



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: 28 September 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: 28 September 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION SEEKING
RECONSIDERATION OF OR CERTIFICATION TO APPEAL
SCHEDULING ORDER**

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 22 October 2015, the Chamber informed the parties that it expected them to be in a position to file their final trial briefs within a number of weeks following the close of the evidentiary phase of this case and that work on the final trial briefs should have already commenced.¹ The Chamber further urged the parties' attention to the final trial brief preparation.² On 17 December 2015, the Chamber advised the parties to use any periods of non-sitting to *inter alia* prepare for their final trial briefs.³ It further advised that it would not grant an extended period of time after the close of the case for the preparation of final trial briefs, especially if the parties had various opportunities to prepare prior to its closure.⁴ The Chamber repeated this guidance on 3 February 2016, 1 March 2016, and 16 June 2016.⁵ On 12 April 2016, the Chamber informed the parties by email that they should expect to file their final trial briefs by 1 September 2016.

2. On 23 June 2016, the Defence filed a motion requesting an extension of time to file the final trial briefs ("Extension Motion").⁶ The Registry made submissions in relation to the Extension Motion on 27 June 2016 and 4 July 2016.⁷ On 29 June 2016, the Prosecution responded to the Extension Motion, opposing it.⁸ On 8 July 2016, the Chamber informed the parties that the new provisional deadline for filing the final trial briefs was 3 October 2016.⁹ On 2 August 2016, the Chamber stated that it "will take the arguments of the Defence [in the Extension Motion] into consideration when setting the fixed deadline for the final trial briefs and closing arguments".¹⁰ On 5 September 2016, the Defence filed a supplement to the Extension Motion ("Supplemental Filing").¹¹ On 9 September 2016, the Chamber issued a scheduling order, granting the Extension

¹ T. 40238.

² *Ibid.*

³ T. 42898.

⁴ *Ibid.*

⁵ T. 43142, 43228, 44211.

⁶ Defence Motion Requesting 7 December 2016 for the Final Brief and 12 January 2017 for Closing Arguments, 23 June 2016. In the Extension Motion, the Defence announced its intention to submit a separate filing detailing the information technology problems it has encountered during its final trial brief preparations. On 23 June, the Defence submitted the announced supplemental filing to the Registry as a joint motion signed by Defence counsel and the head of the Tribunal's Information Technology Support Section ("Supplemental Motion"). The Registry rejected the filing as it had been submitted jointly with a non-party to the proceedings. On 26 June, the Defence submitted a public filing to the Registry requesting the Chamber to order the Registry to file the Supplemental Motion ("Intervention Motion"). The Registry rejected this filing on the basis that its public dissemination could expose the Tribunal's information technology system to further risk. The Supplemental Motion and the Intervention Motion were subsequently attached to a Defence filing.

⁷ Registrar's Submission in Relation to the Defence Motion of 23 June 2016, 27 June 2016 (Confidential); Deputy Registrar's Submission in Relation to the Defence Motion of 23 June 2016, 4 July 2016.

⁸ Prosecution Response to Defence Motion Requesting 7 December 2016 for the Final Brief and 12 January 2017 for Closing Arguments, 29 June 2016.

⁹ T. 44217.

¹⁰ Fourth Defence Case Omnibus Decision, 2 August 2016 ("Fourth Omnibus Decision"), para. 2.

¹¹ Defence Further Submission in Support of "Defence Motion Requesting 7 December 2016 for the Final Brief and 12 January 2017 for Closing Arguments", 5 September 2016.

Motion in part, denying the Supplemental Filing, and setting the deadline for the filing of the final trial briefs to 25 October 2016, and for the closing arguments to 5-15 December 2016 (“Impugned Decision”).¹² On 16 September 2016, the Defence requested reconsideration of or, alternatively, certification to appeal the Impugned Decision (“Motion”).¹³ On 21 September 2016, the Deputy Registrar filed a submission relating to the Motion.¹⁴ The Prosecution responded on 22 September 2016, opposing the Motion (“Response”).¹⁵

II. SUBMISSIONS OF THE PARTIES

3. In relation to its request for reconsideration, the Defence submits that the Chamber (i) did not consider the Supplemental Filing and other filings made by the Defence, leading to a “downplaying of the severity of the difficulties encountered by the Defence”; (ii) erroneously stated that the Defence, with regard to information technology access restrictions, “never sought the Chamber’s intervention”; and (iii) did not provide a reasoned decision in relation to the arguments put forth by the Defence.¹⁶

4. With regard to certification to appeal, the Defence submits that the Chamber’s errors in the Impugned Decision affect the fairness of the proceedings.¹⁷ It submits that the issue at stake, namely the Defence’s ability to make final submissions in a full and professional manner, is of paramount importance and would significantly affect the outcome of the trial.¹⁸ The Defence argues that not granting certification to appeal could invalidate the trial judgment and force a costly and burdensome re-trial.¹⁹ The Defence also requests an extension of the word limit for the Motion.²⁰

5. The Prosecution submits that the Motion is a baseless submission which wastes the court’s time and attempts to frustrate the completion of the trial.²¹ The Prosecution contends that the

¹² Scheduling Order, 9 September 2016.

¹³ Motion for Reconsideration or, in the Alternative, Certification to Appeal Chamber’s Disregard of Defence Further Submissions in Support of “Defence Motion Requesting 7 December 2016 for the Final Brief and 12 January 2017 for Closing Arguments”, 16 September 2016 (Confidential). The Defence states that it seeks reconsideration of or certification to appeal with regard to its own submissions (paras 1, 5, 11). The Chamber understands the Defence to seek relief in relation to the Chamber’s decision instead.

¹⁴ Deputy Registrar’s Submission Concerning the Defence “Motion for Reconsideration or, in the Alternative, Certification to Appeal Chamber’s Disregard of Defence Further Submissions in Support of ‘Defence Motion Requesting 7 December 2016 for the Final Brief and 12 January 2017 for Closing Arguments’”, 21 September (Confidential).

¹⁵ Prosecution Response to 16 September 2016 Defence Motion for Reconsideration of, or in the Alternative, Certification to Appeal, the Trial Chamber’s 9 September 2016 Scheduling Order, 22 September 2016.

¹⁶ Motion, paras 2-3, 11-12, 20, 22-24.

¹⁷ Motion, para. 25.

¹⁸ Motion, para. 26.

¹⁹ *Ibid.*

²⁰ Motion, para. 6.

²¹ Response, para. 1.

Defence repeats earlier submissions and does not identify an error of reasoning, injustice to the Defence, an issue that could affect the fairness or outcome of the trial, or an issue which the Appeals Chamber needs to decide on to materially advance the proceedings.²²

III. APPLICABLE LAW

6. The Chamber recalls and refers to the applicable law governing reconsideration of decisions, as set out in a previous decision.²³ The Chamber further recalls and refers to the applicable law governing certification to appeal pursuant to Rule 73 (B) of the Tribunal's Rules of Procedure and Evidence ("Rules"), as set out in a previous decision.²⁴ Lastly, the Chamber recalls and refers to the applicable law in relation to requests to exceed the word limit for motions.²⁵

IV. DISCUSSION

Word Limit

7. With regard to the Defence's request to exceed the word limit, the Chamber considers that the Motion makes submissions on reconsideration as well as certification to appeal and relates to the matter of whether the Defence was granted sufficient time to prepare its final trial brief. Considering the importance of the subject matter and that the limit was not significantly exceeded, the Chamber will grant the requested leave.

Reconsideration

8. With regard to the argument regarding the severity of the difficulties encountered by the Defence, the Chamber confirms that it considered all filings made by the Defence. The Impugned Decision clearly mentions and addresses the Supplemental Filing.²⁶ With regard to other filings mentioned by the Defence, the Chamber previously held that "it is neither seised of the Supplemental Motion nor of the Intervention Motion, as these motions were never filed before the Chamber through the formal channels".²⁷ At the same time, the information contained therein was subsequently made part of the record by annexing the Supplemental Motion and the Intervention Motion to a Defence filing. Accordingly, while the Chamber duly considered the information contained in these filings before issuing the Impugned Decision, it found that there was no basis to

²² Response, paras 1, 3.

²³ Reasons for Decision on Defence Motion for Reconsideration, 29 June 2012, para. 10.

²⁴ Decision on Defence Motion for Certification to Appeal the Decision on the Admission of the Evidence of Milan Tutorić, 15 July 2015, para. 4.

²⁵ Decision on Prosecution Motion to Admit Evidence in Rebuttal, 16 August 2016, para. 15.

²⁶ Impugned Decision, pp. 2-3.

²⁷ Fourth Omnibus Decision, fn. 5.

decide on any specific submissions or requests made therein. The Defence's further submissions in the Motion in relation to the severity of the information technology difficulties encountered by the Defence merely repeat earlier submissions and express disagreement with the Chamber's assessment of the situation without arguing how the Chamber had erred.

9. With regard to the argument in relation to whether the Defence ever sought the Chamber's intervention due to its information technology problems, the Chamber confirms that in December 2015, the Defence made the Chamber aware of certain information technology problems it had encountered. However, the Chamber was not apprised of the severity of the problems. More importantly, the Defence never requested the Chamber's assistance in resolving any such problems.²⁸ The Defence therefore has not demonstrated that the Chamber erred in relation to this issue.

10. With regard to the argument that the Impugned Decision did not provide a reasoned decision, the Chamber considers that the Defence has not demonstrated that this is the case. In the Impugned Decision, the Chamber detailed how it had prepared the parties in relation to the deadline for filing the final trial briefs.²⁹ The Chamber regularly kept the parties informed of provisional deadlines for the filing of the final trial briefs. On 2 August 2016, it further explained that it would be premature to set fixed dates for the filing of the final trial briefs and for closing arguments prior to the closure of the Defence case.³⁰ In the Impugned Decision, the Chamber recalled this procedural history and addressed the Defence's arguments for an extension.³¹ The Defence has not demonstrated that the Chamber erred with respect to providing a reasoned decision.

11. Based on the above, the Chamber finds that the Defence fails to demonstrate that the Impugned Decision should be reconsidered.

Certification to Appeal

12. The Chamber considers that the Impugned Decision involves the issue of granting the parties sufficient time to prepare meaningful submissions as to how evidence in this case ought to be weighed by the Chamber. This issue may significantly affect the fairness of proceedings or the outcome of the trial. The Chamber further considers that an immediate resolution by the Appeals Chamber may materially advance the proceedings as any prejudice to be found could be remedied

²⁸ The Chamber emphasizes that even if other sections of the Tribunal may have dissuaded the Defence from bringing certain matters to the attention of the Chamber, it remains the Defence's responsibility to raise appropriate matters in a timely manner with the Chamber. The Chamber always takes matters raised by the parties seriously.

²⁹ Impugned Decision, pp. 1-3, fn. 20.

³⁰ Fourth Omnibus Decision, para. 2.

³¹ Impugned Decision, pp. 1-3.

more efficiently during trial proceedings as opposed to following the issuance of the trial judgment. Under these circumstances, considering that the sufficiency of time relates to the filing of the final trial briefs, which are vital submissions in the context of a criminal trial, the Chamber will use its discretion under Rule 73 (B) of the Rules to grant certification to appeal the Impugned Decision.

V. DISPOSITION

13. For the foregoing reasons, pursuant to Rule 73 (B) of the Rules, the Chamber

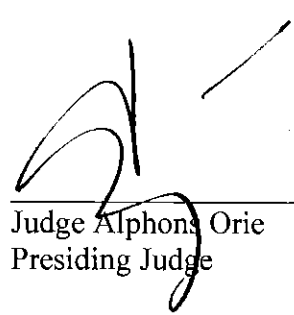
GRANTS the Motion in part;

GRANTS leave to exceed the word limit in the Motion;

DENIES reconsideration of the Impugned Decision; and

GRANTS certification to appeal the Impugned Decision.

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



Judge Alphons Orie
Presiding Judge

Dated this twenty-eighth day of September 2016
At The Hague
The Netherlands

[Seal of the Tribunal]