



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: 15 January 2008

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: 15 January 2008

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON ACCUSED'S SUBMISSION DATED 7 DECEMBER 2007
AND DECISION ON CERTIFICATION TO APPEAL**

Office of the Prosecutor

Mr. Peter McCloskey

The Accused

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 “Submission of the Accused to the Tribunal Concerning the Need for Communication Between the Trial Chamber, Prosecution and Registry with the Accused in his Mother Tongue, Serbian, and using the Cyrillic Alphabet, which he can Understand”, submitted by the Accused on 7 December 2007 (“Motion”);¹

NOTING that in the Motion the Accused reiterates previous arguments regarding the use of the Serbian language in Cyrillic script and provides a detailed description of the history of the development of the Serbian language;

NOTING that during the Status Conference on 11 December 2007, the Pre-Trial Judge issued a decision on the Accused’s motion dated 16 November 2007,² which ruled on the issue of disclosure of material and communication between the Accused and the Trial Chamber, the Registry and the Prosecution, in a language the Accused understands (“oral decision of 11 December 2007”);³

NOTING the Prosecution’s Response filed on 14 December 2007 (“Response”), in which the Prosecution, referring to the oral decision of 11 December 2007, requests the Trial Chamber to dismiss the Motion on the basis that the issue raised has been decided already by the Pre-Trial Judge ;⁴

NOTING that the Motion does not present any new material on the matter of the Accused’s understanding of the language of disclosure of material and communication with Trial Chamber,

¹ “Submission of the Accused to the Tribunal Concerning the Need for Communication Between the Trial Chamber, Prosecution and Registry with the Accused in his Mother Tongue, Serbian, and using the Cyrillic Alphabet, which he can Understand”, submitted by the Accused on 7 December 2007 (English version filed on 13 December 2007). The Motion includes information on the history of the “Serbian literary language and the Cyrillic script”, the relationship and differences between the “Eastern or Serbian variant with Ekavian pronunciation and Cyrillic script” and the “Western or Croatian variant with Ijekavian pronunciation and Latin script”. The Accused also argues that the use of BCS “discriminates” against the Serbian language and the Cyrillic script as well as against all Serb accused before the Tribunal. Motion, p. 2–4.

² “Motion to the Pre-Trial Chamber and the Registry Concerning Assistance in Appointing a Legal Advisor, Disclosure of Material in a Language the Accused Understands and Notification of Special Defence on the Charges in the Indictment”, submitted by the Accused on 16 November 2007 (English translation filed on 20 November). The “Prosecution Response to the Accused’s 16 November 2007 Motion” was filed on 4 December 2007. The “Registrar’s Submission on the Accused’s Motion dated 16 November 2007” was filed on 7 December 2007.

³ T. 112–117 (11 December 2007). During the Status Conference the Pre-Trial Judge stated the following: “[...] I am aware, Mr. Tolimir, that you have filed a new submission. [...] However, I have not received a formal translation of that submission [...]. The normal time-lines will run, and we will deal with it if it requires decision after the recess. However, I have been advised that it may relate, once again, to the issue of language, which we’re going to be addressing this afternoon. So I would note that, in the absence of new material, you can anticipate similar disposition in the matter as will be discussed shortly.” T. 111–112 (11 December 2007).

⁴ “Prosecution’s Response to the Accused’s 7 December 2007 Motion”, 14 December 2007 (“Response”).

Registry and Prosecution, which has already been dealt with in the oral decision of 11 December 2007 except for expanded detail on the history of the Serbian language;

CONSIDERING that the additional detail provided serves only to further demonstrate the intricate knowledge of the Accused of the languages of the Former Yugoslavia and does not support the Accused's claim of a lack of understanding of B/C/S or the demand for all documents and communication to be in Serbian in the Cyrillic script;

NOTING the Decision on Motion for Certification to Appeal 11 December Oral Decision⁵, in which the Trial Chamber granted certification to appeal the issue of whether the Accused has a legal right to receive disclosed material and filings in Serbian in the Cyrillic script;

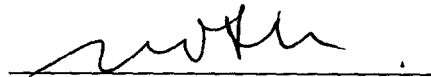
CONSIDERING that the same issue arises out of this decision and therefore this decision raises an issue that would significantly affect the fair and expeditious conduct of the proceedings and immediate resolution by the Appeals Chamber would materially advance the proceedings;

FOR THE FOREGOING REASONS

HEREBY DISMISS the Motion, and;

GRANTS certification to appeal this decision in conjunction with the 11 December Oral Decision.

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



Carmel Agius
Judge

Dated this fifteenth day of January 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

⁵ Issued 15 January 2008.