



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 October 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:** 21 October 2016

**PROSECUTOR**

**v.**

**RATKO MLADIĆ**

***PUBLIC***

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**DECISION ON DEFENCE URGENT MOTION FOR STAY OF  
PROCEEDINGS PENDING APPEALS**

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**Office of the Prosecutor**

Mr Peter McCloskey  
Mr Alan Tieger

**Counsel for Ratko Mladić**

Mr Branko Lukić  
Mr Miodrag Stojanović

**TRIAL CHAMBER I** 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);

**BEING SEISED** of the Defence Urgent Motion for Stay of Proceedings Pending Appeals (“Motion”), filed on 10 October 2016, in which the Defence requests a suspension of all deadlines and scheduled hearings until such time as certain pending appeals, motions, and a potential appeal (collectively “Pending Motions”) have been decided upon, or, in the alternative, a declaration of mistrial on the basis that the fair trial rights of Ratko Mladić (“Accused”) have been violated;<sup>1</sup>

**NOTING** the Defence arguments that the Chamber has already confirmed that the conditions for a stay of proceedings have been met because the Chamber granted certification to appeal one of its decisions,<sup>2</sup> and that a stay of proceedings is necessary because: (i) if any grounds of the Pending Motions are granted, this could nullify deadlines set by the Chamber thereby wasting resources and leading to injustice; and (ii) it is in the interests of justice for the Defence to be permitted to fully substantiate its arguments in relation to the Pending Motions and its final trial brief;<sup>3</sup>

**NOTING** the Prosecution Response to Defence Urgent Motion for Stay of Proceedings Pending Appeals (“Response”), filed on 12 October 2016, in which the Prosecution submits that it does not oppose the Chamber granting a stay of proceedings if the Appeals Chamber does not render a

<sup>1</sup> Motion, paras 1-4, 11. See Defence Motion for Certification to Appeal Decision on Defence Motion for Stay of Proceedings for Systemic Bias or, in the Alternative, a Mistrial (a Protest Against Trial Chamber I’s “Insert Defence Acknowledgment Here” Decision-Making Process), 29 September 2016; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.6, Interlocutory Appeal Brief Challenging the Decision of the Trial Chamber on the Defence Motion for a Fair Trial and Presumption of Innocence, 4 October 2016; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.7, Interlocutory Appeal Brief Challenging the Decision of the Trial Chamber on the Defence Motion Regarding Scheduling Order (with Confidential Annex A), 5 October 2016 (“Scheduling Appeal”); *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.6, Appellant’s Motion Pursuant to Rule 15(B) Seeking Disqualification of Judge Theodor Meron from the Appeals Chamber, 10 October 2016; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.6, Appellant’s Motion Pursuant to Rule 15(B) Seeking Disqualification of Judge Carmel Agius from the Appeals Chamber, 10 October 2016; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.6, Appellant’s Motion Pursuant to Rule 15(B) Seeking Disqualification of Judge Fausto Pocar from the Appeals Chamber, 10 October 2016; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.7, Appellant’s Motion Pursuant to Rule 15(B) Seeking Disqualification of Judge Theodor Meron from the Appeals Chamber, 10 October 2016; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.7, Appellant’s Motion Pursuant to Rule 15(B) Seeking Disqualification of Judge Carmel Agius from the Appeals Chamber, 10 October 2016; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.7, Appellant’s Motion Pursuant to Rule 15(B) Seeking Disqualification of Judge Fausto Pocar from the Appeals Chamber, 10 October 2016.

<sup>2</sup> See Decision on Defence Motion for Reconsideration or Certification to Appeal Decision on Motion for a Fair Trial or Mistrial, 27 September 2016.

<sup>3</sup> Motion, paras 6-10. See Decision on Defence Motion for Reconsideration or Certification to Appeal Decision on Motion for a Fair Trial or Mistrial, 27 September 2016; Decision on Defence Motion Seeking Reconsideration of or Certification to Appeal Scheduling Order, 28 September 2016.

decision on one of the Pending Motions by 21 October 2016, but that a stay is not warranted on any other grounds put forward by the Defence;<sup>4</sup>

**NOTING** that on 17 October 2016, the Defence filed a request for leave to reply, attaching its reply as an annex in which it opposes the Prosecution's proposal with respect to a stay of proceedings as well as its characterization of the recent volume of written litigation;<sup>5</sup>

**RECALLING** that Article 20 (1) of the Tribunal's Statute provides that a trial chamber must ensure the fairness and expeditiousness of the trial and that proceedings are conducted in accordance with the Tribunal's Rules of Procedure and Evidence ("Rules"), with full respect for the rights of an accused;

**RECALLING** that Article 21 of the Tribunal's Statute guarantees an accused's right to a fair trial;

**RECALLING** that pursuant to Rule 54 of the Rules, a trial chamber may issue such orders as necessary for the conduct of the trial, which could include an order for a stay of proceedings;<sup>6</sup>

**RECALLING** that a stay of proceedings is an exceptional measure ordered by a chamber to avoid prejudice to a party, and for which a chamber must consider whether the continuation of proceedings would have an impact on the fairness or expeditiousness of the trial;<sup>7</sup>

**CONSIDERING** the importance of the subject matter of the Motion and that the Defence has demonstrated good cause to reply in the request to reply;

**CONSIDERING** that if the Chamber were to accept the Defence's arguments concerning certification to appeal, it would mean that decisions certified for appeal which concern the fair-trial rights of an accused would also necessitate a stay of proceedings;

**CONSIDERING** that this approach stands in such stark contrast to the jurisprudence and practice of the Tribunal that the Defence's arguments in this regard demonstrate a fundamental misunderstanding of, or wilful inattention to, the interlocutory appeals process;

<sup>4</sup> Response, paras 1-6. *See* Scheduling Appeal.

<sup>5</sup> Defence Motion for Leave to Reply in Support of Urgent Motion for Stay Pending Appeals: Annex A, Defence Reply in Support of Urgent Motion for Stay Pending Appeals, 17 October 2016, paras 2-3.

<sup>6</sup> *See Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-A, Judgement, 19 July 2010, para. 36.

<sup>7</sup> *See Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR73.8, Decision on Prosecution's Appeal against the Trial Chamber's Order Regarding the Resumption of Proceedings, 16 September 2008, paras 8-9; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67, Order Regarding the Resumption of Proceedings, 15 August 2008, p. 4; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Decision on Defence Motion for Stay Proceedings, 28 September 2005, p. 2; *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Decision on Milan Lukić's Notice of Verification of Alleged Victim Survivors and Application for Stay of Proceedings with Exhibits A through H, 12 March 2009, para. 12.

**CONSIDERING** that under the current circumstances, a continuation of the proceedings means only that the parties must meet the deadlines for filing their final trial briefs and the presentation of their closing arguments;<sup>8</sup>

**CONSIDERING** that if the Pending Motions are unsuccessful, the Accused will not have been prejudiced by the scheduling of deadlines for the final trial briefs and closing arguments;

**CONSIDERING** that if the Pending Motions are successful, there would be no irreversible consequences for the trial or prejudice to the Accused which could not be remedied by, *inter alia*, an opportunity to supplement the final trial brief or by closing arguments being scheduled at a later date;

**CONSIDERING** therefore that regardless of the outcomes of the Pending Motions, the Defence will have had adequate time to prepare its final trial brief and closing arguments, and that a stay of proceedings under such circumstances would constitute an unjustified delay in the trial;

**CONSIDERING** that the Defence has failed to establish that the Accused's fair trial rights have been violated, or that continuation of the proceedings would have a negative impact on the fairness or expeditiousness of the trial;

**CONSIDERING** that the Defence has not made specific submissions as to why a declaration of a mistrial would be justified;

**CONSIDERING** therefore that there is no basis upon which to order a stay of proceedings or to declare a mistrial;

**FOR THE FOREGOING REASONS**

**PURSUANT TO** Rule 54 of the Rules;

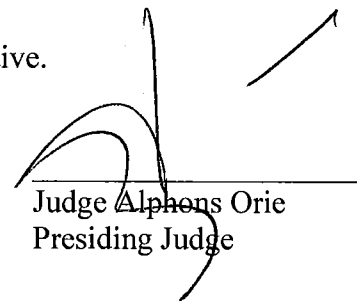
**HEREBY GRANTS** the Defence request to reply; and

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<sup>8</sup> See Scheduling Order, 9 September 2016.

**DENIES** the Motion.

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



Judge Alphons Orie  
Presiding Judge

Dated this twenty-first day of October 2016  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**