



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: 17 April 2009

Original: English

IN TRIAL CHAMBER II

Before: Judge Kimberly Prost, Pre-Trial Judge
Acting Registrar: Mr. John Hocking
Decision of: 17 April 2009

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON TOLIMIR'S MOTION FOR AN EXTENSION OF TIME TO
FILE A RESPONSE TO THE PROSECUTION'S MOTION FOR JUDICIAL
NOTICE OF ADJUDICATED FACTS AND MOTION FOR AN ORDER
FOR VERIFICATION OF TRANSLATION OF THE INDICTMENT**

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 “Motion for Setting a Time-Limit for Submitting a Response to the Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Motion for an Order for a Verification of the Translation of the Indictment”, submitted in BCS on 30 March 2009 and filed in English on 9 April 2009 (“Motion”);

NOTING that in the Motion, the Accused requests the Trial Chamber:

- (i) to grant him 35 days from the date on which he received the translation of the Prosecution’s Pre-Trial Brief in order to respond to the Prosecution’s Motion for Judicial Notice of the Adjudicated Facts (“Adjudicated Facts Motion”)¹ because “views on the large number of facts of which the Prosecution wants to formally take judicial notice largely depend on the views of the Prosecution which are, according to their nature, contained in the pre-trial brief” and the Adjudicated Facts Motion is very extensive and contains 604 factual allegations (“First Request”);² and
- (ii) to order the Registry to verify the translation of the Indictment in line with his previous submissions (“Second Request”);³

NOTING the “Prosecution’s Response to Motion of the Accused for Setting a Time Limit for Submitting a Response to the Prosecution’s Motion for Judicial Notice of Adjudicated Facts and Motion for an Order for a Verification of the Translation of the Indictment”, filed on 14 April 2009 (“Response”);

NOTING that the Prosecution submits:

- (i) while it opposes the First Request because the Accused fails to demonstrate the requisite good cause in accordance with the Rules of Procedure and Evidence (“Rules”), given the

¹ Prosecution’s Motion for Judicial Notice of Adjudicated Facts pursuant to Rule 94(B), with Attached Appendix A, 13 February 2009. The original confidential status was lifted by the Notice of Change of Filing Status Concerning the Prosecution’s Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B), with Attached Appendix A, 25 February 2009.

² Motion, paras. 2–5.

³ *Ibid.*, paras. 6–8.

delay of the translation of the Prosecution's Pre-Trial Brief, an extension of one week beyond the prescribed time limit is appropriate and sufficient;⁴ and

- (ii) it takes no position on the Second Request and defers to the discretion of the Trial Chamber;⁵

NOTING that Rule 127(A) provides that a Trial Chamber, on good cause being shown by motion, may extend or reduce any time prescribed by or under the Rules;

NOTING that the Prosecution's Pre-Trial Brief was filed under seal on 28 November 2008,⁶ and its BCS version was filed on 30 March 2009;

NOTING that the Adjudicated Facts Motion was filed in English on 13 February 2009 and its BCS version was filed on 27 March 2009;

NOTING that the Accused was required to submit his response to the Adjudicated Facts Motion by no later than 14 April 2009;

CONSIDERING that in the Adjudicated Facts Motion the Prosecution seeks judicial notice of a significant number of facts each of which must be considered by the Accused in the context of the case alleged against him;

CONSIDERING that because of the nature of the case, the Prosecution has been granted leave to file an extended Pre-Trial Brief,⁷ a proper review of which is necessary in order for the Accused to prepare his response to the Adjudicated Facts Motion;

CONSIDERING that, in these circumstances, good cause has been shown for granting an extension of time;

CONSIDERING however the need to ensure the expeditious preparation of the case for trial;

CONSIDERING that as concerns the Second Request, it is a matter that falls primarily within the purview of the Registry and thus, at this stage, it is not properly before the Trial Chamber;

PURSUANT TO Rules 54 and 127 of the Rules,

⁴ Response, paras. 2–4.

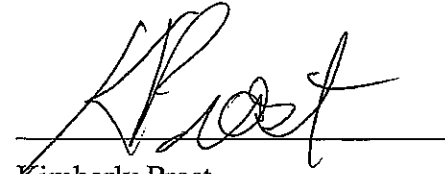
⁵ *Ibid.*, para. 5.

⁶ Prosecution Filing of Pre-Trial Brief Pursuant to Rule 65ter (E), under seal, 28 November 2008.

⁷ Decision on Prosecution's Request Relating to the Length of the Pre-Trial Brief, 17 April 2009.

HEREBY GRANT the Motion in part and **ORDER** that a response to the Adjudicated Facts Motion be filed by no later than 29 April 2009.

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



Kimberly Prost
Pre-Trial Judge

Dated this seventeenth day of April 2009
At The Hague
The Netherlands

[Seal of the Tribunal]