

**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-A
Date: 7 March 2013
Original: English

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andréia Vaz
Judge Khalida Rachid Khan

Registrar: Mr. John Hocking

Decision of: 7 March 2013

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ**

PUBLIC

**DECISION TERMINATING APPELLATE PROCEEDINGS IN
RELATION TO MILAN GVERO**

The Office of the Prosecutor:

Mr. Peter Kremer QC
Ms. Helen Brady

Counsel for the Accused:

Mr. Zoran Živanović and Ms. Mira Tapušević for Mr. Vujadin Popović
Mr. John Ostojčić for Mr. Ljubiša Beara
Ms. Jelena Nikolić and Mr. Stéphane Bourgon for Mr. Drago Nikolić
Ms. Natacha Fauveau Ivanović and Mr. Nenad Petrušić for Mr. Radivoje Miletić
Mr. Dragan Krgović and Mr. David Josse for Mr. Milan Gvero
Mr. Peter Haynes and Mr. Simon Davis for Mr. Vinko Pandurević

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 seised of the appeals filed by Counsel for Milan Gvero (“Counsel” and “Gvero”, respectively)¹ and the Office of the Prosecutor (“Prosecution”)² against the Judgement rendered by Trial Chamber II (“Trial Chamber”) on 10 June 2010 in the case of *Prosecutor v. Popović et al.*, Case No. IT-05-88-T (“Trial Judgement”).

I. BACKGROUND

2. The Trial Chamber found Gvero guilty of committing persecution and other inhumane acts (forcible transfer) as crimes against humanity, and sentenced him to five years’ imprisonment.³ On 28 June 2010, the President of the Tribunal granted Gvero early release.⁴ On 8 September 2010, the Prosecution filed its notice of appeal, which included two grounds of appeal against Gvero.⁵

3. On 13 December 2010, the Appeals Chamber suspended the appellate proceedings in relation to Gvero pending a determination of his capacity to meaningfully participate in appellate proceedings.⁶ On 30 November 2012, the Appeals Chamber found Gvero fit to participate in appellate proceedings, revoked the suspension of the appellate proceedings against him, and established a schedule for briefing.⁷ On 17 December 2012, Gvero filed his notice of appeal which included nine grounds of appeal.⁸ On 19 December 2012, the Prosecution filed a motion to strike Gvero’s second ground of appeal.⁹ Gvero filed a response on 2 January 2013,¹⁰ and the Prosecution

¹ Notice of Appeal on Behalf of Milan Gvero, 17 December 2012 (confidential; public redacted version filed on 19 February 2013) (“Gvero Notice of Appeal”); Appeal Brief on Behalf of Milan Gvero Against the Trial Judgement [*sic*] of 10 June 2010, 15 February 2013 (confidential; public redacted version filed on 19 February 2013) (“Gvero Appeal Brief”).

² Prosecution’s Notice of Appeal, 8 September 2010 (“Prosecution Notice of Appeal”), paras 30-34; Prosecution Appeal Brief (Grounds Against Milan Gvero), 15 February 2013 (“Prosecution Appeal Brief”).

³ Trial Judgement, para. 2109, pp. 830-831.

⁴ *Prosecutor v. Milan Gvero*, Case No. IT-05-88-ES, Decision of President on Early Release of Milan Gvero, 28 June 2010, para. 20.

⁵ Prosecution Notice of Appeal, paras 30-34.

⁶ Decision on Motion by Counsel Assigned to Milan Gvero Relating to His Present Health Condition, 13 December 2010 (confidential; public redacted version filed on 16 May 2011), paras 14-15.

⁷ Decision on Request to Terminate Appellate Proceedings in Relation to Milan Gvero, 30 November 2012 (confidential and *ex parte*; public redacted version filed on 16 January 2013), paras 29-30. See also Decision on Milan Gvero’s Motion to Rescind Decision in Part or for an Extension of Time to File Various Briefs, 13 December 2012 (confidential and *ex parte* status lifted by order of the Pre-Appeal Judge; see Order Lifting Confidential and *Ex Parte* Status of Decision on Milan Gvero’s Motion to Rescind Decision in Part or for an Extension of Time to File Various Briefs, 16 January 2013), p. 3.

⁸ Gvero Notice of Appeal.

⁹ Prosecution’s Motion to Strike Ground Two from Gvero’s Notice of Appeal, 19 December 2012 (confidential) (“Motion to Strike”).

¹⁰ Defence Response on Behalf of Milan Gvero to Prosecution Motion to Strike Ground Two from Gvero’s Notice of Appeal, 2 January 2013 (confidential).

filed its reply on 7 January 2013.¹¹ On 15 February 2013, both Counsel and the Prosecution filed their appeal briefs.¹²

4. On 18 February 2013, Counsel informed the Appeals Chamber that, on 3 February 2013, Gvero's medical condition had taken "a significant turn for the worse" and that he had been "completely incapacitated" since this date.¹³ Gvero passed away on 17 February 2013 at the Military Medical Academy in Belgrade.¹⁴

II. OUTCOME OF THE PROCEEDINGS

5. The Appeals Chamber recalls "that while neither the Statute [of the Tribunal] nor the Tribunal's Rules of Procedure and Evidence [...] explicitly provide for the course of action to be taken following the death of an appellant, a number of their provisions clearly exclude the possibility of the continuation of the appellate proceedings in such circumstances".¹⁵ The Appeals Chamber further recalls that appellate proceedings before this Tribunal should be terminated following the death of the appellant for lack of jurisdiction.¹⁶ On the death of Gvero, the Appeals Chamber no longer has jurisdiction over his proceedings. The appellate proceedings in relation to Gvero must therefore be terminated, without prejudice to the appellate proceedings concerning the other appellants in the *Popović et al.* case.

6. The Appeals Chamber also recalls that "the approach followed in certain national jurisdictions, where convictions entered by a court of first instance are vacated following the death of an appellant, is not compatible with the essence of the appellate proceedings before this Tribunal".¹⁷ Accordingly, the Appeals Chamber considers that, having found that the death of an appellant results in the termination of proceedings and given that no appeal judgement can be rendered with respect to Gvero, nothing can undermine the finality of the Trial Judgement as it

¹¹ Prosecution's Reply to Gvero's Response to Prosecution's Motion to Strike Ground Two from Gvero's Notice of Appeal, 7 January 2013 (confidential).

¹² Gvero Appeal Brief; Prosecution Appeal Brief.

¹³ Urgent Submission of Counsel to Accompany the Appeal Brief Filed on Milan Gvero's Behalf Concerning His Medical Condition, 18 February 2013 (confidential and *ex parte*) ("Urgent Submission"), paras 6, 13. See also Urgent Submission, paras 8-9, 11.

¹⁴ See "Certificate of Death" and "Excerpt from the Register of Deaths" for Milan Gvero, attached to Letter from the Deputy Director of the Republic of Serbia Office of the National Council for Cooperation with the International Criminal Tribunal for the Former Yugoslavia dated 18 February 2013, 19 February 2013. The Appeals Chamber notes the "Motion by Milan Gvero's Counsel Seeking Clarification of the Appeals Chamber Decision of 30 November 2012 and the Effect of Counsel's Assignment", filed 5 March 2013, and is of the view that the clarification sought therein is addressed in the filing of the present decision.

¹⁵ *Prosecutor v. Rasim Delić*, Case No. IT-04-83-A, Decision on the Outcome of the Proceedings, 29 June 2010 ("*Delić* Decision"), para. 5. See also *Delić* Decision, para. 6.

¹⁶ *Delić* Decision, para. 8.

¹⁷ *Delić* Decision, para. 14. See also *Delić* Decision, paras 9-13.

concerns Gvero.¹⁸ As a consequence, the Trial Judgement shall be considered final in relation to Gvero.

III. DISPOSITION

7. For the foregoing reasons, the Appeals Chamber **HEREBY**:
TERMINATES the appellate proceedings with respect to Gvero; and
DISMISSES the Motion to Strike as moot.

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

Dated this seventh day of March 2013,
At The Hague,
The Netherlands.



Judge Patrick Robinson
Presiding

[Seal of the Tribunal]

¹⁸ See *Delić* Decision, para. 15.