

T-09-92-T
D 66472- D 66469
22 August 2013

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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 August 2013
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 22 August 2013

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTIONS FOR
RECONSIDERATION AND CERTIFICATION TO APPEAL
THE DECISION ON DEFENCE MOTION SEEKING
ADJUSTMENT OF THE TRIAL SCHEDULE**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 19 July 2013, the Defence filed a motion for certification to appeal the Decision on Second Defence Motion Seeking Adjustment of the Trial Sitting Schedule Due to the Health Concerns of the Accused (“Motion” and “Impugned Decision” respectively).¹ The Defence submits that certification to appeal is warranted pursuant to Rule 73 (B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) because of the following: “1) the lack of analysis in the Chamber’s Medical Speculation; 2) The process of delay and avoidance of issuing a decision by the Chamber analysis [*sic*] of the decision to deny a independent medical examination; and 3) the lack of analysis of the decision that the conclusions of the MO is [*sic*] subjective rather than objective”.² On 25 July 2013, citing an increase in the fatigue of the Accused as a result of sitting five days per week, the Defence made an oral request for reconsideration of the Impugned Decision.³ The Chamber then invited the Defence to make its request for reconsideration in a written motion.⁴
2. On 26 July 2013, the Prosecution stated that it would take no position on the Motion.⁵

II. APPLICABLE LAW

3. Pursuant to Rule 73 (B) of the Rules, a Trial Chamber may grant certification of an interlocutory appeal if the impugned decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and for which, in the opinion of a Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings. The purpose of a request for certification to appeal is not to show that an impugned decision is incorrectly reasoned, but rather to demonstrate that the two cumulative conditions set out in Rule 73 (B) have been met.⁶

¹ Defence Motion for Certification to Appeal the Decision on Second Defence Motion Seeking Adjustment of the Trial Sitting Schedule Due to the Health Concerns of the Accused, 19 July 2013; Decision on Second Defence Motion Seeking Adjustment of the Trial Sitting Schedule Due to the Health Concerns of the Accused, 12 July 2013.

² Motion, paras 1, 7-11.

³ T. 15118-15119.

⁴ T. 15146-15147.

⁵ T. 15182.

⁶ Decision on the Defence Motion for Certification to Appeal the Decision on Submissions Relative to the Proposed “EDS” Method of Disclosure, 13 August 2012, para. 3.

III. DISCUSSION

4. As a preliminary matter, and as it has done in previous decisions, the Chamber again notes that the Defence, although having correctly set out the applicable law in the abstract, nevertheless incorrectly premises its arguments for certification to appeal on alleged judicial errors.⁷ The Chamber reminds the Defence that the appropriate forum for arguments concerning judicial errors is the appeal itself, not the request for certification to appeal. Accordingly, the parts of the Motion concerned with alleged judicial errors will not be further considered. The Chamber will nonetheless analyse whether the issue of the Accused's health concerns vis-à-vis the trial sitting schedule meets the requirements of Rule 73 (B) of the Rules.

5. In relation to the first prong of Rule 73 (B) of the Rules, the Chamber considers the effect of sitting five rather than four days per week on the overall length of the trial as well as the potential impact on the Accused's rights to adequate time and facilities for the preparation of his defence and to be tried in his presence as set forth in Article 21 (4) (b) and (d) of the Tribunal's Statute. The Chamber is satisfied that the issue of the trial scheduling would significantly affect the fair and expeditious conduct of the proceedings. Accordingly, the first prong of the test under Rule 73 (B) has been met.

6. In relation to the second prong of Rule 73 (B) of the Rules, the Chamber considers that a review of the factors and standards as applied by the Chamber in the Impugned Decision may guide it in future scheduling issues and allow the Chamber to adjust the trial schedule, if and to the extent necessary, if the Appeals Chamber would find that errors of law or fact underlie the Impugned Decision and may thus materially advance the proceedings. Accordingly, the second prong of the test under Rule 73 (B) has been met.

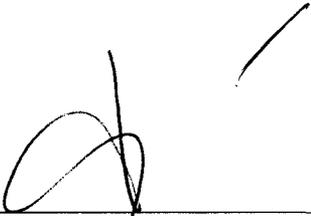
7. Lastly, with regard to the Defence's oral request for reconsideration, the Chamber notes that the Defence did not make written submissions on the matter as requested. The Chamber, therefore, denies without prejudice the request for reconsideration.

⁷ See *Ibid.*, para. 4; Motion, paras 1, 7-11.

IV. DISPOSITION

8. For the foregoing reasons, and pursuant to Rules 54 and 73 (B) of the Rules, the Chamber hereby **DENIES** without prejudice the Defence's request for reconsideration, and **GRANTS** the Motion, allowing certification to appeal the Impugned Decision.

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



Judge Alphons Orie
Presiding Judge

Dated this twenty-second day of August 2013.
At The Hague
The Netherlands

[Seal of the Tribunal]