



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-A
Date: 20 June 2014
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Patrick Robinson
Judge Mehmet Güney
Judge Khalida Rachid Khan
Judge Jean-Claude Antonetti

Registrar: Mr. John Hocking

Decision of: 20 June 2014

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON TOLIMIR'S REQUEST TO GRANT A RIGHT
OF AUDIENCE TO MR. ALEKSANDAR GAJIĆ**

The Office of the Prosecutor:

Mr. Peter Kremer

The Accused:

Mr. Zdravko Tolimir

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);

BEING SEISED OF the “Request to the Bench of the Appeals Chamber to Grant a Right of Audience to Mr. Aleksandar Gajić” filed confidentially by Zdravko Tolimir (“Tolimir”) on 23 May 2014 (“Request”),¹ in which Tolimir requests the Appeals Chamber to grant his legal advisor, Mr. Aleksandar Gajić (“Gajić”), a right of audience “including [the] possibility to present oral arguments at the [appeal] hearing”,²

NOTING the “Prosecution’s Response to Tolimir’s Request for Right of Audience for Mr. Aleksandar Gajić” filed confidentially by the Office of the Prosecutor (“Prosecution”) on 28 May 2014 (“Response”), in which the Prosecution states that it does not oppose Tolimir’s request that Gajić be granted a right of audience at the appeal hearing, provided such a right is limited to presenting arguments about legal issues,³ and that Tolimir “should present the factual arguments at the appeals hearing”,⁴

NOTING Tolimir’s submission that allowing Gajić a right of audience at the appeal hearing will “significantly advance” the proceedings and “serve the interests of justice”⁵ since Gajić: (i) will closely assist Tolimir in preparing all the arguments to be presented at the appeal hearing;⁶ (ii) has the qualifications and experience justifying a right of audience;⁷ and (iii) has significantly participated in the preparation of the defence case in the pre-trial, trial and appellate phases;⁸

CONSIDERING that, pursuant to paragraph 20(A)(ii) of the Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused, legal associates have no right of audience before the Tribunal unless the Chamber seized of the case decides otherwise;⁹

CONSIDERING that Gajić was assigned by the Office of the Registrar to the position of “Legal Advisor with privileged legal status” on 18 March 2008,¹⁰ was granted a right of audience at trial

¹ The Appeals Chamber considers that while the Request was filed confidentially, there is no confidential information in this decision and it may therefore be issued publicly.

² Request, para. 1. See Request, para. 14. The Appeals Chamber recalls that on 5 July 2013, Judge Theodor Meron, the Pre-Appeal Judge in this case, advised Tolimir to submit a written request to the full bench of the Appeals Chamber if he wishes Gajić to be granted a right of audience in the appeal proceedings. Status Conference, T. 5 July 2013, p. 3.

³ Response, paras 1-2.

⁴ Response, para. 2.

⁵ Request, para. 13.

⁶ Request, paras 12-13.

⁷ Request, paras 4-5.

⁸ Request, paras 4, 6-11.

⁹ Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused, 1 April 2010 (Rev. 3), para. 20(A)(ii).

limited to presenting legal or administrative issues by Trial Chamber II of the Tribunal,¹¹ and was also granted on appeal “a right of audience limited to addressing legal or administrative issues during Status Conferences”;¹²

CONSIDERING that Gajić is a member of the Association of Defence Counsel Practising at the International Criminal Tribunal for the Former Yugoslavia and is admitted to the list of counsel pursuant to Rule 45 of the Rules of Procedure and Evidence of the Tribunal (“Rules”);¹³

CONSIDERING that Gajić has significantly participated in the defence case at the pre-trial, trial and appellate phases and will closely assist Tolimir in preparing for the appeal hearing;¹⁴

CONSIDERING that, as Tolimir submits,¹⁵ both he and the Appeals Chamber would benefit from Gajić’s assistance in presenting the legal issues at the appeal hearing;

CONSIDERING that legal issues concern any question of a legal nature that may arise in the presentation of arguments on alleged errors of fact or law in a trial judgement;¹⁶

RECALLING that the Appeals Chamber must ensure that the proceedings before it are fair and expeditious pursuant to Article 20(1) of the Statute of the Tribunal;

PURSUANT to Article 20(1) of the Statute and Rules 54 and 107 of the Rules;

HEREBY GRANTS the Request and **AUTHORIZES** Gajić to make oral submissions at the appeal hearing.

¹⁰ *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-T, Order Issuing a Public Redacted Version of the “Decision on Accused’s Request to the Trial Chamber concerning Assistance of his Legal Advisor”, 27 May 2010, appending Decision on Accused’s Request to the Trial Chamber concerning Assistance of his Legal Advisor, 28 April 2010 (public redacted version) (“*Tolimir* Decision on Assistance of Legal Advisor”), para. 24.

¹¹ *Tolimir* Decision on Assistance of Legal Advisor, paras 24-25, p. 10 (Disposition).

¹² Status Conference, T. 5 July 2013, p. 3.

¹³ See Request, para. 5. The Prosecution does not contest that.

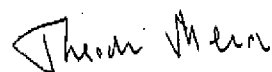
¹⁴ See Request, paras 8-12.

¹⁵ See Request, paras 12-13.

¹⁶ The Appeals Chamber notes that while the Prosecution asserts that Tolimir’s appeal “primarily addresses factual matters rather than legal issues” (see Response, para. 2), an allegation of a factual error by a trial chamber on appeal may still raise legal issues pertaining, for example, to the standard of review on appeal or the correct interpretation of the standard applicable to a finding of fact by a trial chamber. See *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR98bis.1, Scheduling Order for Appeal Hearing, 22 March 2013, p. 2 (granting Radovan Karadžić’s legal advisor, Mr. Peter Robinson the right to appear on Karadžić’s behalf at the appeal hearing in the Rule 98bis proceedings).

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

Done this 20th day of June 2014,
At The Hague,
The Netherlands.



Judge Theodor Meron
Presiding Judge

[Seal of the Tribunal]