

**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-04-75-T

Date: 6 July 2016

Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Decision: 6 July 2016

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON REQUESTS FOR CERTIFICATION TO APPEAL DECISION
ON PROSECUTION MOTION FOR FORMAL TERMINATION OF THE
PROCEEDINGS**

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for Goran Hadžić:

Mr. Zoran Živanović

Mr. Christopher Gosnell

TRIAL CHAMBER II 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);

NOTING that, on 17 June 2016, the Chamber issued its “Decision on Prosecution Motion for Formal Termination of the Proceedings” (“Impugned Decision”) in which it denied requests by the Prosecution and Defence to formally terminate the proceedings;¹

BEING SEISED OF the “Prosecution Request for Certification to Appeal Decision on the Formal Termination of Proceedings”, filed on 23 June 2016 (“Prosecution Motion”), in which the Prosecution seeks certification to appeal the Impugned Decision;

BEING FURTHER SEISED OF the “Request for Certification to Appeal Decision on Prosecution Motion for Formal Termination of the Proceedings”, filed by the Defence on 24 June 2016 (“Defence Motion”), in which the Defence separately seeks certification to appeal the Impugned Decision;²

NOTING the Prosecution submissions that (a) because the Impugned Decision concerns the formal termination of the proceedings, it significantly affects the fair and expeditious conduct of the proceedings and the outcome of the trial; (b) resolution by the Appeals Chamber may materially advance the proceedings by reversing the Impugned Decision and terminating the proceedings; (c) resolution by the Appeals Chamber would promote certainty and judicial economy;³ and (d) as there will be no trial or appeals judgements in this case, certification is the appropriate means of seeking appellate review of the Impugned Decision;⁴

NOTING the Defence submission that the Impugned Decision directly concerns the outcome of the trial and that immediate resolution of the issue may materially advance the proceedings;⁵

NOTING that Rule 73(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) provides that:

Decisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would

¹ The Chamber further notes that on 19 April 2016, the Chamber issued its “Decision on Request for Reconsideration of Decision Continuing Prohibition of Social Contacts During Provisional Release” (“Decision on Social Contacts during Provisional Release”) in which the Chamber found that prohibiting social contact by Hadžić with six enumerated witnesses was not necessary in order to safeguard the integrity of the proceedings and the administration of justice.

² The Defence submits that “[g]iven previous rulings by the Appeals Chamber concerning the scope of arguments that can be made by a non-appealing party”, it requests that leave to appeal be separately granted. Defence Motion, para. 3.

³ Prosecution Motion, para. 2.

⁴ Prosecution Motion, para. 2.

⁵ Defence Motion, paras 1-4.

significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings;

CONSIDERING that the Impugned Decision concerns the question of whether the proceedings in this case should be stayed or terminated and that this is an issue that would affect the fair and expeditious conduct of the proceedings or the outcome of the trial;

CONSIDERING, moreover, that an immediate resolution by the Appeals Chamber of this question may materially advance the proceedings;

CONSIDERING that the requirements of Rule 73(B) of the Rules have been fulfilled and that the requests for certification to appeal the Impugned Decision should be granted;

CONSIDERING that to the extent the Prosecution maintains its assertion that “the integrity of the proceedings has been undermined by the Trial Chamber’s recent decision to grant Hadžić permission to have social contact with certain Defence witnesses”,⁶ the Trial Chamber reiterates that such a challenge should have been raised through an appeal of the Decision on Social Contacts during Provisional Release, which the Prosecution did not pursue,⁷ and that, therefore, the current certification does not include leave to appeal that decision;

PURSUANT to Rule 73(B) of the Rules, hereby:

GRANTS the Prosecution Motion; and

GRANTS the Defence Motion.

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

Done this sixth day of July 2016,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]

⁶ Prosecution Motion, fn. 3.

⁷ See Impugned Decision, para. 11.