

**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-09-92-T
Date: 17 May 2016
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 May 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR CERTIFICATION
TO APPEAL DEFENCE BAR TABLE SUBMISSIONS
DECISION**

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 16 December 2015, the Prosecution requested that it be allowed to tender contextual documents in its responses to the Defence's upcoming bar table motions.¹ On 18 December, the Defence filed a notice of objection to the Prosecution's request.² On 24 December, the Prosecution filed its response to the Defence's objection.³ On 13 January 2016, the Chamber notified the parties by email of its decision on the Prosecution's request ("Decision"), and indicated that reasons for this decision would follow. On 20 January, the Defence filed a motion for certification to appeal the Decision.⁴ On 3 February, the Prosecution filed its response opposing the Defence motion.⁵ On 10 March, the Chamber filed its reasons for the Decision and dismissed the certification motion as premature.⁶ On 17 March, the Defence filed a motion for certification to appeal the Decision ("Motion").⁷ On 31 March, the Prosecution responded, opposing the Motion ("Response").⁸

II. SUBMISSIONS OF THE PARTIES

A. Defence

2. The Defence submits that the Decision significantly affects the fair and expeditious conduct of the proceedings as it (i) creates a new procedure that provides for "a higher standard for the admission of Defence evidence than was applied to Prosecution evidence";⁹ and (ii) violates existing procedures such as Rule 85 of the Tribunal's Rules of Procedure and Evidence ("Rules").¹⁰

3. The Defence submits that the Decision "could have, and will continue to, have a significant effect on the outcome of the trial because the procedure places an undue burden on the Defence" which, the Defence argues, has "forced" it to undertake a great deal of additional analysis and legal

¹ T. 42724-42725.

² Defense Notice of Objection to the Prosecution's Proposed Modification to Bar Table Submissions, 18 December 2015.

³ Prosecution Response to Defence Notice of Objection to the Prosecution's Proposed Modification to Bar Table Submissions, 24 December 2015.

⁴ Defence Motion for Certification to Appeal the Email Decision of 13 January 2016 as to Bar Table Submissions, 20 January 2016.

⁵ Prosecution Response to Defence Motion for Certification to Appeal the Email Decision of 13 January 2016 as to Bar Table Submissions, 3 February 2016.

⁶ Reasons for Decision on Prosecution Request to Tender Documents and Decision on Defence Motion for Certification to Appeal, 10 March 2016.

⁷ Defence Motion for Certification to Appeal the Bar Table Decision and Reasons, 17 March 2016.

⁸ Prosecution Response to Defence Motion for Certification to Appeal the Bar Table Decision and Reasons, 31 March 2016.

⁹ Motion, paras 3, 8-10, 15-19.

¹⁰ Motion, paras 3, 8, 10-16.

work and detracts from its ability to perform other planned and necessary tasks including the drafting of the final brief which would significantly affect the outcome of the trial.¹¹

4. The Defence argues that an immediate resolution by the Appeals Chamber may materially advance the proceedings because the current state of uncertainty and confusion caused by the Decision has placed an undue burden on the Defence.¹² The Defence points out that the Prosecution has actually tendered documents in its responses to Defence bar table motions, instead of simply providing *submissions* as to why it should be permitted to tender specific contextual evidence.¹³ This, the Defence submits, has resulted in it having to respond to the Prosecution's substantive arguments rather than procedural submissions.¹⁴

B. Prosecution

5. The Prosecution submits that the alleged "burden" of addressing a limited number of contextualising documents in the context of this "massive case" would not affect a procedural or substantive right sufficient to satisfy Rule 73(B) or impact the outcome of the trial.¹⁵ The Prosecution further submits that an immediate resolution of the issue by the Appeals Chamber would not materially advance the proceedings.¹⁶ Accordingly, the Prosecution invites the Chamber to dismiss the Motion on the grounds that neither of the conditions of Rule 73(B) are met.

III. APPLICABLE LAW

6. The Chamber recalls and refers to the applicable law as set out in a previous decision.¹⁷

IV. DISCUSSION

7. The Chamber recalls that the two requirements for certification to appeal a decision set out in Rule 73(B) of the Rules are cumulative. The Chamber further recalls that in the Decision, it merely invited the Prosecution to make *submissions* as to why it should be permitted to tender specific contextual evidence at this stage of the proceedings as opposed to during a rebuttal case. The Decision neither allowed the Prosecution to tender contextual documents nor did it deal with admission of such documents. Even if one were to assume that the Decision involves an issue that

¹¹ Motion, paras 20-21.

¹² Motion, paras 22, 23.

¹³ Motion, paras 23-24.

¹⁴ Motion, paras 22-24.

¹⁵ Response, para. 4.

¹⁶ Response, para. 5.

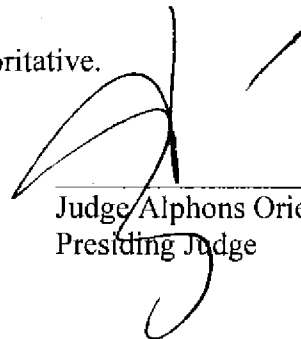
¹⁷ Decision on Defence Motion for Certification to Appeal the Decision on the Admission of the Evidence of Milan Tutorić, 15 July 2015.

would significantly affect the fair and expeditious conduct of the proceedings, or the outcome of the trial, on the basis of the Decision's mere establishment of a procedure, only inviting *submissions*, the Chamber is not satisfied that the proceedings would be materially advanced by an immediate resolution by the Appeals Chamber as to whether or not that invitation for *submissions* was erroneous.¹⁸ Accordingly, the Chamber finds that the Motion does not meet the requirements for certification to appeal.

V. DISPOSITION

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

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



Judge Alphons Orié
Presiding Judge

Dated this seventeenth day of May 2016
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁸ The Chamber notes the Defence submission at paragraph 20 of the Motion in which it argues that the Decision significantly affects the outcome of the trial because it places an undue burden on the Defence and that burden has resulted in the Defence being "forced" to undertake a great deal of additional work which has resulted in the non-performance of other necessary tasks, such as drafting the final trial brief. The Chamber is not convinced that the litigation on this issue has reached a point where it would impact on the parties' preparation time for the further stages of this case.