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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-AR73.1

Date: 18 June 2008

Original: English

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mehmet Güney
Judge Liu Daqun
Judge Andrésia Vaz
Judge Theodor Meron

Registrar: **Mr. Hans Holthuis**

Decision of: **18 June 2008**

THE PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

DECISION ON ZDRAVKO TOLIMIR'S REQUEST FOR RECONSIDERATION OF APPEALS CHAMBER'S DECISION OF 28 MARCH 2008

Office of the Prosecutor

Mr. Peter McCloskey

The Accused

Mr. Zdravko Tolimir

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1. The Appeals 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 ("Appeals Chamber" and "Tribunal", respectively) is seized of a motion for reconsideration by Zdravko Tolimir ("Applicant")[1] of the Appeals Chamber's "Decision on Interlocutory Appeal Against Oral Decision of the Pre-Trial Judge of 11 December 2007" issued on 28 March 2008 ("Impugned Decision"), as well as of a supplement to the Motion.[2]

I. BACKGROUND

2. On 28 March 2008, the Appeals Chamber issued its Impugned Decision, dismissing a motion by the Applicant against the Pre-Trial Judge's Oral Decision of 11 December 2007. The Applicant had submitted that the Pre-Trial Judge erred in her application of the law and committed an error of fact occasioning a miscarriage of justice by failing to allow him to communicate with the Tribunal in Serbian, his mother tongue, written in Cyrillic script. The Appeals Chamber considered that the issue on appeal was limited to the question of whether the delivery to the Applicant, who is representing himself, of materials in B/C/S[3] (in Latin script) satisfied the guarantees provided by Article 21(4)(a) of the Statute and Rule 66(A) of the Rules of Procedure and Evidence ("Rules") in this case.[4]

3. More specifically, the Appeals Chamber found that the Pre-Trial Judge had not erred in law when it considered that the rights enshrined in Article 21 of the Statute create an obligation to provide relevant material in a language which the accused understands sufficiently in order to allow the effective exercise of his right to conduct his defence—as opposed to his native language.[5]

4. In relation to the circumstances of the case, the Appeals Chamber ruled that the finding that the Applicant was able to read the Latin script, but refused to read documents in this script by choice, did not amount to an abuse of discretion, taking into account the indicia relied upon by the Pre-Trial Judge in her Oral Decision of 11 December 2007.[6] The Appeals Chamber added that, since 3 January 2008 and despite his continued choice to defend himself, the Applicant had been

[1] Accused's Motion to the President of the Tribunal and Members of the Appeals Chamber to Exercise Their Discretionary Powers and Reconsider Their Decision on the Appeal Against the Interlocutory Appeal Against the Oral Decision of the Pre-Appeal Judge of 11 December 2007, submitted on 16 April 2008 (English translation filed on 18 April 2008) ("Motion").
[2] Supplement to the Accused Zdravko Tolimir's Motion to the President of the Tribunal and Members of the Appeals Chamber to Review Their Decision on the Appeal Against the Decision of the Pre-Trial Judge of 11 December 2007, submitted on 30 May 2008 (English translation filed on 4 June 2008) ("Supplement to the Motion").
[3] On the use of the expression "B/C/S" by the Tribunal, see Impugned Decision, fn. 32.
[4] Impugned Decision, para. 14.
[5] Impugned Decision, para. 15.
[6] Impugned Decision, paras 17-23.

granted two legal assistants remunerated by the Tribunal, who were therefore able to support him in all matters related to case preparation.[7]

II. ARGUMENTS OF THE PARTIES

5. The Applicant first filed his Motion before the "President", "all members of the Appeals Chamber", as well as "Pre-Trial Chamber II".[8] He writes that, since he had not been able to obtain the content of the Impugned Decision in "standard Serbian", the only language he allegedly understands,[9] he is left to presume that his appeal had been rejected.[10] The Applicant in particular refers to an alleged error by the Pre-Trial Judge in her Decision rendered on 11 December 2007.[11] On the basis of such speculations, the Applicant requests the President and the Appeals Chamber to "exercise their discretionary powers and reconsider their decision and the oral decision of the Pre-trial Judge", ensure that all filings in the case are sent to him in Serbian, and prevent a violation of Rules 66, 67, 68 and 68 *bis* of the Rules as well as of Article 20 and 21 of the Statute.[12] Finally, the Applicant submits that the problem of disclosure of material and court documents to him in his own standard Serbian is merely of a technical nature, since software exists which can translate a document written in Latin script into Cyrillic.[13]

6. In his Supplement to the Motion, the Applicant reiterates that Rule 3 of the Rules allows an accused to use his or her own language and that, therefore, his right to use Serbian with Cyrillic script is explicitly envisaged by the Tribunal and is not a matter of discretion by the Trial Chamber.[14] Thus, the Applicant argues, since B/C/S is not his language, its use cannot be forced upon him.[15] The Applicant adds that the right of a self-represented accused to use one language encompasses the right to receive relevant material, such as documents and evidence, in that language.[16]

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[7] Impugned Decision, para. 24.
[8] Motion, cover page.
[9] Motion, para. 1.
[10] Motion, para. 2. See, in particular, Motion, paras 4, 5, 6, 8, 9, 11, which all begin with the clause "The Appeals Chamber probably did not..." signalling that the Applicant does not refer to any actual finding, but only to his conjectures in that respect.
[11] Motion, para. 7. This issue was dealt with at length in the Impugned Decision, paras 17-23.
[12] Motion, paras 2 and 1 at p. 6. The Appeals Chamber notes that the English version of the Motion indicates "Rule 86 *bis*", but the original actually points to Rule 68 *bis*.
[13] Motion, para. 15. See also Supplement to Motion, para. 9.
[14] Supplement to the Motion, paras 2-3 and 6.
[15] Supplement to the Motion, para. 7.
[16] Supplement to the Motion, paras 4 and 8.

7. On 16 June 2008, the Prosecution filed a response, arguing that the Applicant has failed to meet the threshold for reconsideration and is merely repeating arguments made before.[17]

III. STANDARD OF REVIEW

8. According to the jurisprudence of the Tribunal, 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.[18]

IV. DISCUSSION

9. At the outset, the Appeals Chamber notes that, despite the fact that the Supplement to the Motion appears to request a "review" of the decision, the Application clearly refers to reconsideration of the Impugned Decision due to an error of reasoning. The Appeals Chamber therefore will not discuss further whether the Motion and the Supplement to the Motion meet the threshold for a request for review under Rule 119 of the Rules.

10. As far as the request for reconsideration is concerned, the Appeals Chamber finds that the Applicant fails to identify precisely the findings of the Appeals Chamber in the Impugned Decision which warrant reconsideration. Rather, the Applicant speculates on what the reasons of the Appeals Chamber for rejecting his Appeal may be and argues that those reasons are erroneous. The Applicant fails to address specifically the Appeals Chamber's findings in the Impugned Decision and thus articulates no basis for reconsideration.

11. The Applicant's only substantial argument appears to be that, when an accused exercises his right to represent himself, all relevant material must be submitted to him in his own language on the basis of Rule 3 of the Rules.[19] This allegation belies a fundamental misunderstanding of the Impugned Decision and of the principles it espouses. First, the Appeals Chamber's ruling did not affect the rights of the Applicant himself to use the language he considers his own, pursuant to Rule 3 of the Rules; the very circumstance that the present Motion (written in Cyrillic) was duly considered, if anything, demonstrates this. The Appeals Chamber however reiterates that the right to receive relevant material in a language an accused understands does not automatically translate into a right for an accused, regardless of his or her background, education, experience, to come

[17] Prosecution's Response to Tolimir's Request for the Appeals Chamber to Reconsider Its28 March 2008 Decision, 16 June 2008.
[18] See *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, p. 2; *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, paras 203-204, and references therein; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motion for Leave to Present Additional Evidence Pursuant to Rule 15, 5 May 2006, para. 8.
[19] Supplement to the Motion, paras 3-8. See also Motion, paras 8 and 11.

before the Tribunal and demand the production of documents in any language or script that he or she chooses.[20] Second, the Appeals Chamber concluded that the Applicant had not shown any abuse of discretion in the Pre-Trial Judges' determination that B/C/S is a language he understands for the purpose of receiving disclosure and other material from the Tribunal's organs. Third, the Appeals Chamber noted in the Impugned Decision that, as of 3 January 2008, the Applicant was granted a legal adviser and a case manager remunerated by the Tribunal, who can support him in all matters related to the preparation of his case for trial, including clarifications on translation issues.

12. In light of the above, the Appeals Chamber finds that the Applicant has therefore not shown any clear error in the reasoning of the Impugned Decision or the necessity to reconsider it in order to prevent an injustice.

V. DISPOSITION

On the basis of the foregoing, the Application is hereby **DISMISSED**.

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

Done this 18th day of June 2008,
At The Hague,
The Netherlands.

Judge Fausto Pocar
Presiding Judge

[Seal of the Tribunal]

[20] Impugned Decision, para. 15. Thus, for example, Rule 66(A) of the Rules prescribes disclosure "in a language which the accused understands".