



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: 17 April 2015
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 17 April 2015

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR CERTIFICATION
TO APPEAL THE DECISION ON DEFENCE REQUEST TO
ADOPT MODALITY FOR PROSECUTION RE-OPENING**

Office of the Prosecutor

Mr Peter McCloskey
Mr Alan Tieger

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 27 March 2015, the Chamber partially granted a Defence request for an 11-week adjournment of court hearings prior to the presentation of the Prosecution's re-opening evidence in this case ("Impugned Decision").¹ On 7 April 2015, the Defence sought certification to appeal the Impugned Decision ("Motion").² On 13 April 2015, the Prosecution responded to the Motion ("Response").³

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that the requirement of adequate time and facilities for the Defence to prepare is one of the most fundamental aspects of due process and a fair trial.⁴ According to the Defence, the issues involved in the Impugned Decision directly relate to the ability of the Defence to have adequate time to prepare a defence and an immediate resolution of the Appeals Chamber may materially advance the proceedings.⁵ The Defence submits that the Impugned Decision applies the wrong legal standard and may lead to a miscarriage of justice if an interlocutory appeal is prohibited.⁶

3. The Prosecution opposes the Motion, arguing that the Defence fails to demonstrate that the criteria of Rule 73 (B) of the Tribunal's Rules of Procedure and Evidence ("Rules") are met.⁷ The Prosecution also challenges the Defence's characterisation of alleged errors on the Impugned Decision and the jurisprudence it cites.⁸ The Prosecution further submits that granting the Motion would result in a significant delay of the proceedings and would likely disrupt the current trial schedule for the presentation of the Prosecution re-opening.⁹

III. APPLICABLE LAW

4. Rule 73 (B) of the Rules requires two cumulative criteria to be satisfied to allow a Trial Chamber to grant a request for certification to appeal: 1) that the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the

¹ Decision on Defence Request to Adopt Modality for Prosecution Re-opening, 27 March 2015, paras 1, 15.

² Defence Motion for Certification to Appeal the Decision on Defence Request to Adopt Modality for Prosecution Re-opening, 7 April 2015.

³ Prosecution Response to Defence Motion for Certification to Appeal the Decision on Defence Request to Adopt Modality for Prosecution Re-opening, 13 April 2015.

⁴ Motion, para. 8.

⁵ Motion, paras 9, 11, 13, 15.

⁶ Motion, paras 14-15.

⁷ Response, paras 1, 3-5, 11, 20.

⁸ Response, paras 6-11, 16-17.

trial, and 2) that, in the opinion of a Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

IV. DISCUSSION

5. As a preliminary matter, the Chamber notes that, in the Response, the Prosecution disputes several of the alleged judicial errors contained in the Impugned Decision. The appropriate forum for arguments on judicial errors is the appeal itself, not the litigation of the certification to appeal. Accordingly, the portions of the Response concerned with alleged judicial errors will not be further considered by the Chamber.

6. With respect to the first prong of Rule 73 (B) of the Rules, the Chamber considers that the Impugned Decision involves the issue of how much time to grant to the Defence in order to further prepare for the presentation of the Prosecution's re-opening evidence. The Prosecution's re-opening evidence is a substantial part of its case, thus making the amount of preparation time an issue that significantly affects the fair and expeditious conduct of the proceedings or the outcome of the trial, thus satisfying the first prong of Rule 73 (B) of the Rules.

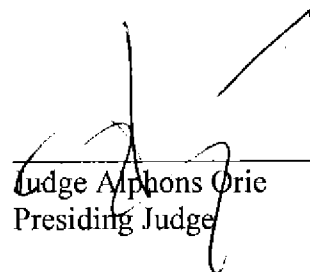
7. The Chamber further considers that granting certification to appeal at this stage may materially advance the proceedings as any possible prejudice found by the Appeals Chamber could more appropriately be remedied during the trial as opposed to during an appeals procedure. Remedying a prejudice arising from the issue at hand during the first instance proceedings positively affects the expeditiousness of the overall proceedings. In this respect, the Chamber notes that granting certification to appeal at this stage does not cause delays in the ongoing proceedings, as granting certification does not, in itself, lead to a suspension of the proceedings.

⁹ Response, para. 13.

V. DISPOSITION

8. For the foregoing reasons, pursuant to Rule 73 (B) of the Rules, the Chamber **GRANTS** the Motion.

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



Judge Alphons Orie
Presiding Judge

Dated this Seventeenth day of April 2015
At The Hague
The Netherlands

[Seal of the Tribunal]