



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: 20 September 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

Order of: 20 September 2011

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**ORDER REGARDING THE SCHEDULING OF THE DEFENCE CASE
AND RELATED MATTERS**

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 that Witness 208 is the only remaining *viva voce* witness in the Prosecution case-in-chief;¹

NOTING that on 13 September 2011 the Prosecution indicated that it would be filing a Motion seeking the admission of various intercepts² and that there were certain other matters regarding Exhibits that may require decisions³ (collectively “matters raised on 13 September 2011”);

NOTING that on 15 September 2011 the Prosecution’s request for admission of Witness 209’s statement pursuant to Rule 92 *quater* of the Rules of Procedure and Evidence (“Rules”) was denied without prejudice;⁴

NOTING that there will be no oral submissions pursuant to Rule 98 *bis*;⁵

NOTING that the Defence has submitted that it will be in a position to present the Defence case after the winter recess⁶ and that it will need “about a month” to present its case, if the Chamber continues to sit on four days each week;⁷

NOTING that the Defence explained their request to present the Defence case after the winter recess on the basis of the amount of material that they had to review, including in particular material that has recently been disclosed and the testimony of Richard Butler, the work that their experts need to do, the need for translations for the Accused and the size of the Defence Team;⁸

NOTING that the Defence has indicated that the efficient use of time during the Defence case will depend on its preparation time being adequate;⁹

¹ T. 17913 (13 September 2011).

² T. 17919–17920 (13 September 2011).

³ T. 17905–17910, 17920–17922 (13 September 2011).

⁴ Decision on Prosecution’s Motion for Leave to Add [Witness No. 209] to its Witness List and to admit his Evidence pursuant to Rule 92 *quater*, confidential, 15 September 2011, para. 21.

⁵ T. 17335 (29 August 2011).

⁶ T. 17788 (8 September 2011).

⁷ T. 17788–17789 (8 September 2011).

⁸ T. 17788–17790 (8 September 2011).

⁹ T. 17889, 17791–17792 (8 September 2011). At T. 17789 (8 September 2011) the following exchange took place between the Presiding Judge and the Accused’s Legal Adviser:

JUDGE FLUEGGE: I take it, Mr. Gajic, that the whole Defence case will last one month. Is that your rough estimation for the moment?

MR. GAJIC: [Interpretation] Yes, Mr. President. Unless we are not given enough time for preparations, a month.

NOTING that the Prosecution acknowledges that the Accused is representing himself and that there is a large quantity of material and it has stated that it would leave the question of the timing of Defence case to the Chamber;¹⁰

NOTING that the documentation to be submitted by the Defence in preparation for the Defence case may take a significant amount of time to be translated into English;

NOTING that on 13 September 2011 the Trial Chamber presented the envisioned timings related to the Defence case¹¹ and that the parties indicated their satisfaction with these timings;¹²

NOTING that the trial was adjourned until further notice on 13 September 2011;¹³

NOTING that the Trial Chamber intends to continue to sit on four days each week during the Defence case;

NOTING the “Revised Order concerning Guidelines on the Presentation of Evidence and Conduct of the Parties during Trial”, issued on 4 February 2011;

CONSIDERING that the Accused is representing himself and requires additional time because he does not speak English and that the documentation to be reviewed in the preparation of the Defence case can be expected to be voluminous;

CONSIDERING that the conduct of the trial should as far as possible be planned in advance so as to ensure that it is conducted fairly and expeditiously;

HEREBY ORDERS pursuant to Articles 20 and 21 of the Statute of the Tribunal and Rules 54, 65 *bis*, 65 *ter*(G), 73 *ter*, 84, 92 *bis*, 92 *ter*, 92 *quater* and 94 *bis*:

At T. 17791–17792 (8 September 2011), the Accused’s Legal Adviser said:

Obviously, if things are well prepared, that can be done and we will be able to present all of our Defence case within the scope of one month.

One more thing we have had in mind: When bringing our witnesses in, we don't want to bring those witnesses who will repeat things that already are on file. We want to provide the Trial Chamber with some new information which may be of a very high relevance for this Trial Chamber's decision.

On my internal list, I already have somebody who may be called to provide an adequate testimony, but first I have to check whether this will indeed be of help to the Trial Chamber or whether this will be a repetition of things that are already known. We don't want to go over the same grounds again. We would like to provide the Trial Chamber with new things, something that they have not heard before. We want our experts to provide proper and good analysis. Unfortunately, all that takes time, and we believe that the time-span which brings us to the end of the winter recess is an adequate period of time.

¹⁰ T. 17789 (8 September 2011).

¹¹ T. 17913–17914 (13 September 2011).

¹² T. 17914 (13 September 2011).

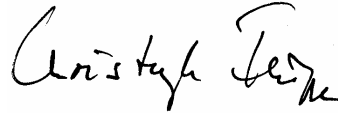
¹³ T. 17917 (13 September 2011).

- (1) By no later than 27 September 2011 the Prosecution shall file all Motions on the matters raised on 13 September 2011 in addition to a possible Motion in respect of Witness 209;
- (2) On 27 September 2011 the Prosecution case shall be considered closed save for the testimony of Witness 208, if it is heard after this day, and any Decisions on Motions relating to the evidence in the Prosecution case that are still pending on that day;
- (3) On or before 1 December 2011 the Accused shall file a list of witnesses he intends to call with:
 - i. the name or pseudonym of each witness;
 - ii. a summary of the facts on which each witness will testify;
 - iii. the points in the Indictment as to which each witness will testify;
 - iv. the total number of witnesses and the number of witnesses who will testify on each count;
 - v. an indication of whether the witness will testify in person or pursuant to Rule 92 *bis* or Rule 92 *quater* by way of written statement or use of a transcript of testimony from other proceedings before the Tribunal; and
 - vi. the estimated length of time required for each witness and the total time estimated for presentation of the Defence case;
- (4) On or before 1 December 2011 the Accused shall file a list of exhibits he intends to offer in his case, stating where possible whether the Prosecutor has any objection as to authenticity, and shall serve on the Prosecutor copies of the exhibits so listed;
- (5) On or before 1 December 2011 the Accused shall file a list of the expert witnesses he intends to call during his Defence case and serve upon the Prosecution and the Chamber copies of the *curricula vitae* and reports of the expert witnesses he intends to call during his Defence case;
- (6) If the Accused wishes to seek the admission of the evidence of any witness pursuant to Rules 92 *bis*, 92 *ter*, or 92 *quater*, he shall file a Motion or Motions to this effect on or before 1 December 2011;

- (7) A Status Conference shall be held on 5 December 2011 to review the progress that has been made in the preparation for the Defence case;
- (8) The Pre-Defence Conference shall be held on 9 January 2012;
- (9) The Accused may make his opening statement on 10 January 2012; and
- (10) The first Defence witness shall testify on 11 January 2012 or, if there is no opening statement, on 10 January 2012;

AND INVITES the Accused to serve upon the Prosecution and the Chamber copies of the *curricula vitae* and reports of the expert witnesses he intends to call during his Defence case as far in advance of 1 December 2011 as possible.

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



Judge Christoph Flügge
Presiding Judge

Dated this twentieth day of September 2011
At The Hague
The Netherlands

[Seal of the Tribunal]