IT-05-88/2-PT
D 2997 - D 2994
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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-PT

Date: 24 April 2009

Original: English

IN TRIAL CHAMBER II

Before: **Judge Kimberly Prost, Pre-Trial Judge**

Acting Registrar: **Mr. John Hocking**

Decision of: **24 April 2009**

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

DECISION ON TOLIMIR'S REQUESTS REGARDING SETTING TIME LIMITS FOR FILING RESPONSES TO PROSECUTION MOTIONS UNDER RULES 92 *BIS* AND 94 *BIS*

Office of the Prosecutor
Mr. Peter McCloskey

The Accused
Zdravko Tolimir

I, KIMBERLY PROST, Judge 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 Requests by Zdravko Tolimir Regarding Setting Time Limits for Filing Responses to Prosecution Motions under Rules 92 *bis* and 94 *bis*", submitted by the Accused Zdravko Tolimir in BCS on 16 April 2009 and filed in English on 17 April 2009 ("Motion");

NOTING that in the Motion the Accused requests the Trial Chamber:

(1) To grant until 29 May 2009 for the filing of a response to the "Prosecution's Notice of Disclosure of Expert Witness Reports Pursuant to Rule 94 *bis* and Attached Appendices A and B", filed on 13 March 2009 ("Prosecution's 94 *bis* Notice") on the grounds that the material disclosed therein is extensive and he also needs to respond to the "Prosecution's Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B), with Attached Appendix A", filed on 13 February 2009 ("Prosecution's Adjudicated Facts Motion" and "First request", respectively);[1] and

(2) To temporarily refrain from setting a time limit for the filing of a response to the "Prosecution's Motion for Admission of Written Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis* and Attached Appendix A", filed confidentially on 13 February 2009 ("Prosecution's 92 *bis* Motion") due to the volume of the material, and to set a time limit for filing a response after decisions on his motions for access to confidential material in *Krstić*, *Blagojević* and *Jokić*, and *Popović* cases, filed on 17 April 2009,[2] have been issued ("Second request");[3]

NOTING that the Accused also seeks support for his legal adviser's forthcoming application to the Registry, in which his legal adviser will request for compensation for up to 200 hours per month;[4]

NOTING the "Prosecution's Response to the Accused Tolimir's Requests Regarding Setting Time Limits for Filing Responses to Prosecution Motions Under Rules 92 *bis* and 94 *bis*", filed on 21 April 2009 ("Response");

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[1] Motion, para. 4.

[2] Very Urgent Zdravko Tolimir's Motion for Access to Confidential Evidence, Submissions and Decisions in the Case *The Prosecutor v. Radislav Krstić*, 15 April 2009 (BCS version) and 17 April 2009 (English version); Zdravko Tolimir's Motion for Access to Confidential Evidence, Submissions and Decisions in the Case *The Prosecutor v. Blagojević and Jokić*, 15 April 2009 (BCS version) and 17 April 2009 (English version); Zdravko Tolimir's Motion for Access to Confidential Evidence, Submissions and Decisions in the Case *The Prosecutor v. Popović et al*, 15 April 2009 (BCS version) and 17 April 2009 (English version).

NOTING that in the Response the Prosecution submits that:

(1) It does not oppose the First request;[5]

(2) As regards the Second request, it opposes the Accused's request for the Trial Chamber to refrain from setting a time limit because the Prosecution's 92 *bis* Motion provides the Accused with all the statements, transcripts and exhibits drawn from other cases and the issue of the Accused's access to further confidential material has no real bearing on the matters at issue in the Prosecution 92 *bis* Motion; but a reasonable extension of time for the filing of a response may be justified;[6] and

(3) It takes no position as to the Accused's request concerning the compensation of his legal adviser;[7]

NOTING that Rule 127(A)(i) of the Rules of Procedure and Evidence ("Rules") provides that a Trial Chamber, on good cause being shown by motion, may extend or reduce any time prescribed by or under the Rules;

NOTING that Rule 94 *bis*(B) provides that within thirty days of disclosure of the statement and/or report of the expert witness, or such other time prescribed by the Trial Chamber or pre-trial Judge, the opposing party shall file a notice indicating whether: (i) it accepts the expert witness statement and/or report; or (ii) it wishes to cross-examine the expert witness; and (iii) it challenges the qualifications of the witness as an expert or the relevance of all or parts of the statement and/or report and, if so, which parts;

NOTING that the BCS version of the Prosecution's 94 *bis* Notice was filed on 14 April 2009;

NOTING that the BCS version of the Prosecution's 92 *bis* Motion was filed on 1 April 2009, based on which the Accused was required to file a response by no later than 15 April 2009;

CONSIDERING that the Accused was granted an extension of time to respond to the Prosecution's Adjudicated Facts Motion on 17 April 2009;[8]

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[3] Motion, para. 5.
[4] *Ibid.*, paras. 6–7.
[5] Response, para. 2.
[6] *Ibid.*, para. 3.
[7] *Ibid.*, para. 2.
[8] Decision on Tolimir's Motion for an Extension of Time to File a Response to the Prosecution's Motion for Judicial Notice of Adjudicated Facts and Motion for an Order for Verification of Translation of the Indictment, 17 April 2009.

CONSIDERING the volume of the expert reports disclosed by the Prosecution's 94 *bis* Notice and the significant amount of witness statements and transcripts submitted in the Prosecution's 92 *bis* Motion;

CONSIDERING however that the Accused has failed to demonstrate why he is unable to make appropriate determinations on the Prosecution's 92 *bis* Motion and prepare his response on the basis of the existing material in his possession;

CONSIDERING that good cause has been shown for granting an extension of time;

CONSIDERING that the issue of compensation for the Accused's legal adviser is a matter before the Registry and as such, no intervention is required at this stage;

PURSUANT TO Rules 94 *bis*(B) and 127(A)(i) of the Rules,

HEREBY GRANT the Motion in part and **ORDER** that:

(1) A response to the Prosecution's 94 *bis* Notice be filed by no later than 25 May 2009; and

(2) A response to the Prosecution's 92 *bis* Motion be filed by no later than 8 June 2009.

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

Kimberly Prost
Pre-Trial Judge

Dated this twenty-fourth day of April 2009
At The Hague
The Netherlands

[Seal of the Tribunal]