



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: 1 September 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

Order/Decision of: 1 September 2010

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON URGENT REGISTRY SUBMISSION PURSUANT TO
RULE 33(B) CONCERNING THE ORDER REGARDING THE NIGHTLY
MONITORING OF THE ACCUSED**

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 “Urgent Registry Submission Pursuant to Rule 33(B) Concerning the Order Regarding the Nightly Monitoring of the Accused” filed publicly with public, confidential, and confidential and *ex parte* annexes by the Deputy Registrar (“Registry”) on 31 August 2010 (“Submission”);

NOTING that the Registry submits that it may be appropriate for the Trial Chamber to order an independent psychiatric evaluation of the Accused prior to the discontinuance of the nightly monitoring, in order to establish that the Accused is able to provide his informed consent;¹

NOTING the Prosecution’s oral submission of 31 August 2010 that it does not see any justification in requiring the Accused to see a psychiatrist for this matter;²

NOTING the persistent refusal of the Accused to accept the medication offered to him at the United Nations Detention Unit (“UNDU”),³ his wish that the nightly checks be discontinued,⁴ and in particular his oral submission of 31 August 2010 expressed also in a statement (“Medical Waiver”) signed by the Accused and his counsel which provides:

“I, Zdravko Tolimir, refuse to be subjected to nightly checks, which deprive me of sleep, as I consider them to be contrary to the basic principles of human rights. I have to date submitted several explicit requests to be excluded from this kind of treatment. In view of the fact that the Trial Chamber made the discontinuation of the nightly checks, which deprive me of sleep, conditional on me giving a statement in the presence of a witness, this is what I am doing now, I hope in front of a sufficient number of witnesses, at a public session.”⁵

RECALLING the “Order Regarding the Nightly Monitoring of the Accused” issued confidentially and *ex parte* on 25 August 2010 (“Order”), in which the Trial Chamber orders that the staff of the UNDU discontinue the nightly half-hourly checks on the Accused provided that the Accused, in the presence of a witness, signs a written statement in which he confirms his refusal to be monitored through nightly checks;⁶

¹ Submission, para. 8.

² T. 4630-4631 (31 August 2010); *see also* T. 246 (25 June 2009).

³ *See* Order Regarding the Nightly Monitoring of the Accused, issued confidentially and *ex parte* on 25 August 2010, para. 8; in particular, fns. 22-24.

⁴ *Ibid.*

⁵ Statement in accordance with the Trial Chamber Decision of 25 August, submitted by the Accused on 31 August 2010 and filed publicly on 1 September 2010; *See also* T. 4631-4632 (31 August 2010).

⁶ Order, Disposition.

RECALLING Recommendation 98/7 of the Committee of Ministers of the Council of Europe which provides:

“In the case of refusal of treatment, the doctor should request a written statement signed by the patient in the presence of a witness. The doctor should give the patient full information as to the likely benefits of medication, possible therapeutic alternatives, and warn him/her about risks associated with his/her refusal.”;⁷

RECALLING that “while the availability of a prison health care service is crucial, freedom of consent to medical treatment is one of the fundamental rights of detained individuals”;⁸

RECALLING that it is the duty of the Trial Chamber and Registry to ensure the well-being of Accused held in the UNDU;⁹

RECALLING that the Accused has been fully informed of the detrimental effects of his refusal of the prescribed medication and the differing opinions of the medical experts concerning the value of his nightly monitoring;¹⁰

FURTHER RECALLING that the Chamber “has no indication” that the Accused who is fully capable of representing himself “lacks the soundness of mind required to give [his] informed consent”;¹¹

CONSIDERING that it is necessary to distinguish the situation at hand from situations in which a detainee has commenced a voluntarily protest fast in that a voluntary protest fast is not the refusal of proposed medical treatment but rather a protest which can ultimately lead to the death of the accused, if maintained to the end;

CONSIDERING that, unlike the situation at hand, a voluntary protest fast by its very nature indicates a self-destructive intent, and moreover, the very act of undertaking a fast compromises an accused’s ability to take responsibility for his or her own well-being, health, and/or life;

CONSIDERING that in the situation at hand, however, the Chamber can see no indication that the Accused has used his refusal to accept the offered medical treatment for any other purpose than to have undisturbed sleep;

⁷ Recommendation No. R. (98) 7 of the Committee of Ministers to Member States Concerning the Ethical and Organisational Aspects of Health Care in Prison, adopted by the Committee of Ministers on 8 April 1998 at the 627th Meeting of the Ministers’ Deputies (“Recommendation 98/7”), para. 60.

⁸ Order, para. 21, referring to The European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment Standards, CPT/Inf/E (2002) 1 – Rev. 2009, paras. 30, 45.

⁹ See Order, para. 18.

¹⁰ Order, para. 27.

¹¹ Order, para. 27; See further paras. 3-5, 10-11, 13.

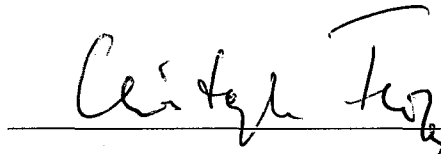
CONSIDERING that the Accused in the presence of a witness has signed a Medical Waiver in which he confirms his refusal to be monitored through nightly checks;¹²

RECALLING that the Registry should offer the instalment of a “panic button” next to the Accused’s bed;¹³

FINDING that Trial Chamber does not deem it appropriate, under the present circumstances, to order an independent psychiatric evaluation of the Accused prior to the discontinuance of the nightly monitoring.

HEREBY ORDERS the staff of the UNDU to discontinue the nightly half-hourly checks on the Accused with immediate effect.

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



Judge Christoph Flügge

Presiding Judge

Dated this first day of September 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

¹² Statement in accordance with the Trial Chamber Decision of 25 August submitted by the Accused on 31 August 2010 and filed publicly on 1 September 2010.

¹³ Order, para. 28.