

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 22 January 2019

Original: English

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**IN THE APPEALS CHAMBER**

**Before:** Judge Prisca Matimba Nyambe, Pre-Appeal Judge  
**Registrar:** Mr. Olufemi Elias  
**Decision of:** 22 January 2019

**PROSECUTOR**

**v.**

**RATKO MLADIĆ**

***PUBLIC***

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**DECISION ON PROSECUTION'S MOTION TO STRIKE  
MLADIĆ'S MOTIONS TO ADMIT ADDITIONAL EVIDENCE**

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**The Office of the Prosecutor:**

Mr. Serge Brammertz  
Ms. Laurel Baig  
Ms. Barbara Goy

**Counsel for Mr. Ratko Mladić:**

Mr. Branko Lukić  
Mr. Dragan Ivetić

**I, PRISCA MATIMBA NYAMBE**, Judge of the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively) and Pre-Appeal Judge in this case;<sup>1</sup>

**NOTING** the judgement issued in this case by Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia on 22 November 2017;<sup>2</sup>

**NOTING** that Ratko Mladić (“Mladić”) and the Office of the Prosecutor of the Mechanism (“Prosecution”) have appealed against the Trial Judgement;<sup>3</sup>

**NOTING** that, on 31 December 2018, Mladić filed five motions, pursuant to Rule 142 of the Rules of Procedure and Evidence of the Mechanism (“Rules”), requesting the admission of additional evidence (collectively, “Rule 142 Motions”);<sup>4</sup>

**BEING SEISED OF** a motion, filed on 10 January 2019, wherein the Prosecution requests the Appeals Chamber to strike the First, Second, Fourth, and Fifth Motions and order that they be filed in a manner that conforms with the Practice Direction on Requirements and Procedures for Appeals,<sup>5</sup> or, in the alternative, that the time to respond run from the date of the filing of the complete set of translations for each of the Rule 142 Motions;<sup>6</sup>

<sup>1</sup> Order Assigning Judges to a Case Before the Appeals Chamber, 19 December 2017, p.1; Order Assigning Three Judges Pursuant to Rule 18 of the Rules, 5 September 2018 (original French version filed on 4 September 2018), p. 1; Order Assigning a Pre-Appeal Judge, 12 September 2018, p. 1.

<sup>2</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Judgement, 22 November 2017 (public with confidential annex) (“Trial Judgement”).

<sup>3</sup> Notice of Appeal of Ratko Mladić, 22 March 2018 (public with public and confidential annexes); Appeal Brief on Behalf of Ratko Mladić, 6 August 2018 (confidential); Notice of Filing of Corrigendum to: Appeal Brief on Behalf of Ratko Mladić, 16 August 2018 (confidential; public redacted version filed on 11 September 2018); Prosecution Response Brief, 14 November 2018 (confidential); Reply to Prosecution’s Response Brief on Behalf of Ratko Mladić, 29 November 2018 (confidential; public redacted version filed on the same date). *See also* Prosecution’s Notice of Appeal, 22 March 2018; Prosecution Appeal Brief, 6 August 2018 (confidential; public redacted version filed on 7 August 2018); Response to Prosecution’s Appeal Brief on Behalf of Ratko Mladić, 14 November 2018; Prosecution Reply Brief, 29 November 2018 (confidential).

<sup>4</sup> Ratko Mladić’s First Motion to Admit New Evidence Pursuant to Rule 142 – International Witnesses, 31 December 2018 (public with confidential Annex A and public Annex B) (“First Motion”); Ratko Mladić’s Second Motion to Admit New Evidence Pursuant to Rule 142, 31 December 2018 (public with confidential annexes) (“Second Motion”); Ratko Mladić’s Third Motion to Admit New Evidence Pursuant to Rule 142 – Documents Made Accessible by the Central Intelligence Agency of the United States of America, 31 December 2018; Ratko Mladić Fourth Motion to Admit New Evidence Pursuant to Rule 142 – Sarajevo Segment, 31 December 2018 (“Fourth Motion”); Ratko Mladić’s Fifth Motion to Admit New Evidence Pursuant to Rule 142 – Armija BiH Documents, 31 December 2018 (“Fifth Motion”).

<sup>5</sup> Practice Direction on Requirements and Procedures for Appeals, MICT/10, 6 August 2013 (“Practice Direction”).

<sup>6</sup> Urgent Prosecution Motion to Strike Mladić’s Motions to Admit Additional Evidence, 10 January 2019 (“Motion to Strike”), paras. 1, 2.

**NOTING** the Prosecution’s submission that the majority of the documents annexed to the First, Second, Fourth, and Fifth Motions have not been translated into an official language of the Mechanism, and that the confidential Annex B of the Second Motion was not filed;<sup>7</sup>

**NOTING** that, on 10 January 2019, Mladić filed a corrigendum to the Second Motion that includes the “inadvertently omitted translations” to confidential Annex A and the “completely omitted” confidential Annex B;<sup>8</sup>

**NOTING** the response, filed on 10 January 2019, wherein Mladić submits, *inter alia*, that: (i) multiple documents in relation to the Rule 142 Motions have been submitted to the Mechanism’s translation services and that the official translations are yet to be completed;<sup>9</sup> and (ii) in relation to the Second Motion, a corrigendum has been filed with draft translations and the omitted confidential annex;<sup>10</sup>

**NOTING** Mladić’s further submission that the Motion to Strike should be dismissed except as to the following extensions of time for the Prosecution’s response to: (i) the Second Motion, the time should run from the date of the filing and service of the Corrigendum to Second Motion; and (ii) the “remaining affected motions”, the time should run from the filing of the complete and official translations of the relevant annexes;<sup>11</sup>

**NOTING** that the Prosecution did not file a reply;

**RECALLING** that, pursuant to Rules 3(A) and 3(E) of the Rules, the working languages of the Mechanism are English and French, and that “[t]he Registrar shall make any necessary arrangements for [...] translation into and from the working languages”;

**RECALLING** that, pursuant to Rule 3(F) of the Rules, if a party is required to take any action within a specified time after the filing or service of a document by another party, and pursuant to the Rules, that document is filed in a language other than one of the working languages of the Mechanism, time shall not run until the party required to take action has received from the Registrar a translation of the document into one of the working languages of the Mechanism;

<sup>7</sup> Motion to Strike, paras. 1, 2.

<sup>8</sup> Corrigendum to Ratko Mladić’s Second Motion to Admit New Evidence Pursuant to Rule 142, 10 January 2019 (public with confidential annexes) (“Corrigendum to Second Motion”), n. 1, RP. 9070-9054.

<sup>9</sup> Ratko Mladić’s Response to “Urgent Prosecution Motion to Strike Mladić’s Motions to Admit Additional Evidence”, 10 January 2019 (“Response to Motion to Strike”), paras. 3, 8, 9.

<sup>10</sup> Response to Motion to Strike, para. 7. *See also* Corrigendum to Second Motion.

<sup>11</sup> Response to Motion to Strike, paras. 7, 8, p. 4.

**RECALLING FURTHER** that, pursuant to paragraph 12 of the Practice Direction, where a party applies to present additional evidence pursuant to Rule 142 of the Rules, the “relevant documents and exhibits, where applicable, shall be translated into one of the languages of the Mechanism”;

**CONSIDERING** that Mladić has filed the Corrigendum to Second Motion, which contains the translations for Annex A and the omitted Annex B;<sup>12</sup>

**CONSIDERING** that: (i) the First Motion contains, in confidential Annex A, more than 200 pages of documents that are not in one of the official languages of the Mechanism;<sup>13</sup> (ii) the Fourth Motion contains, in Annexes A through G, 21 pages of documents that are not in one of the official languages of the Mechanism;<sup>14</sup> and (iii) the Fifth Motion contains, in Annexes B through D, eight pages of documents that are not in one of the official languages of the Mechanism (collectively, “Affected Annexes”);<sup>15</sup>

**CONSIDERING** that the Affected Annexes shall be translated into one of the working languages of the Mechanism in compliance with paragraph 12 of the Practice Direction;

**CONSIDERING** that, pursuant to Rule 3(F) of the Rules, the time for the Prosecution to respond to the relevant Rule 142 Motions should not run until it has received a translation of the Affected Annexes into one of the working languages of the Mechanism;

**CONSIDERING FURTHER** that it is in the interests of justice and effective case management to synchronise the briefing schedule for the Rule 142 Motions;<sup>16</sup>

**FINDING**, therefore, that it is justified that the time for the filing of the Prosecution’s response(s), if any, to the Rule 142 Motions shall run from the date of service on the Prosecution of the final translation of the Affected Annexes;

**PURSUANT** to Rules 3, 55, 131 of the Rules;

**HEREBY GRANT** the Motion to Strike, in part;

<sup>12</sup> See *supra* n. 8.

<sup>13</sup> First Motion, Annex A, RP. 9026-8780.

<sup>14</sup> Fourth Motion, Annexes A-G, RP. 8751-8749, 8746-8744, 8742-8737, 8735, 8734, 8732-8730, 8728, 8727, 8725, 8724.

<sup>15</sup> Fifth Motion, Annexes B-D, RP. 8681-8678, 8676, 8675, 8673, 8672.

<sup>16</sup> Cf. Decision on Ratko Mladić’s Motion for Extensions of Time and Word Limits, 22 May 2018, p. 3; Decision on Motion for Extension of Time to File Notice of Appeal, 21 December 2017, p. 2.

**REQUEST** Mladić to review the lengthy submission in the confidential Annex A to the First Motion and consider submitting a request for translation only of the part(s) necessary, bearing in mind the costs of translation services and the time required for translation;


**ORDER** Mladić to file the Affected Annexes in one of the working languages of the Mechanism as soon as practicable after receipt of the official translations from the Mechanism's Registry;

**ORDER** the Prosecution to file its response(s), if any, to the Rule 142 Motions within 30 days of the filing of the final translation of the Affected Annexes; and

**DISMISS** the Motion to Strike in all other respects.

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

Done this 22<sup>nd</sup> day of January 2019,  
At The Hague,  
The Netherlands



Judge Prisca Matimba Nyambe  
Pre-Appeal Judge

[Seal of the Mechanism]



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<b>Date Created/ Daté du :</b>	22 January 2019	<b>Date transmitted/ Transmis le :</b>	22 January 2019	<b>No. of Pages/ Nombre de pages :</b>	5
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