



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: 2 September 2016
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 2 September 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR AN EXTENSION OF
TIME TO TENDER SENTENCE-RELATED INFORMATION**

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 16 August 2016, the Chamber established that the Defence case was closed.¹ On the same day, it set a deadline of 25 August 2016 for the parties to file any motions tendering evidence pursuant to Rule 85 (A) (vi) of the Tribunal's Rules of Procedure and Evidence ("Rules").² On 25 August, the Prosecution submitted that it would not tender any such material.³ On the same day, the Defence requested an extension of time to tender evidence pursuant to Rule 85 (A) (vi) of the Rules ("Motion").⁴ On 31 August, the Prosecution responded to the Motion.⁵

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that it was only given notice of the deadline of 25 August on 16 August.⁶ It announces its intention to present various character and mitigation evidence, including a number of witnesses (former subordinates, members of the Accused's family, foreign nationals, as well as a doctor).⁷ The Defence submits that it would be impossible to conduct the necessary consultations, preparations, analyses, and translations in relation to this evidence by 25 August, and requests that the Chamber extend the deadline to 17 October 2016.⁸ The Defence further submits that it was taken "off guard" by the deadline as "typically this type of submission is submitted at a later stage of the trial, after the rejoinder of evidence submissions, within the final brief and during closing arguments".⁹

3. The Prosecution does not oppose a reasonable extension for the Defence to submit written information relevant to sentencing under Rule 85 (A) (vi) of the Rules but considers the requested new deadline of 17 October 2016 as "excessive".¹⁰ The Prosecution argues that the Defence has had

¹ T. 44319.

² *Ibid.*

³ Prosecution Submission pursuant to Rule 85(A)(vi), 25 August 2016.

⁴ Urgent Defence Motion for an Extension of Time to Tender Relevant Information to go to Determining an Appropriate Sentence, 25 August 2016.

⁵ Prosecution Response to Urgent Defence Motion for an Extension of Time to Tender Relevant Information to go to Determining an Appropriate Sentence, 31 August 2016 ("Response").

⁶ Motion, para. 4.

⁷ *Ibid.*

⁸ Motion, paras 4-5, 9-10.

⁹ Motion, para. 6.

¹⁰ Response, paras 1, 6.

a reasonable period of time to obtain written information relevant to sentencing and should also have presented such information during its case-in-chief.¹¹ It also argues that the Defence has long been on notice that this phase of the trial was approaching, seeing that the Chamber sat only on 17 days in the year 2016 to hear Defence evidence.¹²

III. APPLICABLE LAW

4. Rule 85 (A) of the Rules states as follows:

Each party is entitled to call witnesses and present evidence. Unless otherwise directed by the Trial Chamber in the interests of justice, evidence at the trial shall be presented in the following sequence:

- (i) evidence for the prosecution;
- (ii) evidence for the defence;
- (iii) prosecution evidence in rebuttal;
- (iv) defence evidence in rejoinder;
- (v) evidence ordered by the Trial Chamber pursuant to Rule 98; and
- (vi) any relevant information that may assist the Trial Chamber in determining an appropriate sentence if the accused is found guilty on one or more of the charges in the indictment.

5. Pursuant to Rule 86 (C) of the Rules, the parties shall also address matters of sentencing in closing arguments.

6. According to Rule 127 (A) (i) of the Rules, a trial chamber may, on good cause being shown by motion, enlarge or reduce any time prescribed by or under the Rules.

IV. DISCUSSION

7. In relation to the Defence's argument that typically Rule 85 (A) (vi) submissions are made in final trial briefs and closing arguments, the Chamber considers that the Defence confuses presenting evidentiary information on sentencing matters with making arguments about such matters. Rule 85 of the Rules is titled "Presentation of Evidence" and sets out the sequence of

¹¹ Response, paras 1, 5-6.

presenting evidence. Rule 86 (C) of the Rules clarifies that the parties should also address questions of sentencing in their closing arguments. As such, the parties still have the opportunity to make arguments about sentencing, with references to admitted evidence and other matters before the Chamber, in their final trial briefs and closing arguments. The Chamber's deadline of 25 August 2016 solely concerned the presentation of such information.

8. The Chamber will now analyse whether the Defence's arguments as set out in the Motion amount to a showing of good cause pursuant to Rule 127 (A) (i) of the Rules. The underlying premise of the Defence's argument is that it had only nine days to tender evidence pursuant to Rule 85 (A) (vi) of the Rules. This, however, ignores the context in which the Chamber set the deadline. The Defence has been aware since the beginning of this case of the sequence of the presentation of evidence. Since December 2015, it was clear to the parties that the Defence case was coming to a close with only a limited number of witnesses left to be called and deadlines being set with regard to the presentation of remaining evidence.¹³ There was additional proof of a rather short rebuttal (and consequently short rejoinder) case when the Prosecution filed its rebuttal motion, tendering only six documents, already on 21 June 2016, many weeks prior to the close of the Defence case. As the Chamber has reminded the Defence in the past, an expeditious trial requires the parties to be proactive in preparing subsequent stages of the trial.¹⁴ In this respect, the Defence fails to indicate why it could not have taken steps to prepare its Rule 85 (A) (vi) information at an earlier stage, so as to be in a position to tender such information expeditiously. The Chamber also notes that the Defence qualified a number of its witnesses and documents presented during its case-in-chief as character evidence or evidence in mitigation.¹⁵ This contradicts the Defence position that it saved such material for tendering at the Rule 85 (A) (vi) stage. Presented evidence relevant for mitigation,

¹² Response, para. 5.

¹³ Decision on Defence Requests to Vary the Deadline for Presenting Witnesses, 15 August 2016 (Confidential) ("Deadline Decision"), fn. 44; For an overview of all relevant deadlines which were given by the Chamber in 2015 and the first half of 2016, see Decision on Defence Request for Reasoned Decision Regarding Closure of Defence Case, 23 August 2016, para. 1.

¹⁴ See Deadline Decision, para. 15.

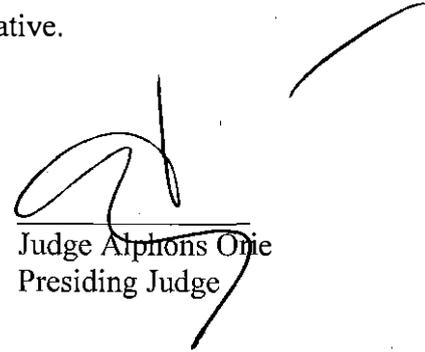
¹⁵ Defence Supplemental Submission of Preliminary Witness and Exhibit Lists under Rule 65ter (G), 19 May 2014 (Confidential), Annex A, pp. 13, 96, 240-241. Three of these four proposed witnesses testified in this case. Defence Sixth Motion to Admit Documents from the Bar – Documents Relating to Ratko Mladić, 18 January 2016, para. 9.

including medical evidence before the Chamber,¹⁶ can be relied upon by the Defence when arguing its case in its final trial brief and closing arguments. Under these circumstances, the Chamber finds that the Defence has not demonstrated good cause to extend the deadline set by the Chamber.

V. DISPOSITION

9. For the foregoing reasons, pursuant to Rule 127 of the Rules, the Chamber **DENIES** the Motion.

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



Judge Alphons Onie
Presiding Judge

Dated this second day of September 2016
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁶ The Chamber recalls that there is a vast amount of medical evidence before the Chamber, namely (i) reports from the United Nations Detention Unit (“UNDU”), (ii) reports from external practitioners, and (iii) testimony of the UNDU’s medical officer.