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24 January 2014

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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-09-92-T
Date: 24 January 2014
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 24 January 2014

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON URGENT DEFENCE MOTION SEEKING THAT
THE TRIAL CHAMBER INTERVENE TO PROTECT THE
RIGHTS OF THE ACCUSED IN RELATION TO THE
SUBPOENA ISSUED BY THE KARADŽIĆ CHAMBER**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 14 January 2014, the Defence filed an urgent motion seeking the Chamber's intervention in relation to a *subpoena ad testificandum* issued by the Trial Chamber in the case of *Prosecutor v. Karadžić* ("Karadžić Trial Chamber") compelling Mr Mladić to appear and testify in the proceedings against Mr Karadžić ("Motion").¹ The Prosecution responded to the Motion on 23 January 2014 ("Response").²

2. The Karadžić Trial Chamber issued a subpoena to Mr Mladić on 11 December 2013 ("Subpoena").³ The Mladić Defence sought certification to appeal the subpoena decision, which the Karadžić Trial Chamber denied on 23 December 2013 ("Certification Decision").⁴ Mr Mladić's testimony has been scheduled for 28 January 2014.⁵ The Chamber notes that both the Prosecution and the Mladić Defence sought reconsideration of the Certification Decision before the Karadžić Trial Chamber.⁶ The Karadžić Trial Chamber denied these motions for reconsideration.⁷

II. SUBMISSIONS OF THE PARTIES

3. The Defence submits that Mr Mladić's medical condition requires the Chamber to intervene and protect his rights and the proper administration of justice.⁸ The Defence seeks "a protective order enjoining Ratko Mladić's testimony [before the Karadžić Trial Chamber] and asking for the Appeals Chamber to consider this matter and hear the appeal that was intended by the Certification Motion".⁹ The Defence further argues that the standard for medical fitness to testify as a witness is

¹ Urgent Defence Motion Seeking that the Trial Chamber Intervene to Protect the Rights of the Accused in Relation to the Subpoena Issued by the Karadžić Chamber, 14 January 2014.

² Prosecution Response to urgent Defence Motion Seeking That the Trial Chamber Intervene to Protect the Rights of the Accused in Relation to the Subpoena Issued by the Karadžić Chamber, 23 January 2014.

³ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Subpoena ad Testificandum, 11 December 2013; see also *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Decision on Accused's Motion to Subpoena Ratko Mladić, 11 December 2013 ("Subpoena Decision").

⁴ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Decision on Mladić Request for Certification to Appeal Subpoena Decision, 23 December 2013.

⁵ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Notice to the Registrar on Dates of Testimony for General Ratko Mladić, 8 January 2014.

⁶ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Mladić Urgent Motion for Reconsideration of Decision on Motion for Certification to Appeal, 14 January 2014; *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Urgent Prosecution Motion for Reconsideration of Decision on Mladić Request for Certification to Appeal Subpoena Decision, 15 January 2014. The Mladić Defence also requested the Karadžić Trial Chamber to order a medical examination of Mr Mladić to determine his fitness to testify.

⁷ *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Decision on Urgent Motion for Reconsideration of Decision Denying Mladić Request for Certification to Appeal Subpoena Decision, 22 January 2014.

⁸ Motion, paras 12-14.

⁹ Motion, para. 14.

different from the standard to determine medical fitness to stand or attend trial and, therefore, requests a medical examination in this regard.¹⁰

4. The Prosecution opposes the Motion. It submits that while the Chamber has a role in protecting Mladić's rights in his trial, the remedy sought by the Motion is outside the Chamber's remit.¹¹ The Prosecution argues that the Defence's distinction between medical fitness to stand trial and medical fitness to testify is without legal basis.¹²

III. APPLICABLE LAW

5. Article 20 (1) of the Statute of the Tribunal provides that:

The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

6. Rule 54 of the Tribunal's Rules of Procedure and Evidence ("Rules") provides that at the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

IV. DISCUSSION

7. The Defence requests that the Chamber "certify the matter for an immediate appeal".¹³ The Chamber understands this to mean that the Defence requests the Chamber to override or reconsider the Karadžić Trial Chamber's Certification Decision. The Defence does not submit any legal basis in respect of the competency of the Chamber to intervene in proceedings of another Chamber. The Chamber finds that it is not competent to reconsider the decisions of another Chamber and, therefore, denies this part of the Motion.

8. In relation to the request to order a medical examination of Mr Mladić in order to determine his fitness to testify as a witness in other proceedings, the Chamber notes that the Subpoena orders Mr Mladić "to appear to testify [...] or to show good cause why this subpoena cannot be complied with".¹⁴ Therefore, any issue related to whether or not good cause has been shown in respect of Mr Mladić's health as an obstacle to appearing and testifying will in this context be dealt with by the

¹⁰ Motion, paras 14-15.

¹¹ Response, para. 1.

¹² Response, para. 2.

¹³ Motion, 'Conclusion'.

¹⁴ Subpoena, p. 2 (emphasis added).

competent authority, which is the authority that issued the subpoena. This includes the determination whether a medical examination should be ordered to further investigate the claim of ill health. Accordingly, the Chamber finds that it is the Karadžić Trial Chamber, and not this Chamber, that is competent in this respect and will deny this part of the Motion.

9. In relation to the request to enjoin the testimony of Mr Mladić before the Karadžić Trial Chamber, the Defence does not point to any legal basis for doing so. Under Rule 54 of the Rules, a Chamber may issue such orders as may be necessary for the conduct of the trial. The Chamber would thus have to determine that it is necessary for the conduct of a fair trial against Mr Mladić that he is not forced to appear and be examined as a witness in the *Karadžić* proceedings. Mr Mladić has access to various remedies before the Karadžić Trial Chamber, including, but not limited to: seeking reconsideration of relevant decisions in this context, seeking certification to appeal such decisions, seeking postponements of his testimony, or seeking adjusted sitting times for his testimony. In addition, Rule 90 (E) gives him the right to refuse to answer questions if the answer would tend to be self-incriminatory. The Karadžić Trial Chamber also made it clear that it is cognisant of the fact that Mr Mladić is currently on trial.¹⁵ Lastly, there is a strong suggestion in the Rules that in an intra-Tribunal situation of obtaining the testimony of a person under the authority of the Tribunal, as is the case here, there is no need for an involvement of the Chamber seised of the proceedings in respect of this person in order to protect his rights.¹⁶ Under these circumstances, the Chamber finds that it is not necessary for the conduct of the trial of Mr Mladić to intervene with his upcoming testimony before the Karadžić Trial Chamber.¹⁷

¹⁵ Subpoena Decision, para. 23.

¹⁶ This follows *a contrario* from Rule 75 *bis* of the Rules, which concerns the obtaining of testimony of Tribunal accused or convicted from external entities and involves the involvement of a Tribunal Judge, see Rule 75 *bis* (G).

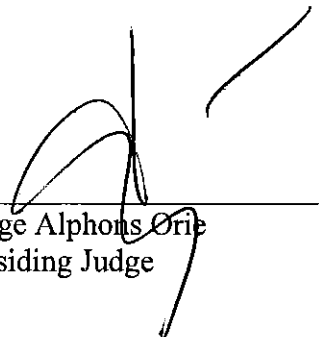
¹⁷ The Chamber will not address whether such an order, if issued, would have any binding effect on the Karadžić Trial Chamber.

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V. DISPOSITION

10. For the foregoing reasons, pursuant to Rule 54 of the Rules, the Chamber **DENIES** the Motion.

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



Judge Alphons Orie
Presiding Judge

Dated this Twenty-Fourth day of January 2014
At The Hague
The Netherlands

[Seal of the Tribunal]