



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-T

Date: 4 March 2010

Original: English

IN TRIAL CHAMBER II

Before: Judge Christoph Flügge, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Prisca Matimba Nyambe

Registrar: Mr. John Hocking

Decision of: 4 March 2010

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON THE ACCUSED'S INFORMATION AND REQUESTS FOR
THE TRIAL CHAMBER**

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”), is seised of “Information and Requests for the Trial Chamber”, submitted on 12 February 2010 and filed in English on 18 February 2010 (“Motion”),¹ and hereby renders its decision thereon.

I. SUBMISSIONS OF THE PARTIES

A. Motion

1. The Accused states in the Motion that he wishes to inform the Trial Chamber of his problems in the pre-trial phase and those that may result if the Registry does not decide on his requests in time, in particular in regard to his legal aid fees during trial and the funding currently available to the Defence Team, which he says “obviously make it impossible to present a defence successfully”.² The Accused draws attention to the large volume of disclosure and filings recently produced by the Prosecution.³ He submits that the Registry has refused to authorise a daily subsistence allowance (“DSA”) for his Legal Adviser on the non-trial days of the trial phase and that his Legal Adviser’s tasks related to the preparation of the trial are so numerous that in other Defence Teams they would be divided among several Team members.⁴ He submits that while the Prosecution has at its disposal a full-time “army of investigators, advisers and three attorneys (senior trial attorneys)”, the Registry only allows for the payment of a legal adviser and a case manager for the Defence.⁵

2. The Accused requests that the Trial Chamber order the Prosecution to give information as soon as possible on (a) the number of persons working on the Tolimir case, their positions and responsibilities, (b) the number of hours per month the entire Prosecution Team, including the investigators, spend on trial preparation for the case and (c) the budgeted funds that are being spent on the case.⁶ In the alternative, he invites the Trial Chamber to consider the situation that the Prosecution would find itself in if its staffing were limited in certain ways.⁷ He also requests that,

¹ The Motion was initially filed on 15 February, but following an Internal Memorandum from CLSS of 18 February 2010 a Revised and Corrected English translation was filed on 18 February 2010.

² Motion, para. 1.

³ *Ibid.*, para. 2.

⁴ *Ibid.*, para. 4.

⁵ *Ibid.*, para. 6.

⁶ *Ibid.*, para. 7.

⁷ *Ibid.*, para. 8.

should the Trial Chamber consider the Registry policies in his case to be fair and lawful and to be consistent with a fair trial, it should publicly state this.⁸

3. The Accused requests that the Trial Chamber freeze all deadlines for "the submission of potential Defence filings", until the Registry decides on his request for an increase the number of billable hours for the pre-trial phase.⁹

B. Response

4. The Prosecution filed "Response to Accused's Information and Requests for the Trial Chamber" on 18 February 2010 ("Response").

5. The Prosecution does not object to the Accused's request for such additional funds and/or resources as may be necessary for the preparation and conduct of the Accused's defence, but submits that it is not in a position to address his specific allegations or requests in this respect.¹⁰

6. The Prosecution does not object to granting the Accused a reasonable period of time to respond to substantial Prosecution motions, but considers that requests for variations of applicable time limits may more appropriately be determined on a case-by-case basis, rather than by a blanket suspension of deadlines, pending the Registry's decision on his request for additional pre-trial funds.¹¹

7. The Prosecution opposes Tolimir's request for information concerning the personnel or structure of its trial team as the request is neither relevant nor helpful to resolve any of the issues raised in the Motion.¹²

C. Registrar's Submission Pursuant to Rule 33

8. On 19 February 2010 the Registrar filed "Registrar's Submission pursuant to Rule 33 regarding Zdravko Tolimir's Information and Requests for the Trial Chamber" ("Registrar's Submission").

9. The Registrar submits that the Trial Chamber is not competent to rule on the issue of the DSA as the appropriate remedy for the Accused in relation to the denial by the Registry of his

⁸ *Ibid.*, para. 9.

⁹ *Ibid.*, para. 11.

¹⁰ Response, para. 2.

¹¹ *Ibid.*, para. 3.

¹² *Ibid.*, para. 4.

request for additional DSA is to seek judicial review by the President under Article 31 of the Directive on the Assignment of Counsel (“Directive”).¹³

10. The Registrar further submits that to the extent that the Accused is requesting that the Trial Chamber should rule on the issue of additional funding at the pre-trial and trial phases of the case, his requests are premature as the Registrar has not yet issued a decision on either matter.¹⁴ The Registrar further submits that the “Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused”, promulgated on 28 September 2007 and revised on 24 July 2009 (“Remuneration Scheme”) expressly provides that the proper procedure for the resolution of any dispute regarding funding is to seek redress pursuant to Article 31 of the Directive and that there is no possibility for an aggrieved party to seek redress from a Trial Chamber in the manner envisaged.¹⁵

11. The Registrar concludes that the Trial Chamber is not competent to review the requests of the Accused with respect to funding¹⁶ and that the Trial Chamber should deny his requests to the extent that they seek the review of funding by the Registry.¹⁷

D. The Accused’s Response to the Registry’s Rule 33 Submission

12. On 24 February 2010, the Accused submitted the “Response to Registrar’s submission of 19 February”, which was filed in English on 25 February 2010 (“Response to Registrar’s Submission”). The Accused submits that the Registrar misinterpreted the Motion and that the Trial Chamber is not being requested to decide upon the requests made to the Registry and the President.¹⁸ The Accused invites the Trial Chamber, if it is satisfied with the fairness of the Registry’s policies regarding the Defence, to state its satisfaction in a public decision.¹⁹ Finally, the Accused asserts that in other respects the Registrar’s Submission merely confirms the facts stated in the Motion.²⁰

II. DISCUSSION

13. The Trial Chamber notes the large volume of disclosure and filings received by the Accused and considers that as he is representing himself this may constitute a burden for him and his Defence Team. However, in view of the variety of filings which it will be or may be incumbent

¹³ Registrar’s Submission, para. 9.

¹⁴ *Ibid.*, para. 10.

¹⁵ *Ibid.*, para. 13.

¹⁶ *Ibid.*, para. 14.

¹⁷ *Ibid.*, para. 15.

¹⁸ Response to Registrar’s Submission, para. 1.

¹⁹ *Ibid.*, para. 2.

upon the Accused to make, the Trial Chamber does not consider that the deadlines for all such filings should be “frozen”, pending the decision of the Registry on funding for the pre-trial phase.²¹ The Trial Chamber agrees with the Prosecution’s submission that the requests for variations of applicable time limits should be considered on a case-by-case basis.²²

14. The Trial Chamber considers that it would be inappropriate to grant the Accused’s request for information on the staffing levels and the allocation of funds to the Prosecution team. The Trial Chamber in *Prosecutor v. Naletilić and Martinović* held that even though it was apparent that the parties did not have identical amounts of time and resources with which to prepare their respective cases, the real issue was not whether they had equal time and facilities but whether either party, and in particular the Accused, was at a disadvantage when presenting its case.²³ The Trial Chamber does not consider that in the circumstances of the instant case the Accused has been disadvantaged in the time and resources available to him with the result that he will not be able adequately to present his case. The information sought by the Accused on the resources of the Prosecution will not be of assistance to him and the Trial Chamber, therefore, does not deem it appropriate that it be provided.

15. The Accused requests a statement from the Trial Chamber in connection with the Registry policies in his case.²⁴ He also asserts that a Motion regarding DSA will soon be filed with the President.²⁵ At this stage the Accused is not requesting that the Trial Chamber review any decisions of the Registrar relating to the funding of his Defence case.²⁶ Furthermore the Trial Chamber notes that:

- (1) The Registrar has informed the Trial Chamber that he has not yet taken a decision on the requests of the Accused regarding the additional funding for the pre-trial and trial phases of his case;²⁷
- (2) The Accused has not submitted to the Trial Chamber the requests regarding funding that he has submitted to the Registrar or any related documentation; and
- (3) Pursuant to the Remuneration Scheme, disputes over the remuneration of persons assisting indigent self-represented Accused are to be settled in accordance with Article 31 of the Directive;²⁸ and

²⁰ *Ibid.*, para. 3.

²¹ Motion, para. 11.

²² Response, para. 3.

²³ *Prosecutor v. Naletilić and Martinović*, Case No.: IT-98-34-PT, Decision on the Accused Naletilić’s Motion to Continue Trial Date, 31 August 2001, para. 7.

²⁴ Motion, para. 9, Response to Registrar’s Submission, para. 2.

²⁵ Motion, para. 5.

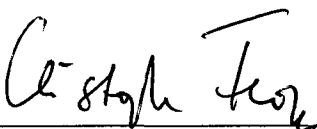
- (4) Article 31(C) of the Directive provides, *inter alia*, that where the dispute involves a sum greater than €4,999, an aggrieved party may file a request for review with the Registrar, who shall refer the matter to the President for his determination and that the President's determination is final and binding on the parties.

16. The Trial Chamber concludes that it is not in a position at the present time to address any decision of the Registry concerning the funding of the Accused's Defence Team that is referred to in the Motion and that it would not be appropriate for the Trial Chamber to make any statement in relation to fairness and lawfulness of the policies of the Registry in this regard. Equally, the Trial Chamber notes that, in accordance with its judicial mission enshrined in the Statute of the Tribunal ("Statute") and the Rules, to ensure the equality of arms and a fair trial, it may review a decision taken by the Registrar where there is no provision in the Rules or the Directive for a review of that decision.²⁹

III. DISPOSITION

17. For these reasons, pursuant to Articles 20 and 21 of the Statute and Rules 54 and 127, the Trial Chamber hereby **DENIES** the Motion.

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



Christoph Flügge
Presiding

Dated this fourth day of March 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

²⁶ See Response to Registrar's Submission, para. 1.

²⁷ Registrar's Submission, para. 10.

²⁸ Registrar's Submission, para. 13; Remuneration Scheme, para. 8.1; *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, 17 December 2009, para. 12.

²⁹ See *Prosecutor v. Milutinović et al.*, Case No. IT-99-37-AR73.2, Decision on Interlocutory Appeal on Motion for Additional Funds, 13 November 2003, para. 19; *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Decision on Accused Motion for Adequate Facilities and Equality of Arms: Legal Associates, 28 January 2009, para. 27; *Prosecutor v. Hadžihasanović et al.*, Case No. IT-01-47-PT, Decision on Prosecution's Motion for Review of the Decision of the Registrar to Assign Mr. Rodney Dixon as Co-counsel to the Accused Kubura, 26 March 2002, para. 21.