

**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: 22 February 2017
Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Carmel Agius, President

Registrar: Mr. John Hocking

Order of: 22 February 2017

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE REQUEST TO ENLARGE TIME
UNTIL SEVEN DAYS AFTER THE PRESIDENT'S
POTENTIAL DECISION ON THE SECOND GROUND OF
DISQUALIFICATION**

The Office of the Prosecutor:

Mr. Peter McCloskey
Mr. Alan Tieger

Counsel for the Accused:

Mr. Branko Lukić
Mr. Dragan Ivetić

I, CARMEL AGIUS, President 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 (“Tribunal”);

BEING SEISED of the “Defence Request to Enlarge Time Until Seven Days After the President's Potential Decision on the Second Ground of Disqualification”, filed by Ratko Mladić (“Mladić”) on 27 September 2016 (“Request”), whereby Mladić requests “an enlargement of time [...] until seven days after any decision of the ICTY President on remaining disqualification issues”;¹

NOTING the “Prosecution Response to Defence Request to Enlarge Time Until Seven Days After the President's Potential Decision on the Second Ground of Disqualification”, filed by the Office of the Prosecutor (“Prosecution”) on 10 October 2016 (“Response”), whereby the Prosecution indicates that it will not respond to the Request;²

NOTING that Mladić submits, *inter alia*, that: (i) the decision issued by myself as President of the Tribunal on 26 August 2016 denying the disqualification of Judges Orić and Flüge,³ “abstained” from addressing Mladić’s “Second Ground for Disqualification”, which according to Mladić “is an important issue involving demonstrated bias through the Trial Chamber’s enunciation of higher standards of law in support of its own finding that no bias exists as to legal officers assisting judges”;⁴ and (ii) he seeks to preserve his right to address such matters and the 26 August 2016 Decision, in the interests of justice and expediency;⁵

¹ Request, para. (i). See Request, para. 1. I note that the Request was also filed before Trial Chamber I of the Tribunal (“Trial Chamber”) (Request, p. 1) and that, on 20 September 2016, the Trial Chamber considered a similar request by Mladić to “enlarge time” and dismissed it, “[c]onsidering that [it] is not competent to decide on a request to extend a time limit that may exist for submissions to be filed before the President” (Decision on Defence Request for an Extension of Time, 20 September 2016, p. 1. See Defence Request to Enlarge Time Until Seven Days After the President's Potential Decision on the Second Ground of Disqualification, 2 September 2016).

² Response, para. 1.

³ Decision on Defence Motion Seeking to Disqualify the Honourable Judge Alphons Orić and the Honourable Judge Christoph Flüge, 26 August 2016 (“26 August 2016 Decision”), p. 5.

⁴ Request, paras 1-2. I note that Mladić’s “Second Ground for Disqualification” refers to his earlier argument before me that the content of the “Decision on Defence Motion for a Fair Trial and the Presumption of Innocence or, in the Alternative, a Mistrial”, issued by the Trial Chamber on 4 July 2016 (“Trial Chamber Decision of 4 July 2016”), demonstrated actual bias on the part of Judges Orić and Flüge (“Second Ground for Disqualification”) (Request, fn. 2, referring to Defence Motion Seeking to Disqualify the Honourable Judge Alphons Orić and the Honourable Judge Christoph Flüge Under This Trial Chamber’s Enunciated Standard for Judicial Bias, 20 July 2016 (“Disqualification Motion of 20 July 2016”), para. 9.).

⁵ Request, paras 1, 5-9, (i).

NOTING that the 26 August 2016 Decision *inter alia* provided that, in light of a then pending motion for reconsideration or certification to appeal the Trial Chamber Decision of 4 July 2016, “Mladić’s Second Ground [for Disqualification] is raised prematurely”;⁶

NOTING that Mladić has subsequently appealed the Trial Chamber Decision of 4 July 2016 and that the legal issue raised in Mladić’s Second Ground for Disqualification is therefore currently pending before the Appeals Chamber;⁷

CONSIDERING that, regrettably, the Request is at times incomprehensible and that, in particular, it is neither clear which time limit Mladić seeks to extend by seven days, nor clear before whom Mladić intends to file a submission within that time;

CONSIDERING that I could dismiss the Request on this basis alone;

CONSIDERING, however, that Mladić appears to expect me, as President of the Tribunal, to issue a second decision on the Disqualification Motion of 20 July 2016 relating to Mladić’s Second Ground for Disqualification;

CONSIDERING therefore that, in the interest of judicial efficiency and to prevent further confusion on Mladić’s part, it is prudent for me to clarify that I do not intend to issue any further decision on this matter, given that I have already denied the Disqualification Motion of 20 July 2016 in its entirety⁸ and that the legal issue raised in Mladić’s Second Ground for Disqualification will be decided by the Appeals Chamber;

⁶ 26 August 2016 Decision, p. 5, referring to Defence Motion for Reconsideration or, in the Alternative, Certification to Appeal the Decision on the Defence Motion for a Fair Trial and the Presumption of Innocence or, in the Alternative, a Mistrial, 11 July 2016. On 27 September 2016, the Trial Chamber *inter alia* granted Mladić’s request for certification to appeal the Trial Chamber Decision of 4 July 2016 (Decision on Defence Motion for Reconsideration or Certification to Appeal Decision on Motion for a Fair Trial or a Mistrial, 27 September 2016, para. 16).

⁷ *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.6, Interlocutory Appeal Brief Challenging the Decision of the Trial Chamber on the Defence Motion for a Fair Trial and Presumption of Innocence, 4 October 2016, paras 16b, 24-34.


⁸ In the 26 August 2016 Decision, I granted Mladić’s request to exceed the applicable word limit but denied the Disqualification Motion of 20 July 2016 in all other respects (26 August 2016 Decision, p. 5).

FOR THE FOREGOING REASONS,

HEREBY DENY the Request.

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

Dated this twenty-second day of February 2017,
At The Hague,
The Netherlands.



Judge Carmel Agius
President

[Seal of the Tribunal]