



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: 28 July 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: 28 July 2008

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

DECISION ON SUBMISSION OF THE ACCUSED DATED 20 JUNE 2008

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 with a Request to Initiate Proceedings to Establish Contempt of the International Tribunal” submitted on 20 June 2008 and filed confidentially and *ex parte* in English on 27 June 2008 (“Submission”);

NOTING that the Submission was filed confidentially and *ex parte* pursuant to the Practice Direction on Procedure for the Investigation and Prosecution of Contempt before the International Tribunal;¹

NOTING that in the Submission, the Accused submits that there are reasonable grounds to suspect that the Prosecution in the present case, Mr. Peter McCloskey, and others members of the Prosecution have been involved in the “suppression of facts and evidence regarding [his] arrest, kidnapping and hand-over to the [...] Tribunal without legal judicial proceedings”;²

NOTING that Rule 77(A) of the Rules of Procedure and Evidence (“Rules”) provides that the Tribunal has inherent power to hold in contempt those who knowingly and willfully interfere with its administration of justice;

NOTING that, pursuant to Rule 77(C)(iii), when a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may initiate proceedings itself;

CONSIDERING that based on the information presented by the Accused in the Submission, there is no reason to believe that Mr. McCloskey or other members of the Prosecution may be in contempt of the Tribunal in failing to produce relevant information and evidence regarding his arrest in Serbia and transfer to the Tribunal;

CONSIDERING that at this stage of the proceedings, the confidential and *ex parte* nature of the Submission should be lifted so that Mr. McCloskey as well as other members of the Prosecution are fully aware of the submissions which have been made and that further, this decision, which is issued as public, can only be properly understood with reference to the Submission itself;

¹ IT/227, 6 May 2004.

HEREBY DISMISSES the Submission and **ORDERS** that the confidential and *ex parte* status of the Submission be lifted.

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



Carmel Agius
Presiding

Dated this twenty-eighth day of July 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

² Submission, paras. 1, 5–16.