



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: 21 September 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: 21 September 2015

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**REASONS FOR DECISION ON THE DEFENCE REQUEST OF
22 JUNE 2015 FOR ADDITIONAL TIME**

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 12 March 2015, the Defence filed Submissions as to the Proposed Modality of Prosecution Re-opening (“Submissions”) requesting additional time in order to prepare for the testimony of, *inter alios*, Prosecution expert witnesses.¹ On 27 March 2015, the Chamber partially granted the Defence request for an adjournment (“Adjournment Decision”).² On 17 April, the Chamber granted the Defence certification to appeal the Adjournment Decision.³ On 22 May, the Appeals Chamber dismissed the appeal of the Adjournment Decision (“Appeals Chamber Decision”).⁴ On 22 June, the Defence requested additional preparatory time prior to the Prosecution’s re-opening (“Request”), specifically in relation to preparing for the testimony of Prosecution expert witnesses.⁵ On 23 June, the Chamber denied the Request with reasons to follow.⁶

II. SUBMISSIONS OF THE PARTIES

2. The Defence submitted that it had not adequately prepared for the re-opening of the Prosecution’s case as the time allocated by the Chamber was neither reasonable nor sufficient.⁷ Specifically, the Defence argued that it did not have enough time to complete all the preparatory work necessary to refute the testimonies of the Prosecution expert witnesses.⁸ The Defence also argued that the Tomašica investigations commenced in 2002 and therefore the Prosecution had “more than a decade to complete its work with the help of a vast machinery that it had at its disposal” while the Defence had limited resources and time.⁹ The Defence concluded its submission by requesting that the Chamber grant it additional time “to prepare and to continue to work professionally and to protect the rights of our client”.¹⁰

3. The Prosecution submitted that it had no indication prior to the start of the court session of 22 June that the Defence would be making a request for additional time.¹¹ It also pointed out that

¹ Defence Submission as to Proposed Modality of Prosecution Re-Opening, 12 March 2015.

² Decision on Defence Request to Adopt Modality for Prosecution Re-opening, 27 March 2015.

³ Decision on Defence Motion for Certification to Appeal the Decision on Defence Request to Adopt Modality for Prosecution Re-Opening, 17 April 2015.

⁴ Decision on Interlocutory Appeal Against the 27 March 2015 Trial Chamber Decision on Modality for Prosecution Re-opening, 22 May 2015.

⁵ T. 36085-36087.

⁶ T. 36184.

⁷ T. 36085-36086.

⁸ T. 36086.

⁹ T. 36086-36087.

¹⁰ T. 36087.

¹¹ *Ibid.*

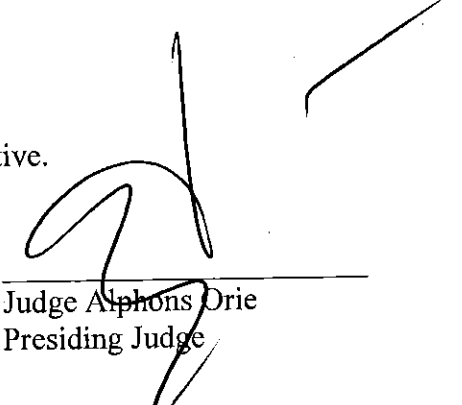
the initial unsuccessful efforts to probe Tomašica in 2002, the partially successful effort to excavate the site in 2004 and 2006, and then eventually the probing and identifying of additional remains resulting in the excavation in 2013 bear no relationship to the amount of time allocated to the Defence to analyse the results of the 2013 exhumation.¹²

III. DISCUSSION

4. The Defence argued that it was unable to identify expert witnesses before the start of Prosecution's re-opening but did not provide any reason for its inability to do so. Therefore, this argument is tantamount to submitting that the time granted for the adjournment was unreasonable. Further, the Request did not include any other facts or arguments beyond those already made in the Submissions. One example of the Defence merely recycling arguments from its Submissions was the argument that the Prosecution has at its disposal a much larger team and has had more time to process the same evidence.¹³ As already pointed out in the Adjournment Decision, and upheld by the Appeals Chamber, submissions along these lines ignore the basic difference in the evidentiary burden between the parties, which has an impact on preparation time for the presentation of evidence.¹⁴ Therefore, the Chamber found that the submissions contained in the Request were already decided upon in the Adjournment Decision and upheld in the Appeals Chamber Decision. The Defence also did not argue that there were any circumstances that justified reconsideration of the Adjournment Decision in order to avoid injustice.

5. For these reasons, the Chamber denied the Request.

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



Judge Alphons Orie
Presiding Judge

Dated this twenty-first day of September 2015
At The Hague
The Netherlands

[Seal of the Tribunal]

¹² T. 36087-36088.

¹³ Submissions, para. 13; T. 36086-36087.

¹⁴ Adjournment Decision, para. 10; Appeals Chamber Decision, para 13.