

**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: 19 January 2010

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:** 19 January 2010

**PROSECUTOR**

v.

**ZDRAVKO TOLIMIR**

**PUBLIC**

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**DECISION ON MOTION FOR CERTIFICATION TO APPEAL DECISION  
ON THE ACCUSED'S PRE-TRIAL BRIEF REQUESTS**

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**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”);

**BEING SEISED OF** the “Request to Appeal Part of the Pre-Trial Chamber’s Decision on the Requests Contained in the Accused’s Pre-Trial Brief”, submitted by the Accused Zdravko Tolimir (“Accused”) on 7 December 2009 and filed publicly in the English version on 9 December 2009 (“Motion”), in which the Accused seeks certification to appeal the relevant part of the “Decision on the Requests Contained in the Accused’s Pre-Trial Brief”, filed on 25 November 2009 (“Decision”);

**NOTING** “Zdravko Tolimir’s Submission with a Pre-Trial Brief Pursuant to Rule 65ter (F) and Notification of the Defence of Alibi in Respect of Some Charges” (“Accused’s Pre-Trial Brief”), dated 30 September 2009 and filed publicly in the English version on 28 October 2009, in which the Accused makes requests for orders to the Prosecution to file a revised Pre-Trial Brief or amend the Indictment;<sup>1</sup>

**NOTING** that in the Decision, except for the request to exceed the word limit, the requests of the Accused were not considered on the grounds that the other requests were “entirely outside the framework of the Rules of Procedure and Evidence”;<sup>2</sup>

**NOTING** that in the Motion the Accused seeks certification to appeal the part of the Decision concerning the Accused’s other requests on the following grounds:

- (1) granting the requests made in the Accused’s Pre-Trial Brief would assist in the conduct of the trial and adequately inform the Accused of the charges brought against him and the Prosecution’s support of these charges;<sup>3</sup>
- (2) the Appeals Chamber’s decision would significantly affect the fair and expeditious conduct of the proceedings by clarifying the charges, organizing the presentation of evidence and determining the relevance of exhibits, thereby ensuring that the trial is conducted in a just manner while allowing the accused to exercise his basic rights under Article 21(4)(a) of the Statute of the Tribunal;<sup>4</sup>

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<sup>1</sup> Accused’s Pre-Trial Brief, paras. 23, 26, 264 and 265.

<sup>2</sup> Decision, p. 1.

<sup>3</sup> Motion, para. 4.

<sup>4</sup> *Ibid.*, para. 6.

- (3) an immediate resolution by the Appeals Chamber is necessary in light of the imminent start of the trial and the nature of what is at issue.<sup>5</sup>

**NOTING** the “Prosecution’s Consolidated Response to Two Requests for Certification”, filed confidentially on 15 December 2008 (“Response”), in which the Prosecution opposes the Motion, arguing that the Accused’s claims fail to satisfy the test for certification under Rule 73(B) of the Rules of Procedure and Evidence (“Rules”) on the following grounds:

- (1) the Decision does not involve an issue that would have any impact on the conduct of the proceedings or the outcome of the trial;<sup>6</sup>
- (2) the Motion contains no identifiable issue for the Appeals Chamber to resolve so as to materially advance the proceedings;<sup>7</sup>
- (3) the Decision does not involve any issue regarding the rights of the Accused;<sup>8</sup>

**NOTING** “Zdravko Tolimir’s Request for Leave to File a Reply and a Reply to the Prosecution’s Consolidated Response to Two Requests for Certification”, dated 15 December 2009 and filed publicly in the English version on 18 December 2009 (“Reply”), in which the Accused seeks leave to file a reply to the Response, reiterates the claims made in his Motion and states that the Prosecution did not consider the relevant arguments in its Response;

**NOTING** that Rule 73(B) provides that “[d]ecisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings”;

**NOTING** that certification is precluded unless the Trial Chamber finds that the conditions for certification are satisfied; that even where they are satisfied, certification remains in the discretion of the Trial Chamber;<sup>9</sup> and that a request for certification is not concerned with whether the decision was correctly reasoned or not;<sup>10</sup>

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<sup>5</sup> *Ibid.*

<sup>6</sup> Response, para 5.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Prosecutor v. Strugar*, Case No. IT-01-42-T, Decision on Defence Motion for Certification, 17 June 2004, para. 2.

<sup>10</sup> *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motion for Certification of Trial Chamber Decision on Prosecution Motion for Voir Dire Proceeding, 20 June 2005, para. 4.

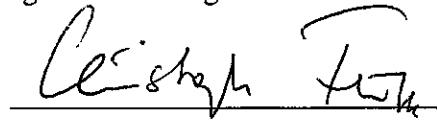
**CONSIDERING** that the Accused does not show that the Decision relates to the criteria for certification as set forth in Rule 73(B);

**CONSIDERING** that the Decision does not involve any issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings;

**PURSUANT TO** Rules 73(B) and 126 *bis* of the Rules;

**HEREBY GRANTS** the Accused leave to file the Reply and **DENIES** the Motion.

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



Christoph Flügge

Presiding Judge

Dated this nineteenth day of January 2010  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**