

**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: 21 October 2016
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orié, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 21 October 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR CERTIFICATION
TO APPEAL DECISION ON MOTION FOR A STAY OF
PROCEEDINGS OR A MISTRIAL**

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 a Defence motion, filed on 29 September 2016, seeking certification to appeal the Chamber’s decision denying the Defence’s request for a stay of the proceedings or the declaration of a mistrial, filed on 22 September 2016 (“Motion” and “Impugned Decision”, respectively);¹

NOTING that the Defence requests leave to exceed the word limit for motions;²

NOTING the Prosecution’s response, filed on 13 October 2016, in which the Prosecution opposes the Motion, submitting that the Defence has failed to demonstrate that the criteria for certification to appeal the Impugned Decision have been met;³

NOTING that on 20 October 2016, the Defence filed a request for leave to reply, attaching its reply as an annex in which it opposes certain submissions of the Prosecution, and offers to provide the Chamber with information concerning public statements allegedly made by at least one Chamber’s staff member with respect to drafting the trial judgment;⁴

RECALLING that Rule 73 (B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) requires two cumulative criteria to be satisfied for a trial chamber to grant certification to appeal a decision: (1) that the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial; and (2) that, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings;

¹ 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, para. 31; Decision on Defence Motion for Stay of Proceedings for Systemic Bias or, in the Alternative, a Mistrial, 22 September 2016.

² Motion, para. 12.

³ Prosecution Response to 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), 13 October 2016, paras 1, 3-9.

⁴ Defence Motion for Leave to Reply in Support of Defence Motion for Certification to Appeal Decision on Defence Motion for Stay of Proceedings for Systemic Bias or, in the Alternative, a Mistrial, 20 October 2016: Annex A, Defence Reply in Support of Defence Motion for Certification to Appeal Decision on Defence Motion for Stay of Proceedings for Systemic Bias or, in the Alternative, a Mistrial, paras 2-7.

NOTING that the Motion almost exclusively addresses a draft version of the Chamber's Omnibus Decision, which was erroneously filed and then immediately withdrawn and replaced by the correct version on 22 September 2016;⁵

CONSIDERING that the Defence's submissions concerning the Omnibus Decision, apart from taking the issue at stake there out of proportion while relying on unfounded assumptions and conclusions, are irrelevant to the question of whether the criteria for certification to appeal the Impugned Decision have been met;

CONSIDERING that the Defence has failed to demonstrate that the Impugned Decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial;

CONSIDERING moreover that the Defence has failed to demonstrate that an immediate resolution of this issue by the Appeals Chamber may materially advance the proceedings;

CONSIDERING therefore that the Defence has failed to demonstrate that both prongs of Rule 73 (B) of the Rules have been satisfied;

CONSIDERING that there is no merit to the argument that working on the trial judgment before receipt of the final trial briefs could be considered to be an example of unfairness toward the Defence;

RECALLING that the Practice Direction on the Length of Briefs and Motions states that motions shall not exceed 3,000 words and that a party must seek authorization from the relevant chamber to exceed this word limit, providing an explanation of the exceptional circumstances that necessitate the oversized filing;⁶

CONSIDERING the importance of the subject matter of the Motion and that the Defence has demonstrated good cause to exceed the word limit for motions, and good cause to reply;

FOR THE FOREGOING REASONS

PURSUANT TO Rule 73 (B) of Rules;

HEREBY GRANTS the request to exceed the word limit;

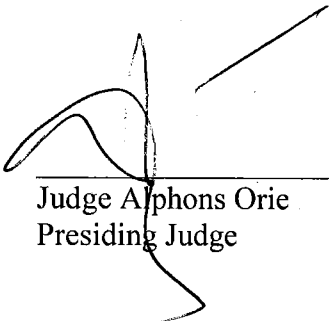
⁵ See Motion, paras 1-6, 8, 10-11, 14-15, 18-20, 24, 28-30, Annex A. See also Omnibus Decision, 22 September 2016.

⁶ Practice Direction on the Length of Briefs and Motions, IT/184 Rev. 2, 16 September 2005, paras 5, 7.

GRANTS the request to reply; and

DENIES the Motion.

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



Judge Alphons Orié
Presiding Judge

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

[Seal of the Tribunal]