

IT-09-92-T
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16 May 2014

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**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: 16 May 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: 16 May 2014

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR CERTIFICATION
TO APPEAL THE CHAMBER'S DECISION UNDER
RULE 98 *BIS***

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 15 April 2014, the Chamber issued its decision pursuant to Rule 98 *bis* of the Tribunal's Rules of Procedure and Evidence ("Rules") finding that for all counts set out in the Indictment, the Prosecution has presented evidence upon which a reasonable trier of fact could be satisfied beyond a reasonable doubt of the guilt of the Accused ("Impugned Decision").¹ On 22 April 2014, the Defence filed a motion for certification to appeal the Impugned Decision ("Motion") in relation to Counts 1 and 2 of the Indictment (Genocide).² On 6 May 2014, the Prosecution filed its response ("Response"), arguing that the Motion fails to meet the conditions for certification.³

2. The Defence argues that the Chamber failed to provide a well-reasoned justification for inferring genocidal intent of the Accused.⁴ The Defence submits in this regard that the Chamber failed to undertake an adequate analysis of the evidence provided by the Defence and failed to demonstrate the existence of direct evidence pertaining to the Accused.⁵ The Defence further submits that the Chamber erroneously considered the evidence of two unreliable witnesses (Witnesses RM-019 and RM-255).⁶ The Defence submits that the effect of the Impugned Decision is crucial to the rights of the Accused and that as such, resolution of this issue by the Appeals Chamber will materially advance the proceedings.⁷

3. The Prosecution submits that the Chamber referenced evidence in relation to a number of different crimes in concluding that all the elements of the crime of genocide have been addressed.⁸ The Prosecution argues that direct evidence pertaining to the Accused is not required and that according to the jurisprudence the Chamber is not required to consider evidence that is favourable to the Accused in a decision pursuant to Rule 98 *bis* of the Rules.⁹ With regard to Witnesses RM-019 and RM-255, the Prosecution submits that the Defence merely disagrees with the Chamber's

¹ T. 20918-20955.

² Defence Motion for Certification to Appeal the Chamber's Decision on the Defence's Request for Acquittal Pursuant to Rule 98 *bis*, 22 April 2014 (Confidential), paras 1, 4, 13.

³ Prosecution Response to Defence Motion for Certification to Appeal the Chamber's Decision Pursuant to Rule 98 *bis*, 6 May 2014 (Confidential), paras 1, 5, 9, 12-14.

⁴ Motion, para. 15.

⁵ Motion, paras 15-17.

⁶ Motion, para. 20.

⁷ Motion, paras 4, 8-11.

⁸ Response, para. 7.

⁹ Response, paras 7-8.

assessment of the reliability of their evidence but fails to identify how the Chamber's reliance on these witnesses is relevant to a determination pursuant to Rule 73 (B) of the Rules.¹⁰

II. APPLICABLE LAW

4. 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.¹¹ The Chamber further notes the permissive language of Rule 73 (B), whereby even when both requirements of the Rule are satisfied, certification is not automatic and remains at the discretion of the Trial Chamber.

III. DISCUSSION

5. As a preliminary matter, the Chamber notes that the parties make detailed submissions about the alleged judicial errors made by the Chamber.¹² The appropriate forum for arguments on judicial errors is the appeal itself, not the request for certification to appeal. Accordingly, the portions of the Motion and Response concerned with alleged judicial errors will not be further considered.

6. The Chamber considers that a decision on whether there is evidence capable of supporting a conviction of the Accused on the genocide counts is, due to the centrality of the genocide charges, an issue that would significantly affect the outcome of the trial. In relation to the second prong of Rule 73 (B) of the Rules, the Chamber considers that should the Impugned Decision have been erroneous, the proceedings would materially benefit from having this determined at this stage rather than following an appeal of the Judgement. Accordingly, an immediate resolution of the issue whether the Accused should be partially acquitted at this stage may materially advance the proceedings. Based on the foregoing, the Chamber is satisfied that the requirements of Rule 73 (B) of the Rules are met.

¹⁰ Response, paras 10-11.

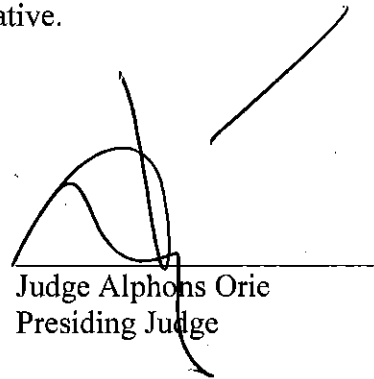
¹¹ Decision on the Defence Motion for Certification to Appeal the Decision on Submissions relative to the Proposed "EDS" Method of Disclosure, 13 August 2012, para. 3.

¹² Motion, paras 13-23; Response, paras 7-8, 10-11.

IV. DISPOSITION

7. For the foregoing reasons, and pursuant to Rule 73 (B) of the Rules, the Chamber **GRANTS** the Motion, allowing certification to appeal the Impugned Decision with respect to Counts 1 and 2 (Genocide).

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



Judge Alphons Orie
Presiding Judge

Dated this Sixteenth day of May 2014
At The Hague
The Netherlands

[Seal of the Tribunal]