



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: 27 June 2011

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: 27 June 2011

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON PROSECUTION'S REQUEST FOR ADJOURNMENT OF
SITTINGS FOR THE WEEK OF 27 JUNE 2011**

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 “Prosecution’s Request for Adjournment of Sittings for Week of 27 June 2011”, filed on 24 June 2011 (“Motion”), in which the Prosecution requests that the trial sittings be adjourned for the week of 27 June 2011, when the testimony of Mr. Richard Butler was scheduled to commence, and that the sittings recommence on Monday 4 July 2011;¹

NOTING that on 21 June 2011 the Chamber decided to sit on three days during the week of 27 June 2011 owing to commitments of two of the Judges² and that on 23 June 2011 the Presiding Judge stated that Judge Mindua and Judge Nyambe were able to sit pursuant to Rule 15 *bis* during the same week;³

NOTING that the Prosecution submits that since the Chamber is not able to sit in full composition during the week of 27 June 2011, it is the strong preference of the Prosecution that Mr. Butler’s testimony be postponed, but that Prosecution is not in a position to produce any of the remaining witnesses during the week of 27 June 2011 at such short notice;⁴

NOTING that the Prosecution notes that should the Chamber adjourn the proceedings for the week of 27 June 2011 it will be in a position to withdraw the “Prosecution’s Motion Concerning Scheduling of Prosecution’s Rule 98bis Oral Argument” filed on 27 May 2011 (“98bis Scheduling Motion”) and that it believes that the time savings, efficiencies and other benefits sought in the 98bis Scheduling Motion can be achieved by utilising the week of 27 June 2011 to focus on the next phase of trial;⁵

NOTING that the Prosecution further notes that in approximately sixteen months in trial this is the first request for an adjournment;⁶

FINDING that the reasons given by the Prosecution for not sitting in the week of 27 June are not on their own sufficient to justify the cancellation of the sessions in that week;

NOTING that the Defence states that it has no objection to the Motion;⁷

¹ Motion, paras. 1, 3.
² T. 15732 (21 June 2011).
³ T. 15984 (23 June 2011).
⁴ Motion, paras. 1, 2.
⁵ Motion, para. 4.
⁶ Motion, para. 5.

CONSIDERING that in view of the lack of opposition by the Defence to the Motion it is in the interests of justice not to sit in the week of 27 June 2011;

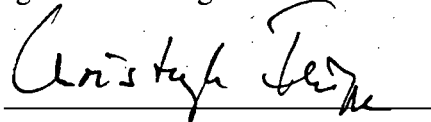
NOTING, however, that the cancellation of court sessions in the instant case is regrettable since the Trial Chamber is able to sit pursuant to Rule 15 *bis* at the times concerned;

PURSUANT TO Rule 54 of the Rules of Procedure and Evidence,

HEREBY GRANTS the Motion by Majority, Judge Nyambe dissenting, and **ORDERS** that:

- (1) the Chamber shall not sit in the week of 27 June and cancels the sessions scheduled in that week; and
- (2) the Chamber shall recommence its sittings on Monday 4 July 2011.

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



Judge Christoph Flügge
Presiding Judge

Dated this 27th day of June 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

⁷ Email communication of 24 June 2011 from the Defence to the Senior Legal Officer. *Cf.* Motion, para. 6.

DISSENTING OPINION OF JUDGE PRISCA MATIMBA NYAMBE

1. I recall at the outset that Judge Mindua and I are available to sit during the week of 27 June 2011 pursuant to Rule 15*bis* of the Rules of Procedure and Evidence (“Rules”), as agreed by the Trial Chamber on 21 June 2011. There is therefore no basis for the Prosecution’s “strong preference” that Mr. Butler’s testimony be postponed on the ground that the Chamber is not able to sit in full composition during the week 27 June 2011.

2. Moreover, Mr. Richard Butler was, as of Friday 24 June 2011, already in The Hague for the purposes of giving his testimony.


3. Additionally I have been informed, that both parties have been extremely busy in the last months and have arrived at a point where they are in need of a break. However, by the Chamber not sitting for three days (Friday, Monday and Tuesday) all parties have been given a break of five days inclusive of the weekend. In my view this is sufficient rest for all concerned.

4. Moreover, Article 20(1) provides that “the Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence”

5. I consider that granting the Motion is without legal foundation within the Rules and will set a bad precedent and that the cancellation of the sittings that have been scheduled will needlessly delay the case and cause unnecessary costs for the Tribunal.

6. For these reasons I would deny the Motion and not cancel the sessions scheduled for the week of 27 June 2011.

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



Judge Prisca Matimba Nyambe

Dated this 27th day of June 2011
At The Hague
The Netherlands

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