



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 December 2014
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 December 2014

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR VARIATION OF
TIME LIMIT FOR MOTION FOR CERTIFICATION TO
APPEAL DECISION DENYING PROTECTIVE MEASURES**

Office of the Prosecutor

Mr Peter McCloskey
Ms Camille Bibles
Mr Alan Tieger

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 24 April 2014, the Defence filed a motion for protective measures for witness GRM-251.¹ On 8 May 2014, the Prosecution responded, opposing the motion.² On 27 August 2014, the Chamber denied the motion for protective measures in an oral decision with written reasons to follow.³ The witness then stated that he did not want to testify without protective measures, the Defence expressed its intention to seek certification to appeal the decision, and the Chamber postponed the testimony of the witness.⁴ The Chamber reminded the Defence that the deadline for filing a motion for certification to appeal the decision would run from the date the reasons for the decision were filed.⁵

2. On 2 October 2014, the Chamber filed the reasons for its decision denying protective measures (“Reasons”), which were distributed to the usual recipients, including the Defence, at 15:40 hours that day through the Tribunal’s electronic distribution system.⁶ On 5 November 2014, noting that the Defence had not sought certification to appeal the decision, the Chamber asked the Defence what its intentions were in relation to the future testimony of the witness. The Defence stated that it was unaware of the filing of the Reasons.⁷ On 11 November, the Defence filed a motion (“Motion”) seeking certification to appeal the decision and requesting the Chamber to consider the Motion as timely filed despite the deadline for the Motion having expired.⁸ On 21 November 2014, the Prosecution filed its response (“Response”).⁹

II. SUBMISSIONS OF THE PARTIES

3. Although arguing that it had “already officially sought certification” when the oral decision was delivered,¹⁰ the Defence acknowledges that it missed the seven-day deadline for seeking certification to appeal because it overlooked the filing of the Reasons.¹¹ The Defence submits,

¹ Motion of the Defence of the Accused Ratko Mladic for Protective Measures for Defence Witness GRM003, 24 April 2014 (Confidential), para. 10.

² Prosecution Response to Defence Motion Requesting Protective Measures for GRM251, 8 May 2014 (Confidential), para. 7.

³ T. 24864.

⁴ T. 24866-24876.

⁵ T. 24876-24877.

⁶ Reasons for Denial of Defence Motion for Protective Measures for Witness GRM-251, 2 October 2014 (Confidential).

⁷ T. 27848-27849, 27868-27869.

⁸ Motion of Ratko Mladic for Certification to Appeal Decision on 27 August 2014 Denying Protective Measures for GRM-251, 11 November 2014 (Confidential), paras 3, 10.

⁹ Prosecution Response to Defence Motion for Certification of the Trial Chamber’s Decision on Protective Measures, 21 November 2014 (Confidential).

¹⁰ Motion, para. 3.

¹¹ Motion, paras 3, 7.

however, that its failure to meet the deadline is justified and good cause exists for the Chamber to consider the Motion as timely filed because, *inter alia*:

- the Reasons were unexpected;
- the Reasons were filed in the days before the trial entered a non-sitting week;
- counsel and co-counsel were busy at the time the Reasons were filed;
- the Reasons were distributed via email during a week in which the Defence team had received “over a dozen emails”;
- the Chamber did not inform the Defence in a timely manner that it had missed the filing deadline; and
- the Defence has sought an extension of the deadline at the “soonest possible time after having been advised of the existence of the [Reasons]”.¹²

4. The Prosecution does not oppose the request for the Chamber to consider the Motion as timely filed, although it notes that the request should have been made pursuant to Rule 127 of the Rules of Procedure and Evidence (“Rules”) rather than Rule 126.¹³

III. APPLICABLE LAW

5. Rule 73 of the Rules provides in relevant part:

- (B) Decisions on all motions are without interlocutory appeal save with certification by the Trial Chamber [...]
- (C) Requests for certification shall be filed within seven days of the filing of the impugned decision. Where such decision is rendered orally, this time-limit shall run from the date of the oral decision, unless

[...]

- (ii) the Trial Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

6. Rule 127 of the Rules provides in relevant part that a Trial Chamber may, upon a showing of good cause, vary time limits prescribed under the Rules and recognize as validly done any act whether or not a prescribed time limit has expired.

¹² Motion, paras 2-3.

¹³ Response, para. 1, fn. 3.

IV. DISCUSSION

7. As a preliminary matter, with regard to the Defence's argument that certification was sought in court at the time of the oral decision, the Chamber recalls the submissions of Defence counsel on 27 August 2014 that the Defence would be filing a written motion for certification to appeal with the understanding that the time limit for any such motion would begin only after the reasons for the oral decision were filed.¹⁴ The Chamber also notes that at the time no submissions were made with respect to either prong of Rule 73(B) or how these cumulative conditions had been met. The Chamber, therefore, rejects the Defence assertion that it sought certification at the time of the oral decision.

8. In accordance with Rules 73(B) through (C)(ii) of the Rules, the seven-day time limit for filing a motion for certification to appeal the decision ran from the filing and distribution of the Reasons on 2 October 2014, and expired on 9 October 2014. The Chamber will now address the Defence arguments that good cause exists for varying the seven-day time limit and considering the Motion as timely filed.

9. With regard to the Defence submission that it overlooked the Reasons because they were distributed by email, the Chamber notes that the Reasons were distributed via the Tribunal's electronic distribution system, which is the standard method for delivering filings since at least 2006. The Chamber, therefore, finds no merit in the Defence argument that it overlooked the Reasons because they were distributed by the usual method.

10. With regard to the Defence submission concerning the allegedly unexpected and problematic timing of the Reasons' filing, the Chamber again recalls the discussions in court on 27 August 2014, in which it clearly stated that the reasons for its decision were still to be given and that any request for certification to appeal the decision would need to wait until after such reasons were delivered. The Chamber also notes that issuing oral decisions with written reasons to follow has been a long-standing practice in this Tribunal. Moreover, decisions are filed and distributed year-round, even when the court is in recess. The Chamber, therefore, rejects the Defence arguments that the filing of the Reasons was in any way unexpected or that their distribution on a Thursday before a non-sitting week could have any bearing whatsoever on the Defence's ability to receive them. In addition, while the Chamber accepts that counsel and co-counsel might have been busy when the Reasons were distributed, it presumes that all participants in these proceedings are

¹⁴ T. 24876-24877.

similarly engaged and finds this to be a poor excuse for failing to notice the Reasons until they were pointed out by the Chamber a month after being distributed.

11. Turning to the Defence argument that it overlooked the Reasons because they were distributed during a week in which the Defence team received over a dozen emails, although the Chamber appreciates the sometimes overwhelming amount of electronic communications that must be managed in today's professional environment and in particular how demanding this task can be in the context of complex criminal trials, it cannot imagine a scenario in which the receipt of such a small number of emails in one week could justify the fact that the Reasons went unnoticed in the Defence inboxes for over a month.

12. With regard to the Defence's argument that the Chamber did not inform the Defence in a timely manner that it had missed the deadline for requesting certification to appeal, the Chamber reminds the Defence that it is responsible for managing its own case, and it is neither the duty nor the practice of this Chamber to remind the parties of deadlines or to inform them in any manner when such deadlines have passed.

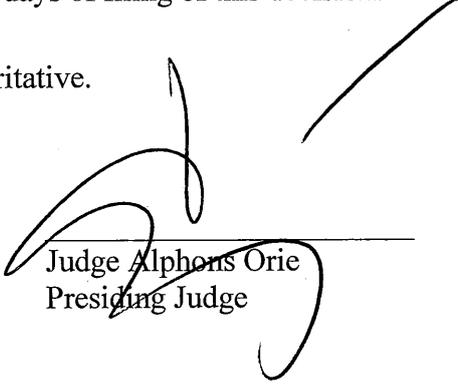
13. Finally, with regard to the Defence argument that it is seeking a variation of the time limit at the "soonest possible time after having been advised of the existence of the [Reasons]", the Chamber again notes that the Defence was advised of the existence of the Reasons when it received them through the normal distribution channels on 2 October 2014 and that the Defence was in possession of the Reasons for over a month before becoming aware of its oversight, after which it took the Defence nearly a week to file the Motion. The Chamber, therefore, finds that the Defence did not seek a variation of the time limit at the soonest possible time.

V. DISPOSITION

14. For the foregoing reasons, pursuant to Rule 127 of the Rules, the Chamber finds that the Defence has not shown good cause to vary the time limit relevant to the Motion and, therefore, **DENIES** the Defence request to consider the Motion as timely filed. Considering that the deadline for filing a request for certification to appeal has passed and having denied the request to consider the Motion as timely filed, the Chamber dismisses the remainder of the Motion.

15. The Chamber therefore **INSTRUCTS** the Defence to file a submission on how to proceed with the proposed evidence of Witness GRM-251, within seven days of filing of this decision.

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



Judge Alphons Orie
Presiding Judge

Dated this eleventh day of December 2014
At The Hague
The Netherlands

[Seal of the Tribunal]