



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 Flügg

Registrar: Mr John Hocking

Decision of: 11 November 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR
RECONSIDERATION OR CERTIFICATION TO APPEAL
DECISION ON WITNESS DEMURENKO**

Office of the Prosecutor
Mr Peter McCloskey
Mr Alan Tieger

Counsel for Ratko Mladić
Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 16 June 2016, Defence witness Andrey Demurenko failed to appear in court to complete his testimony and the Chamber invited the parties to make submissions on how to proceed.¹ On 17 June 2016, the Registry confidentially filed a memorandum from the Registry's Victims and Witnesses Section ("VWS") concerning its interactions with Demurenko ("Memorandum").² On 20 June 2016, the Defence confidentially made submissions in relation to Demurenko, noting that the Memorandum does not reflect the full extent of the information the VWS had earlier informally relayed to the parties in relation to its interactions with Demurenko ("Submissions").³ On 2 August 2016, the Chamber issued a decision on issues relating to witness Demurenko ("Impugned Decision").⁴ In the Impugned Decision, the Chamber informed the parties that it would ask Demurenko whether he would be willing to waive the confidentiality of his communications with the VWS as contained in the Memorandum.⁵ The Chamber further informed the parties that, should Demurenko waive this confidentiality, it would hear from the parties as to whether they would oppose an instruction to the Registry to file a public redacted version of the Memorandum, redacting only the names of Tribunal personnel, and to reclassify, *inter alia*, the Submissions as public.⁶ The Chamber also admitted into evidence exhibits associated with Demurenko's witness statement, including pages 1 to 4 of the document bearing Rule 65 *ter* number 1D03344, and denied the admission into evidence of the remainder of that document.⁷

2. On 8 August 2016, the Defence filed a motion, requesting that the Chamber reconsider or, alternatively, grant certification to appeal the Impugned Decision as it relates to (i) denying the complete admission into evidence of the document bearing Rule 65 *ter* number 1D03344 and (ii) the Chamber's alleged failure to address the Defence's previous submissions concerning the alleged refusal of the VWS to include the full contents of oral representations made to the parties in the Memorandum ("Motion").⁸ In the second alternative, the Defence requested the admission into evidence from the bar table of the excluded portion of the document bearing Rule 65 *ter* number 1D03344.⁹ On 15 August 2016, the Prosecution responded, opposing the Defence's request for

¹ T. 44199.

² Internal Memorandum regarding Witness Mr. Andrey Demurenko, 17 June 2016 (Confidential).

³ Defence Submission Pursuant to Trial Chamber Order of 16 June 2016 in Relation to Witness Demurenko, 20 June 2016, paras 7-8.

⁴ Decision on Issues Relating to Witness Andrey Demurenko, 2 August 2016.

⁵ Impugned Decision, para. 7.

⁶ Impugned Decision, para. 7.

⁷ Impugned Decision, para. 11.

⁸ Request for Reconsideration or, in the Alternative, Certification to Appeal the Decision on Issues Relating to Witness Andrey Demurenko, or in the Alternative, Admission of the Excluded Pages from 1D03344 from the Bar Table, 8 August 2016, paras 1-2, 14-15.

⁹ Motion, para. 16.

reconsideration of or certification to appeal the Impugned Decision but not opposing the admission into evidence from the bar table of the excluded portion of the document bearing Rule 65 *ter* number 1D03344.¹⁰

3. On 16 August 2016, Demurenko completed his testimony before the Chamber and informed the Chamber that, having read the Memorandum, he was not opposed to it being made public.¹¹ That same day, the Chamber also admitted the document bearing Rule 65 *ter* number 1D03344 into evidence in its entirety as exhibit D2177.¹² On 31 August 2016, the Chamber instructed the Registry to file a public version of the Memorandum, redacting the names of Tribunal personnel, and to reclassify, *inter alia*, the Submissions as public.¹³ On 7 September 2016, the Registry filed a public redacted version of the Memorandum.¹⁴

II. DISCUSSION

4. The Chamber notes that it has admitted into evidence the entirety of the document bearing Rule 65 *ter* number 1D03344. The Defence's requests with regard to the admission into evidence of a portion of this document are therefore moot.

5. In relation to the Defence's request for reconsideration of or certification to appeal the Impugned Decision as it relates to the Chamber's alleged failure to address the Submissions with regard to the completeness of the Memorandum, the Chamber understands the Defence's arguments to relate to the need to establish a full and accurate record of the communications between VWS and the parties in relation to Demurenko. The Chamber notes that a public version of the Memorandum, redacting only the names of Tribunal personnel, has now been filed. It further notes that the Submissions, which include information concerning Demurenko that the VWS allegedly informally conveyed to parties but did not include in the Memorandum, are now public. The Chamber thus considers that a complete and accurate record of the different accounts of the communications between the VWS and the parties in relation to Demurenko has been established and the Defence's concerns in this respect have been addressed. Under these circumstances, the Chamber finds that the Defence's request in this respect is also moot.

¹⁰ Prosecution Response to Defence Motion for Reconsideration or Certification to Appeal the Decision on Issues Relating to Witness Andrey Demurenko, 15 August 2016, paras 2, 12.

¹¹ T. 44238-44239.

¹² T. 44317-44319.

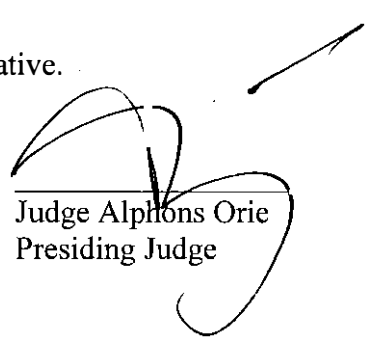
¹³ Order on the Classification of Filings Related to Witness Andrey Demurenko, 31 August 2016.

¹⁴ Internal Memorandum regarding Witness Mr. Andrey Demurenko, 17 June 2016.

III. DISPOSITION

6. For the foregoing reasons, the Chamber **DISMISSES** the Motion as moot.

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



Judge Alphons Orié
Presiding Judge

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

[Seal of the Tribunal]