

**UNITED
NATIONS**



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: 2 July 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: 2 July 2010

PROSECUTOR

v.

ZDRAVKO TOLIMIR

CONFIDENTIAL

**DECISION ON PROSECUTION
PROPOSAL FOR SITE VISIT**

Office of the Prosecutor
Mr. Peter McCloskey

The Accused
Zdravko Tolimir

TRIAL CHAMBER II (“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 “Proposal for Site Visit”, filed confidentially by the Office of the Prosecutor (“Prosecution”) on 3 May 2010 (“Prosecution Proposal”), in which the Prosecution requests that the Trial Chamber order a site visit to the locations set out in the Appendix to the Prosecution Proposal, either during June 2010 or after the summer recess;¹

NOTING that the Prosecution submits that many Trial Chambers hearing cases before the Tribunal have conducted site visits and that the value of such site visits has been demonstrated by the finding in *Prosecutor v. Brđanin* that the site visit enabled the Trial Chamber to assess better “the terrain, locations, distances and other topographical aspects”;²

NOTING that based on the Prosecution’s prior experience the site visit should take approximately 5-7 days to complete;³

NOTING the “Confidential Defence Submission Pertaining to the Proposal for Site Visit”, filed confidentially by Accused Zdravko Tolimir (“Accused”) on 14 May 2010 (“Defence Submission”) in which the Defence moves that the Trial Chamber order a site visit,⁴ allow Aleksandar Gajić to participate actively in the site visit as the Accused’s legal adviser,⁵ set a date for the site visit and a deadline for the completion of the detailed planning,⁶ and issue relevant instructions on the procedures to be followed by the parties during the site visit;⁷

NOTING the Defence submits that a site visit “is not and must not be” merely a visit to some locations but that its purpose should be to collect relevant evidence⁸ and that a site visit constitutes evidence gathering by a Trial Chamber through direct observation;⁹

NOTING the Defence proposes that certain routes and additional locations should be included in the site visit;¹⁰

¹ Prosecution Proposal, para. 5.

² Prosecution Proposal, para. 3 (citing Case No. IT-99-36-T, *Prosecutor v. Brđanin*, Judgement, 1 September 2004, para. 45).

³ Prosecution Proposal, para. 4.

⁴ Defence Submission, para. 20.

⁵ Defence Submission, paras. 17, 21.

⁶ Defence Submission, para. 22.

⁷ Defence Submission, para. 23.

⁸ Defence Submission, para. 5.

⁹ Defence Submission, para. 16.

NOTING that the Accused is representing himself;

CONSIDERING that the Accused will not be prejudiced if he is represented by Mr. Gajić during the site visit, provided that its purpose is not the collection of evidence;.

CONSIDERING that it is in the interests of justice to conduct a site visit so that the Trial Chamber may familiarise itself with locations related to the crimes alleged in the Indictment;

CONSIDERING that the Trial Chamber will decide on the precise itinerary and planning for the site visit after taking fully into account the proposals of the parties and any relevant security and practical factors;

NOTING that Rule 4 of the Rules of Procedure and Evidence (“Rules”) provides: “A Chamber may exercise its functions at a place other than the seat of the Tribunal”;

CONSIDERING that, pursuant to Rule 4 of the Rules, the President has authorised the Trial Chamber to exercise its function at a place other than the site of the Tribunal, in order to conduct a site visit:¹¹

FOR THE FOREGOING REASONS

PURSUANT to Rules 4 and 54 of the Rules;

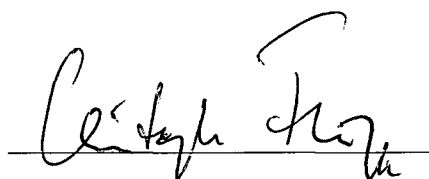
GRANTS the Motion **IN PART** and **ORDERS** that the site visit shall take place for a period of about a week after the summer recess on dates to be determined by the Trial Chamber and that during the site visit the parties:

- (1) shall not seek the admission of evidence;
- (2) may identify for the Judges geographical locations or features of geographical locations which are referred to in the indictment, the pre-trial briefs or other submissions that the parties have made to the Trial Chamber;
- (3) shall have no contact with the media; and
- (4) shall conform to the itinerary to be decided by the Trial Chamber.

¹⁰ Defence Submission, paras. 10–14.

¹¹ Internal Memorandum regarding “Seeking authorization pursuant to Rule 4 in *Prosecutor v Tolimir*”, from President Robinson, sent on 27 May 2010, para. 1

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

A handwritten signature in black ink, appearing to read 'Christoph Flügge', written over a horizontal line.

Judge Christoph Flügge

Presiding Judge

Dated this second day of July 2010
At The Hague
The Netherlands

[Seal of the Tribunal]