



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***

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

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**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”),<sup>1</sup> 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”;<sup>2</sup>

**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,<sup>3</sup> and that Tolimir “should present the factual arguments at the appeals hearing”;<sup>4</sup>

**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”<sup>5</sup> since Gajić: (i) will closely assist Tolimir in preparing all the arguments to be presented at the appeal hearing;<sup>6</sup> (ii) has the qualifications and experience justifying a right of audience;<sup>7</sup> and (iii) has significantly participated in the preparation of the defence case in the pre-trial, trial and appellate phases;<sup>8</sup>

**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 seised of the case decides otherwise;<sup>9</sup>

**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,<sup>10</sup> was granted a right of audience at trial

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> Response, paras 1-2.

<sup>4</sup> Response, para. 2.

<sup>5</sup> Request, para. 13.

<sup>6</sup> Request, paras 12-13.

<sup>7</sup> Request, paras 4-5.

<sup>8</sup> Request, paras 4, 6-11.

<sup>9</sup> 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,<sup>11</sup> and was also granted on appeal “a right of audience limited to addressing legal or administrative issues during Status Conferences”;<sup>12</sup>

**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”);<sup>13</sup>

**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;<sup>14</sup>

**CONSIDERING** that, as Tolimir submits,<sup>15</sup> 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;<sup>16</sup>

**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.

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<sup>10</sup> *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.

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

<sup>12</sup> Status Conference, T. 5 July 2013, p. 3.

<sup>13</sup> *See* Request, para. 5. The Prosecution does not contest that.

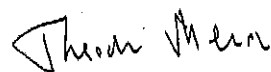
<sup>14</sup> *See* Request, paras 8-12.

<sup>15</sup> *See* Request, paras 12-13.

<sup>16</sup> 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.



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Judge Theodor Meron  
Presiding Judge

**[Seal of the Tribunal]**