



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 June 2012

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: 1 June 2012

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON ACCUSED MOTION FOR RECONSIDERATION
OF THE DECISION OF 14 MAY 2012**

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”);

NOTING the “Scheduling Order on Final Trial Briefs and Closing Arguments” issued on 14 February 2012, in which the Chamber ordered the Final Trial Briefs to be submitted no later than Thursday, 31 May 2012;

NOTING the “Consolidated Decision on the Prosecution’s Bar Table Motions and the Accused’s Motion for Extension of Time” issued on 14 May 2012 (“Decision”), in which the Chamber granted in part the Accused’s request for an extension of the deadline for his Final Trial Brief to be submitted no later than Monday, 11 June 2012;¹ therein, the Chamber was mindful of the fact that the Accused spent time preparing the response to the Prosecution’s bar table motion of 30 March 2012 and “prepar[ed] for the contingency that the Proposed Exhibits might be admitted”;² the Chamber also “[took] into account the fact that none of the Proposed Exhibits [were] admitted into evidence” therefore “an extension until 20 June 2012 would be disproportionate”;³

BEING SEISED OF the “Defence Motion for Review of the Trial Chamber’s Decision of 14 May 2012”, submitted by the Accused Zdravo Tolimir (“Accused”) in BCS on 29 May 2012 and filed in English on 30 May 2012 (“Motion”), in which the Accused requests that the Chamber reconsider its partial grant of an extension of time for the submission of the Final Trial Briefs;

NOTING that the Accused submits that the Chamber erred when applying the “criterion of proportionality”,⁴ stating that the Accused “had to spent a significant amount of time on analysing [the documents proffered in the Prosecution’s bar table motion of 30 March 2012] and [take] a position on their possible influence on the final outcome of the proceedings, inspecting each document individually” and that “the fact that the Chamber rejected the Prosecution’s bar table motions cannot compensate [him] for the time [he] spent on analysing these documents”;⁵

NOTING the “Prosecution’s Response to Defence Motion for Review of the Trial Chamber’s Decision of 14 May 2012” filed on 31 May 2012 (“Response”), in which the Prosecution submits that it does not oppose the Accused’s request for an extension;⁶

¹ The Chamber also ordered that the extension of time shall apply equally to both Parties. Decision, p. 15.

² *Ibid.*, para. 48.

³ *Ibid.*

⁴ Motion, paras. 4, 7.

⁵ *Ibid.*, paras. 5–6.

⁶ Response, p. 1.

NOTING that the standard for reconsideration is such that a Chamber has “inherent discretionary power to reconsider a previous decision in exceptional cases if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice”;⁷

CONSIDERING that in his Motion, the Accused presents the same arguments as previously considered in the Chamber’s Decision of 14 May 2012;

CONSIDERING that, as stated above, in the Decision the Chamber carefully assessed the request for an extension of time based on the Accused’s need to review the proffered documents, including two which were of a substantial nature;

CONSIDERING that none of the documents were admitted from the bar table, so that review of the documents was necessary only for the purposes of preparing a response;

CONSIDERING that under Article 20 (1) of the Statute of the Tribunal, the Chamber has a duty to ensure fair and expeditious proceedings to preserve the rights of the Accused;

CONSIDERING that, despite the Accused’s assurance that a further extension of time “would not affect the schedule for the oral arguments”,⁸ the requested extension would truncate the period of time allotted for the Chamber and Parties to review the Final Trial Briefs in anticipation of the closing arguments scheduled for 21 and 22 August 2012; as such, the extension sought would affect the scheduled presentation of the oral arguments and ultimately the finalisation of the trial and such impact on the scheduling is contrary to expeditious proceedings and the rights of the Accused;

CONSIDERING that, therefore, the Accused has not demonstrated a clear error of reasoning in the Decision or that a further extension of time is required to prevent an injustice;

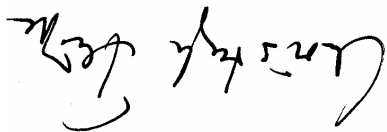
⁷ See, e.g., Decision on Prosecution’s Request for Reconsideration of the Admission of Written Evidence of Witness No. 39 Pursuant to Rule 92 *bis*, 4 November 2011, para. 17; Decision on Second Preliminary Motion on the Indictment Pursuant to Rule 72 of the Rules, 1 October 2008, para. 33; *Prosecutor v. Tolimir*, Case No. IT-05-88/2-AR73.1, Decision on Zdravko Tolimir’s Request for Reconsideration of Appeals Chamber’s Decision of 28 March 2008, 18 June 2008, para. 8.

⁸ Motion, para. 10.

Dated this first day of June 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

Judge Christoph Függe
Presiding Judge



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

HEREBY DENIES the Motion.