

UNITED
NATIONS



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-04-75-T
Date: 24 November 2015
Original: English

IN THE TRIAL CHAMBER

Before:

**Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua**

Registrar:

Mr. John Hocking

Decision:

24 November 2015

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION REQUEST FOR CERTIFICATION TO
APPEAL CONSOLIDATED DECISION ON THE CONTINUATION OF
PROCEEDINGS**

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for Goran Hadžić:

Mr. Zoran Živanović

Mr. Christopher Gosnell

TRIAL CHAMBER II 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 (“Chamber” and “Tribunal”, respectively);

NOTING that, on 26 October 2015, the Chamber issued its “Consolidated Decision on the Continuation of Proceedings” (“Impugned Decision”) wherein, it ordered a stay of proceedings in this case for an initial period of three months;¹

BEING SEISED OF the “Prosecution Request for Certification to Appeal Consolidated Decision on the Continuation of Proceedings”, filed on 2 November 2015 (“Motion”), in which the Prosecution requests certification to appeal the Impugned Decision “insofar as it grants a three-month stay of proceedings rather than ordering that the trial resume”;²

NOTING the Prosecution’s submissions that: (i) the ordered three-month stay has a significant impact on the fair and expeditious conduct of the proceedings and “jeopardizes the likelihood of any outcome of the trial”; and (ii) an immediate resolution by the Appeals Chamber “quashing the stay and ordering the trial to resume would thus materially advance the proceedings”; and therefore the requirements of Rule 73(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) are satisfied;³

NOTING the Prosecution’s arguments that the Chamber erred by: (i) failing to provide a reasoned decision as to whether, in light of the particular circumstances of this case, the trial can proceed in Hadžić’s partial or complete absence;⁴ (ii) rejecting video-conference link as a reasonable accommodation to continue the proceedings;⁵ (iii) failing to adequately address additional measures suggested by the Prosecution which would have enabled the trial to resume;⁶ (iv) abusing its discretion and/or making an erroneous finding of fact when it concluded that the Prosecution’s waiver of its right to cross-examine Defence witnesses weighs neither in favour of nor against continuing proceedings;⁷

NOTING the Response, in which the Defence requests that the Motion be denied and argues that an interlocutory appeal could not materially advance the proceedings due to the “established propensity for a rapid decline” of Hadžić’s health condition and the passage of time since the

¹ Impugned Decision, para. 69.

² Motion, paras 1, 3, 14.

³ Motion, paras 3, 6, 11, 12.

⁴ Motion, para. 7.

⁵ Motion, para. 8.

⁶ Motion, para. 9.

⁷ Motion, para. 10.

medical examinations upon which the Impugned Decision is based, would necessitate a new medical assessment and evaluation;⁸

NOTING that the Defence further submits that: (i) the Impugned Decision is fully and extensively reasoned and the Chamber addressed all of the forms of accommodation proposed by the Prosecution;⁹ (ii) the Prosecution failed to argue, “let alone substantiate”, that Hadžić’s right to be present could be satisfied without his contemporaneous participation in the trial proceedings;¹⁰ (iii) the Chamber did not err in rejecting video-conference link as a means of participation in the trial proceedings;¹¹ and (iv) the Chamber appropriately addressed the Prosecution’s waiver to cross-examine the remaining Defence witnesses;¹²

NOTING that, in its Reply, the Prosecution seeks leave to reply and submits, *inter alia*, that the Defence argument that an interlocutory appeal could not materially advance the proceedings is “irrelevant and conjectural”, stressing that neither of the parties have challenged the Chamber’s determination of Hadžić’s fitness;¹³

NOTING that the Prosecution further argues that the Defence’s remaining submissions go to the merits of the Impugned Decision and are thus “extraneous and premature”;¹⁴

NOTING that Rule 73(B) of the Rules provides that:

Decisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings;

CONSIDERING that the Defence submission that an interlocutory appeal could not materially advance the proceedings since a new medical assessment and evaluation would be necessary, is speculative and thus not relevant for adjudicating the Motion;

NOTING that the remaining arguments raised by the parties in their submissions relate to the merits of the appeal and not to the issue of certification;

⁸ Response to Prosecution Request for Certification to Appeal Consolidated Decision on the Continuation of Proceedings, 17 November 2015 (“Response”), paras 2, 5.

⁹ Response, paras 1, 16. *See also* paras 7-9.

¹⁰ Response, paras 6-7, 9, 11.

¹¹ Response, paras 17-19.

¹² Response, paras 21-22.

¹³ Prosecution Reply to Defence Response to Prosecution Request for Certification to Appeal Consolidated Decision on the Continuation of Proceedings (Expedited Ruling Requested), 19 November 2015 (“Reply”), paras 1, 3.

¹⁴ Reply, paras 3-4.

CONSIDERING that the challenged part of the Impugned Decision concerns the question of whether the proceedings in this case should be stayed or continued and that this is clearly an issue that would affect the fair and expeditious conduct of the proceedings or the outcome of the trial, in particular when taking into account the terminal nature of Hadžić's illness;¹⁵

CONSIDERING, moreover, that an immediate resolution by the Appeals Chamber of this question may materially advance the proceedings;

CONSIDERING that the requirements of Rule 73(B) of the Rules have been fulfilled and that the requested certification to appeal the Impugned Decision should be granted;


PURSUANT to Rules 54, 73(B) and 126 *bis* of the Rules, hereby:

GRANTS the Prosecution leave to file the Reply; and

GRANTS the Motion.

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

Done this twenty-fourth day of November 2015,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]

¹⁵ For more details and the background of Hadžić's illness, *see* Impugned Decision, paras 6-11.