10 October 2007 (“Response”), in which the Prosecution requests that the Motion be denied and with regard to the first and the second submissions submits that:¹⁰

1. the Accused’s request for a suspension of the schedule of the filing of preliminary motions is not justified pursuant to Rules 66 and 72 since (i) the Prosecution has fulfilled its obligations under Rule 66 (A)(i), having made available to the Accused the supporting material to his Indictment in BCS, “a language which the Accused understands,”¹¹ and (ii) the Accused has elected to conduct his own defence;¹²
2. the Accused’s claim of inability to read the Latin script as a result of a stroke he suffered in 1983 is not substantiated because (i) the Accused concedes that he was educated in the Latin

⁶ *Ibid.*, para. 3.

⁷ *Ibid.*, para. 4.

⁸ *Ibid.*, paras. 4–5. On 4 September 2007 the Accused filed his submission, in which he argued that he did not have financial means for financing his defence and requested that his legal advisor, Mr. Nebojša Mrkić be financed by the Tribunal. See “The Accused’s Submission to the Registrar and the Pre-Trial Chamber Concerning Status Issues and the Financing of his Defence in Accordance with Article 21 of the Statute of the International Criminal Tribunal for the Former Yugoslavia”, 4 September 2007 (original version in BCS), 7 September 2007 (English translation). The Registrar filed its submission on 13 September 2007, in which he responded to the above submission that he would consider this request of the Accused “in light of the recent decision by the Appeals Chamber in the *Prosecution v. Krajišnik*, and take action accordingly.” See “Registrar’s Submission on ‘The Accused’s Submission to the Registrar and the Pre-Trial Chamber Concerning Status Issues and the Financing of his Defence in Accordance with Article 21 of the Statute of the International Criminal Tribunal for the Former Yugoslavia’”, 13 September 2007.

⁹ Registrar’s Submission on the Accused’s Motion dated 25 September 2007, 3 October 2007 (“Registrar’s Submission”), paras. 2–6.

¹⁰ Prosecution’s Response to Submission by the Accused dated 25 September 2007, with Appendix”, filed on 10 October 2007 (“Response”). As to the third submission, the Prosecution states that it is not in a position to assess the Accused’s assertions and defers to the discretion of the Trial Chamber. *Ibid.*, para. 2.

¹¹ *Ibid.*, paras. 4–7 (quotation at para. 4).

¹² *Ibid.*, para. 6.

script and possessed the ability to understand the Serbian language as expressed in that form;¹³ (ii) throughout his military career with the JNA and then the VRS, the Accused was part of a military organisation that regularly used the Latin script in conducting official affairs, such as the execution of orders and combat operations;¹⁴ and (iii) there is evidence which establishes that some 9 to 12 years after his stroke several VRS documents drafted in the Latin script were either signed by or addressed to the Accused;¹⁵

3. even if the Accused could substantiate his inability to read Serbian in the Latin script, the relief he has requested is neither compelled nor justified by Rule 66 or the jurisprudence of the Tribunal;¹⁶ and
4. the circumstances of the Accused's arrest are irrelevant to the disposition of the issue at hand;¹⁷

NOTING that Rule 127 (A)(i) provides that a Pre-Trial Judge may, on good cause being shown by motion, enlarge or reduce any time prescribed by or under the Rules;¹⁸

NOTING that during the status conference the Pre-Trial Judge explained to the Accused that, as a result of his choice to represent himself, he accepted a number of responsibilities, including the responsibility for filing written submissions in accordance with the Rules and practice directions of the Tribunal;¹⁹

CONSIDERING that the filing of any preliminary motions shall be without prejudice to any jurisdictional argument the Accused may wish to advance in relation to his arrest and surrender to the Tribunal;

NOTING that the Accused has consistently refused to accept the supporting material to the Indictment disclosed by the Prosecution, as well as any other filing in the present case,²⁰ because it is not in the Cyrillic script of the Serbian language;²¹

¹³ *Ibid.*, para. 9, referring to Status Conference, T. 66 (14 September 2007).

¹⁴ *Ibid.*, para. 10.

¹⁵ *Ibid.*, para. 11, referring to the Appendix which contains two exhibits tendered in the cases of *Slobodan Milošević* and *Popović et. al.* respectively. Both documents are written in the Latin script and signed or type-signed by the Accused Tolimir.

¹⁶ *Ibid.*, paras. 14–18.

¹⁷ *Ibid.*, para. 19.

¹⁸ The Pre-Trial Judge made the Accused aware of this Rule during the status conference. *See* Status Conference, T. 100 (14 September 2007).

¹⁹ Status Conference, T. 56 (14 September 2007).

²⁰ *See e.g.*, Procès-Verbal indicating his refusal of documents, 4 October 2007; Request by the Accused Tolimir, 17 October 2007.

CONSIDERING that as has been stated,²² the Pre-Trial Judge is satisfied that the Prosecution has fulfilled its obligation to make available to the Accused the supporting material under Rule 66(A)(i),²³ and that “Tolimir’s refusal to accept certain documents is his choice”,²⁴

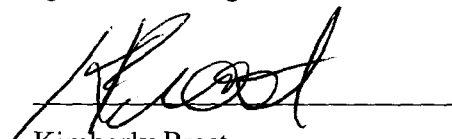
CONSIDERING that unlike the circumstances provided for in Rule 72 (A), in which “permanent counsel has not yet been assigned to or retained by the Accused, or where the accused has not yet elected in writing to conduct his or her defence”,²⁵ an application for financed assistance in the preparation of the Accused’s defence does not suspend the time-limit for the filing of the preliminary motions;

CONSIDERING further that by virtue of his election to represent himself, the Accused has asserted “his ability to conduct his case without legal assistance”,²⁶

CONSIDERING that the Accused has therefore failed to show any good cause to justify the variation of the time-limit set for in the Decision concerning the filing of preliminary motions;

HEREBY DISMISS the Motion.

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



Kimberly Prost
Pre-Trial Judge

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

[Seal of the Tribunal]

²¹ Motion, para. 3.

²² See Further Appearance (3 July 2007); Decision on Submission of Tolimir Requesting Translation of Documents and Transcript, 20 July 2007 (20 July 2007 Decision).

²³ Further Appearance, T. 43–44 (3 July 2007); 20 July 2007 Decision, p.2. The Pre-Trial Judge stated that she “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 [...]” 20 July 2007 Decision, para. 4.

²⁴ 20 July 2007 Decision, para. 4.

²⁵ Rule 72 (A).

²⁶ See in this respect, *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Decision on Krajišnik Request and on Prosecution Motion, 11 September 2007, para. 41.