

**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: 11 November 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: 11 November 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR CERTIFICATION
TO APPEAL DECISION ON EXTENSION OF TIME TO
TENDER SENTENCE-RELATED INFORMATION**

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 August 2016, the Chamber established that the Defence case was closed and set a deadline of 25 August 2016 for the parties to tender sentence-related information pursuant to Rule 85 (A) (vi) of the Tribunal's Rules of Procedure and Evidence ("Rules").¹ On 25 August 2016, the Defence requested an extension of time to tender such information ("Request").² On 2 September 2016, the Chamber denied the Request ("Impugned Decision").³ On 9 September 2016, the Defence sought certification to appeal the Impugned Decision ("Motion").⁴ On 16 September 2016, the Prosecution responded, opposing the Motion.⁵

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that the issue at stake in the Impugned Decision, namely admission of sentence-related information, critically affects the fairness of the Chamber's decision on sentencing.⁶ According to the Defence, this issue also relates directly to the requirement to provide adequate time for the Defence to prepare and gather relevant information, which is one of the most fundamental aspects of due process and a fair trial.⁷ Noting that the Prosecution partly supported its Request, the Defence submits that a small extension of time will not affect the expeditiousness of the trial and will ultimately benefit the proceedings by ensuring a proper finalization of the case.⁸ It argues that since the Impugned Decision was filed on 2 September 2016, *i.e.* five business days after the deadline set out by the Chamber to submit information relating to sentencing, the Defence was left in an "impossible position" and that the Impugned Decision has unfairly penalized the Accused.⁹ Thus, in light of the Chamber's failure to address this issue, the Defence requests guidance on how to proceed.¹⁰ Further, the Defence argues that it could not have foreseen the deadline and that the Chamber committed a number of errors in the Impugned Decision.¹¹ Finally, the Defence submits that an intervention by the Appeals Chamber would materially advance the

¹ T. 44319.

² Urgent Defence Motion for an Extension of Time to Tender Relevant Information to go to Determining an Appropriate Sentence, 25 August 2016.

³ Decision on Defence Motion for an Extension of Time to Tender Sentence-Related Information, 2 September 2016.

⁴ Defence Motion for Certification to Appeal the Decision on Defence Motion for an Extension of Time to Tender Sentence-Related Information, 9 September 2016.

⁵ Prosecution Response to Defence Motion for Certification to Appeal the Decision on Defence Motion for an Extension of Time to Tender Sentence-Related Information, 16 September 2016 ("Response").

⁶ Motion, paras 2-3, 12, 16, 21.

⁷ Motion, paras 18, 22, 24.

⁸ Motion, paras 4-5, 12, 17-18.

⁹ Motion, paras 13, 23.

¹⁰ Motion, para. 23.

¹¹ Motion, paras 6, 14-15, 21.

proceedings by ensuring that the Chamber considers comprehensive submissions on sentencing and that the fair trial rights of the Accused are upheld.¹²

3. The Prosecution submits that the Defence fails to establish that the conditions for granting certification to appeal set out in Rule 73 (B) of the Rules have been met.¹³ It argues that the Impugned Decision does not involve an issue of fairness of the proceedings because: (i) the Defence had ample opportunity to gather sentence-related information and did present such evidence, and (ii) the Defence provided no support for its contention that such information is significant and necessary for the Chamber to consider during deliberations.¹⁴ Finally, the Prosecution submits that an immediate resolution by the Appeals Chamber will risk compromising the expeditious completion of the trial rather than materially advancing the proceedings.¹⁵

III. APPLICABLE LAW

4. The Chamber recalls and refers to the applicable law governing certification to appeal pursuant to Rule 73 (B) of the Rules, as set out in a previous decision.¹⁶

IV. DISCUSSION

5. As a preliminary matter, regarding the Defence's submission that the Chamber committed a number of errors in the Impugned Decision, the Chamber recalls that the appropriate forum for arguments concerning alleged judicial errors in an impugned decision is in a motion for reconsideration or in the appeal itself, not in a motion for certification to appeal.¹⁷ For this reason, the Chamber will not consider the Defence's submissions alleging the existence of judicial errors in the Impugned Decision.

6. Turning to the Defence's request for guidance as to how to proceed in light of the fact that the Chamber has failed to address that the Impugned Decision was issued after the deadline for presenting sentence-related information, the Chamber first notes that decisions on deadlines stand as long as they have not been altered. The Defence provided the Request to the Registry on the day of the deadline, *i.e.* 25 August 2016 and the Request was distributed to the Chamber and the parties the next day, after the deadline had passed. The Defence thereby rendered it impossible for the

¹² Motion, paras 19-20, 25.

¹³ Response, paras 1-3.

¹⁴ Response, para. 2.

¹⁵ *Ibid.*

¹⁶ Decision on Defence Motion for Certification to Appeal the Decision on the Admission of the Evidence of Milan Tutorić, 15 July 2015, para. 4.

¹⁷ See Decision on Defence Motion for Certification to Appeal Decision on Forty-Fifth Motion to Admit Evidence Pursuant to Rule 92 *bis*, 30 June 2015, para. 5.

Chamber to address the matter prior to the expiration. The Defence should have considered the possible consequences of their late Request and have anticipated well in time their procedural position in case the Request would be denied. Besides, it is not for the Chamber to give legal advice to one of the parties on how to conduct its case. The Chamber therefore considers the Defence's request for guidance incongruous and declares it moot.

7. With respect to the first prong of Rule 73 (B) of the Rules, the Chamber considers that the Impugned Decision involves the issue of whether there was good cause to extend the deadline set by the Chamber to tender sentence-related information pursuant to Rule 85 (A) (vi) of the Rules. Respecting the fair trial rights of the Accused does not compel the Chamber to grant every request to extend a deadline. The Chamber considers in particular that the Defence has had ample opportunity to tender sentence-related information, and the Defence qualified a number of its witnesses and documents presented during its case-in-chief as character evidence or evidence in mitigation.¹⁸ In particular, the Chamber recalls that on 26 April 2016, it determined that the Defence should call its final witnesses by the week of 30 May 2016 and notes that the Defence did not argue at that time that it will call additional witnesses.¹⁹ In the Request the Defence sought time to provide letters of support from persons who were "unavailable or unwilling to be Defence witnesses at trial", while it never referred to any problem in that respect previously.²⁰ The Chamber recalls that it has on numerous occasions impressed upon the Defence the need to organise its remaining witnesses and seek assistance from the Chamber.²¹ The Defence did not seek such assistance. Under these circumstances, the Defence's difficulties meeting the time limits imposed by the Chamber, are insufficient to qualify the issue involved in the Impugned Decision as a fair trial issue. The Chamber further considers that the parties had the opportunity to address matters relating to sentencing in their final trial briefs and that they will have a further opportunity to do so in their closing arguments. In light of the above, the Chamber finds that the Defence has not demonstrated that the Impugned Decision, denying an extension to the deadline to tender sentence-related information, involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.

8. As the test under Rule 73 (B) of the Rules is cumulative and the first prong of the test has not been satisfied, the Chamber will not address the second prong of the test.

9. Based on the above, the Chamber will deny the Motion.

¹⁸ See Impugned Decision, para. 8.

¹⁹ T. 43702-43703.

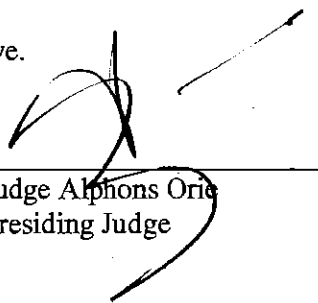
²⁰ See Motion, para. 15.

²¹ T. 43702. See T. 42508, 43068, 43289-43290.

V. DISPOSITION

10. 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 Orie
Presiding Judge

Dated this eleventh day of November 2016
At The Hague
The Netherlands

[Seal of the Tribunal]