

UNITED
NATIONS

25 MARCH 2010



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: 25 March 2010

Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President

Registrar: Mr. John Hocking

Decision of: 25 March 2010

THE PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

**DECISION ON APPEAL AGAINST
REGISTRAR'S 10 FEBRUARY 2010 DECISION**

The Accused

Mr. Zdravko Tolimir

I, **PATRICK ROBINSON**, President 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”), render the following decision in relation to the “Appeal Against the Registrar’s Decision of 10 February 2010” (“Appeal”), filed before me in English by Mr. Zdravko Tolimir (“Tolimir”) on 24 February 2010.¹

I. BACKGROUND

1. On 30 November 2009, Tolimir submitted a request to the Office of Legal Aid and Detention Matters (“OLAD”) to: (1) apply the Defence Travel and DSA Policy², Part II, Section B, to his legal advisor during the trial so that he will be entitled to receive daily subsistence allowance (“DSA”) not only for days spent in court but also for days spent in The Netherlands working on case related materials for at least four hours;³ and (2) to increase the maximum number of remunerable hours per month allotted to his defence team during the trial from 150 hours to 300 hours (“30 November 2009 Request”).⁴

2. On 10 February 2010, OLAD responded to Tolimir’s 30 November 2009 Request (“Impugned Decision”), denying Tolimir’s request for the Travel and DSA Policy to be applied to his legal adviser. OLAD reasoned that the Travel and DSA Policy does not entitle defence team members of self-represented accused to receive DSA for days spent outside the courtroom. With regard to Tolimir’s request for an increase in the number of remunerable hours allotted to his defence team, OLAD advised that:

[...] your legal associate Mr. Gajić indicated to me that your team preferred to wait for the outcome of a request for review of the Registry’s payment policy during trial for persons assisting self-represented accused. This application was filed before the President by another self-represented accused and a decision is awaited. I will therefore [...] revisit your [...] request when brought up again by either your team or after the President’s decision is issued.

3. Tolimir thereafter filed the Appeal. On 4 March 2010, the Prosecution filed a submission concerning the Appeal.⁵ On 17 March 2010, the Registrar filed a *confidential* submission pursuant to Rule 33(B) of the Rules of Procedure and Evidence (“Rules”).⁶

¹ *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-PT, Appeal Against the Registrar’s Decision of 10 February 2010, 24 February 2010. Tolimir submitted the original, B/C/S version of the Appeal to the Registry on 18 February 2010.

² 1 January 2007.

³ See Appeal, pp. 6015-6013.

⁴ See Appeal, pp. 6013-6011.

⁵ *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-T, Prosecution Submission Concerning Tolimir’s Appeal Against the Registrar’s Decision of 10 February 2010, 4 March 2010 (“Prosecution Submission”).

⁶ *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-T, *confidential* Registrar’s Submission Pursuant to Rule 33 Regarding Zdravko Tolimir’s Appeal Against the Registrar’s Decision of 10 February 2010, 17 March 2010

II. SUBMISSIONS

4. In the Appeal, Tolimir requests that I reverse the Impugned Decision and decide that one of his legal advisers is entitled to DSA not only for days spent in court but also for days spent at the seat of the Tribunal working on his case outside the courtroom.⁷ Tolimir further submits that the Registry only partially ruled on his 30 November 2009 Request and accordingly asks that I consider the arguments contained in that Request as part of this Appeal.⁸

5. In the Prosecution Submission, the Prosecution concurs with Tolimir's assertion in his Appeal that "[Tolimir's] legal adviser, Mr. Aleksandar Gajić, will need to be present in The Hague to work throughout the week during the course of the trial, regardless of how many days per week the Trial Chamber is sitting".⁹

6. In the Rule 33(B) submission, the Registrar asks that I stay the Appeal pending the Trial Chamber's determination of a motion submitted by Tolimir on 1 March 2010,¹⁰ requesting that his legal advisor, Mr. Aleksandar Gajić, be granted a limited right of audience during the trial.¹¹ The Registrar notes that:

[w]hile the Defence Travel and DSA Policy authorises DSA payments to defence counsel or co-counsel for days spent on trial-related work in The Netherlands where at least four hours of work were performed, under current Registry policy, defence team members are not entitled to receive DSA for days spent outside the courtroom.¹²

The Registrar explains that, in light of a decision I issued on 19 February 2010,¹³ the Registry has re-examined this policy in relation to self-represented accused, such that:

[...] where rights of audience are granted to a legal associate of a self-represented accused, and the role of that legal associate is such that they are essentially functioning as co-counsel to that accused, the Registry has deemed it appropriate to apply the Defence Travel and DSA Policy as it would to co-counsel.¹⁴

("Registrar's Submission"). Because the Registry has not indicated the reason for filing its submissions confidentially and because I can discern no information therein that should be withheld from the public, I have decided to file this decision publicly.

⁷ Appeal, paras 2 and 10.

⁸ Appeal, paras 2-3.

⁹ Prosecution Submission, para. 2.

¹⁰ *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-T, Request to the Trial Chamber, 1 March 2010 ("1 March 2010 Request").

¹¹ Registrar's Submission, paras 13 and 20.

¹² Registrar's Submission, para. 18 (internal citations omitted).

¹³ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Request for Review of OLAD Decision on Trial Phase Remuneration, 19 February 2010 ("Karadžić Decision").

¹⁴ Registrar's Submission, para. 19.

The Registrar accordingly submits that a stay of the Appeal is warranted until the Trial Chamber issues a decision on Tolimir's 1 March 2010 Motion, clarifying Mr. Gajić's role.¹⁵

III. DISCUSSION

7. As a preliminary matter, I note that the Prosecution has no standing in this matter, which is a dispute between Tolimir and the Registry. The Prosecution Submission will therefore not be considered.

8. I consider it necessary to clarify that Tolimir's Appeal contains two requests. First, as noted above, Tolimir requests that I reverse the Impugned Decision and order OLAD to apply the Defence Travel and DSA Policy to one of his legal associates, which would entitle this associate to DSA for days spent working on his case for at least four hours outside of court but at the seat of the Tribunal ("Tolimir's First Request"). Second, Tolimir asks that I incorporate by reference those arguments contained in his 30 November 2009 Request, which he submits OLAD did not consider in the Impugned Decision. Although Tolimir does not specify the precise arguments concerned, it is clear from his Appeal that he is referring to his request that the maximum number of remunerable hours per month allotted to his defence team during the trial be increased from 150 hours to 300 hours ("Tolimir's Second Request").¹⁶

9. I note that, if the Trial Chamber grants Tolimir's 1 March 2010 Request, Tolimir's First Request may be rendered moot, given the Registrar's submission that, under its revised policy, if Mr. Gajić is granted a right of audience, he may be entitled to receive DSA for days spent outside of court on trial-related work in The Netherlands where at least four hours of work are performed. I thus consider it premature to review this aspect of the Impugned Decision, and I consider it warranted to stay the Appeal in relation to Tolimir's First Request until the Trial Chamber renders its decision on Tolimir's 1 March 2010 Motion. If the Trial Chamber grants Tolimir's 1 March 2010 Motion, and Tolimir is dissatisfied with OLAD's revised decision relating to the application of the Defence Travel and DSA Policy to his legal adviser, he may at such time submit a request for my review of OLAD's new decision. However, if the Trial Chamber denies Tolimir's 1 March 2010 Motion, I will thereafter consider Tolimir's First Request as submitted in this Appeal.

10. Regarding Tolimir's Second Request, I note that in the Impugned Decision, as set forth above, OLAD stated that because Tolimir's legal adviser had represented that his defence team preferred to wait for the outcome of a pending request for review of the Registry's payment policy,

¹⁵ Registrar's Submission, paras 19-20.

¹⁶ See Appeal, pp. 6013-6011.

the Registry would revisit this Request once my decision was issued. Although OLAD did not specify the particular request for review referred to in the Impugned Decision, it is reasonable to conclude that the Registrar was referring to Mr. Radovan Karadžić's "Request for Review of OLAD Decision on Trial Phase Remuneration".¹⁷ Given that I issued my decision on the Request for Review on 19 February 2010,¹⁸ I consider it appropriate to consider Tolimir's Second Request at this time. However, I note that in the Registrar's Submission, the Registrar did not address Tolimir's Second Request. I further note with concern that Tolimir's Second Request has been outstanding since 30 November 2009. Given the potential for this issue to cause delay in Tolimir's trial, I consider its expeditious resolution of utmost importance. In light of the foregoing, I request that the Registrar submit to me a Rule 33(B) submission, if any, in relation to Tolimir's Second Request as soon as possible, and in any event, no later than a week from the date that this decision is issued.

IV. DISPOSITION

11. In light of the foregoing, I hereby **ORDER** the Appeal stayed in relation to Tolimir's First Request until the Trial Chamber renders its decision on Tolimir's 1 March 2010 Request and **REQUEST** the Registrar to file a Rule 33(B) Submission in relation to Tolimir's Second Request within one week of the date of this decision.

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

Done this 25th day of March 2010,
At The Hague,
The Netherlands.



Judge Patrick Robinson
President

¹⁷ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Request for Review of OLAD Decision on Trial Phase Remuneration, 14 January 2010 ("Request for Review").

¹⁸ See *Karadžić* Decision.