



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: 23 August 2016
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 23 August 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE REQUEST FOR REASONED
DECISION REGARDING CLOSURE OF DEFENCE CASE**

Office of the Prosecutor

Mr Peter McCloskey
Mr Alan Tieger

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 19 May 2014, the Defence commenced its case with the presentation of the first Defence witness.¹ From December 2015, the Defence kept the Prosecution and the Chamber informed of the remaining witnesses it intended to call.² On 26 April 2016, the Chamber ordered that the last Defence witnesses commence their testimonies in the week of 30 May.³ On 16 August, the last Defence witness completed his testimony. With regard to the tendering of documentary evidence by the Defence, the Chamber set a deadline of 18 January 2016 for bar table motions, and 15 April 2016 for documents related to witnesses who had already testified.⁴ On 16 June 2016, the Chamber informed the parties that it would formally close the Defence case once it had decided on all evidentiary motions.⁵ During a status conference on 8 July 2016, the Defence indicated that there would be no more evidentiary filings as part of the Defence case after 22 July 2016.⁶

2. The Chamber issued the last remaining evidentiary decisions on 15 and 16 August 2016.⁷ Consequently, on 16 August, the Chamber recalled the procedural history in relation to the closing of the Defence case and sought confirmation that the Defence rested its case.⁸ The Defence declined to rest its case, referring to a motion it had filed on 8 August 2016 relating to witness Mašović and announcing its intention to file a motion seeking certification to appeal the Chamber's decision of 15 August 2016 denying an extension of the deadline for the presentation of witnesses.⁹ The Chamber explained to the Defence that the motion relating to Mašović in fact did not seek leave for Mašović to be called as a Defence witness, but instead as a witness pursuant to Rule 98 of the Tribunal's Rules of Procedure and Evidence ("Rules"), thereby not impacting the closure of the Defence case.¹⁰ In relation to the prospective motion seeking certification to appeal, the Chamber explained that there was nothing pending before it, and that even once such a motion was pending,

¹ T. 21035.

² See *e.g.* T. 43067-43068, 43218-43221, 43702.

³ T. 43703.

⁴ T. 39449; First Defence case omnibus decision, 31 March 2016, para. 2.

⁵ T. 44211.

⁶ See T. 44223 ("JUDGE MOLOTO: And before we go to Mr. Traldi, from the point of view of the Defence, have we heard everything that is outstanding before we can close the case? [...] Are those the only outstanding things from the Defence? MR IVETIC: As to things that still have yet to be filed, yes."); T. 44233 ("MR. TIEGER: [...] I mean, our understanding is that within two weeks, embracing all the factors we've discussed, all motions pertaining to any pending evidentiary matters will have been filed by the Defence [...]. JUDGE MOLOTO: [...] You confirm, Mr. Ivetic? MR. IVETIC: Your Honours, I don't think I need to add anything to what's been said.")

⁷ Decision on Defence requests to vary the deadline for presenting witnesses, 15 August 2016 (Confidential) ("Extension Decision"); Decision on Defence renewed request for admission of the document bearing Rule 65 *ter* number ID04841, 16 August 2016; Admission of D2177, T. 44319; Admission of document related to witness Odobašić, T. 44312. In addition to the above, the Chamber received testimony from witness Demurenko and admitted documentary evidence during his testimony on 16 August 2016.

⁸ T. 44313-44314.

⁹ T. 44314.

¹⁰ T. 44315-44316.

it would not impact the closure of the Defence case.¹¹ The Chamber then established that no evidentiary issues remained, that the Defence had rested its case, and that the Defence case was therefore closed.¹²

3. On 18 August 2016, the Defence submitted a notice of objection to the Chamber's closing of its case, seeking a reasoned decision on the matter ("Request").¹³ On the same day, the Prosecution informed the Defence and the Chamber by email that it would not respond to the Request.

II. SUBMISSIONS

4. The Defence objects to the closing of its case submitting that it did not rest its case.¹⁴ It submits that when closing the Defence case, the Chamber issued contradictory and confusing statements, which make the actual status of the case unclear.¹⁵ The Defence repeats its submissions of 16 August 2016 in relation to "unresolved evidentiary matters" and adds that there are "a number of other proposed documents await[ing] final decision".¹⁶ The Defence submits that the Chamber confusingly stated that "certification motions [...] are evidentiary" but then proceeded to state that no evidentiary issues remain.¹⁷

III. APPLICABLE LAW

5. Pursuant to Rule 85 of the Rules, each party is entitled to call witnesses and present evidence. Pursuant to Rule 90 (F) of the Rules, a trial chamber shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of the truth and avoid needless consumption of time. Pursuant to Rule 54 of the Rules, a trial chamber may issue such orders, summonses, subpoenas, warrants, and transfer orders as may be necessary for the purpose of an investigation or for the preparation or conduct of the trial.

¹¹ T. 44317.

¹² T. 44319.

¹³ Defence notice of objection to the Chamber's closing of its case, 18 August 2016 ("Notice"), para. 10.

¹⁴ Notice, para. 1.

¹⁵ *Ibid.*

¹⁶ Notice, para. 4.

¹⁷ Notice, paras 6, 8.

IV. DISCUSSION

6. At the outset, the Chamber clarifies that on 16 August, it erroneously referred to certification motions as evidentiary matters. Certification motions are not evidentiary matters.¹⁸

7. The Chamber recalls that in court on 16 August, it referred to the Defence's prior statement that there would be no more evidentiary motions filed after 22 July 2016. It then sought confirmation from the Defence that there were no further evidentiary matters pending and addressed each related objection of the Defence as they were raised, explaining why they do not impact the closure of the Defence case.¹⁹ In light of this, the Chamber then proceeded to establish that the Defence case was closed. Although the Defence might disagree with the decision of the Chamber, there is no merit in the Defence's submission that the Chamber did not provide a reasoned decision, especially in light of the long and detailed procedural history on this topic and the Chamber's actions in court on 16 August.²⁰

V. DISPOSITION

8. For the foregoing reasons, the Chamber **DISMISSES** the Request.

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



Judge Alphons Orié
Presiding Judge

Dated this twenty-third day of August 2016
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁸ The Chamber considers that this mistake was an obvious misstatement. Motions seeking certification to appeal are not concerned with the tendering of material into evidence, but solely concern requests for permission from the Chamber to argue a possible reversal of an impugned decision before the Appeals Chamber, *see also* Extension Decision, fn. 40. To the extent this misstatement could be considered a significant part of the decision establishing that the Defence case was closed and despite the implicit clarification shortly thereafter that no evidentiary motions remain, this is hereby explicitly corrected.

¹⁹ T. 44314-44317.

²⁰ As set out above and explained in paras 2 and 6-7.