



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: 27 August 2009
Original: English

IN TRIAL CHAMBER II

Before: Judge Kimberly Prost, Pre-Trial Judge
Registrar: Mr. John Hocking
Decision of: 27 August 2009

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON TOLIMIR'S MOTION TO UNSEAL THE
PROSECUTION'S PRE-TRIAL BRIEF**

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 “Motion by Zdravko Tolimir to Unseal the Prosecution’s Pre-Trial Brief”, submitted in BCS on 6 August 2009 and filed in English on 11 August 2009 (“Motion”);

NOTING that the Prosecution filed its Pre-Trial Brief under seal on 28 November 2008 (“Prosecution’s Pre-Trial Brief”);¹

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

- (i) to order the Prosecution to provide him with a public version of its Pre-trial Brief, in accordance with its statement therein that a public version would be provided “as soon as possible”;² or
- (ii) to issue a decision unsealing the Prosecution’s Pre-Trial Brief, since, in his view, “the identity of the witnesses is not mentioned in the Pre-Trial Brief”, nor does any “information [...] given in the Prosecution’s pre-trial brief [...] indicate the identity of any of the witnesses to whom protective measures have been extended”;³

NOTING the “Prosecution’s Response to the Motion by Zdravko Tolimir to Unseal the Prosecution’s Pre-Trial Brief”, filed on 13 August 2009;

NOTING that the Prosecution objects to the request of the Accused because its Pre-Trial Brief includes references to testimony given in closed session which would identify protected witnesses if made public without redactions;⁴

NOTING that, in its submission, the Prosecution asserts that it will file a public redacted version of its Pre-Trial Brief by 30 September 2009;⁵

CONSIDERING that, as noted by the Prosecution, the publication of the references to closed-session testimony contained in the Prosecution’s Pre-Trial Brief would identify protected witnesses;

¹ Prosecution Filing of Pre-Trial Brief Pursuant to Rule 65 *ter* (E), under seal, 28 November 2008.

² Motion, para. 2.

³ *Ibid.*, para. 3.

⁴ Response, para. 1.

⁵ *Ibid.*, para. 2.

CONSIDERING that the Prosecution has indicated that it will file a public redacted version of the Prosecution's Pre-Trial Brief by 30 September 2009;

HEREBY GRANT the motion in part and **ORDER** that a public redacted version of the Prosecution's Pre-Trial Brief be filed by 30 September 2009.

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



Kimberly Prost
Pre-Trial Judge

Dated this twenty seventh day of August 2009
At The Hague
The Netherlands

[Seal of the Tribunal]