



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 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: 22 September 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE MOTION FOR STAY OF
PROCEEDINGS FOR SYSTEMIC BIAS OR, IN THE
ALTERNATIVE, A MISTRIAL**

Office of the Prosecutor

Mr Peter McCloskey
Mr Alan Tieger

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

TRIAL CHAMBER I 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 (“Chamber” and “Tribunal”, respectively);

BEING SEISED of the 20 July 2016 Defence Motion for Stay of Proceedings for Systemic Bias (“Motion”), brought pursuant to Rule 15 (B) of Tribunal’s Rules of Procedure and Evidence (“Rules”), requesting, *inter alia*, that the Chamber grant a stay of proceedings or, in the alternative, declare a mistrial on the basis that the fair trial rights of Ratko Mladić (“Accused”) have been violated;¹

NOTING that the Motion was also filed before the President of the Tribunal and the President of the Mechanism for International Criminal Tribunals (“MICT”);

NOTING the Defence submissions that the Accused’s fair trial rights have been violated as a result of institutional bias, as evidenced by: (1) the President of the Tribunal, three Appeals Chamber judges, and two of the three judges of the Chamber have already found the Accused guilty; (2) Chamber’s staff have worked on other judgments in which the Accused was found guilty; (3) the President of the MICT, who formerly served as President of the Tribunal, and senior United Nations (“UN”) officials have stated that the Accused is guilty; and (4) the Registry has demonstrated bias through inappropriate interventions to the disadvantage of the Defence;²

NOTING that the Defence also seeks leave to exceed the word limit for motions;³

NOTING that on 27 July 2016, the Deputy Registrar made submissions in response to the Motion;⁴

NOTING that on 3 August 2016, the Prosecution responded (“Response”), opposing the Motion and submitting that: (1) the allegations of bias concerning Judges Orić and Flügel, and Chamber’s staff have been litigated and decided upon; (2) the Defence fails to explain the relevance and legal basis of its allegations of bias concerning Appeals Chamber judges and the Presidents of the Tribunal and the MICT; (3) the allegations of bias concerning UN officials are unrelated to the adjudication of the present case; and (4) the Defence’s sweeping allegations of bias concerning the Registry are based on a handful of innocuous instances;⁵

¹ Defence Motion for Stay of Proceedings for Systemic Bias, 20 July 2016. The Chamber notes that the Defence is also seeking a stay of proceedings in its motion of 20 July 2016.

² Motion, paras 2-4, 21, 24-74 and pp. 27-28. The Defence also requests relief from the Presidents of the Tribunal and the MICT. *See* Motion, p. 27.

³ Motion, para. 6.

⁴ Deputy Registrar’s Submission Concerning Claims Advanced by the Defence on 20 July 2016, 27 July 2016.

⁵ Prosecution Consolidated Response to Defence Motion for Stay of Proceedings and Disqualification of Judges Alphons Orić and Christoph Flügel, 3 August 2016, paras 1, 4, 7-13.

NOTING that on 10 August 2016, the Defence requested leave to reply and replied, submitting that the Prosecution's arguments should be dismissed and the Motion should be granted;⁶

NOTING that the President of the MICT dismissed the Motion for lack of jurisdiction;⁷

NOTING that the President of the Tribunal declined to address the merits of the Motion considering that (1) the Defence request to disqualify Judges Orié and Flügge was previously denied; (2) no appeal is pending in the present case; and (3) the Defence fails to provide any legal basis for seising the President of the Tribunal;⁸

RECALLING that Article 20 (1) of the Tribunal's Statute provides that a trial chamber must ensure the fairness and expeditiousness of the trial and that proceedings are conducted in accordance with the Rules, with full respect for the rights of an accused;

RECALLING that Article 21 of the Tribunal's Statute guarantees an accused's right to a fair trial;

RECALLING that pursuant to Rule 54 of the Rules, the Chamber has the power to issue such orders as may be necessary for the conduct of the trial, which could include an order for a stay of proceedings;⁹

RECALLING that the Practice Direction on the Length of Briefs and Motions states that motions shall not exceed 3,000 words and that a party must seek authorization from the relevant chamber to exceed this word limit, providing an explanation of the exceptional circumstances that necessitate the oversized filing;¹⁰

CONSIDERING the importance of the subject matter of the Motion and that the Defence has demonstrated good cause to reply in the request to reply;¹¹

RECALLING its decision of 4 July 2016, in which the Chamber found that the role of Chamber's staff is to provide assistance to the judges and that decision-making remains entirely within the

⁶ Defence Request for Leave to Reply in Support of Defence Motions for Stay of Proceedings Motion and Disqualification of Judges Alphons Orié and Christophe [*sic*] Flügge, 10 August 2016; Request, Annex A (Defence Reply in Support of Defence Motions for Stay of Proceedings and Disqualification of Judges Alphons Orié and Christophe [*sic*] Flügge), para. 1 and p. 3.

⁷ *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56, Decision on Two Defence Motions, 21 July 2016.

⁸ Decision on Defence Motion for Stay of Proceedings for Systemic Bias, 14 September 2016.

⁹ See *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-A, Judgement, 19 July 2010, para. 36.

¹⁰ Practice Direction on the Length of Briefs and Motions, IT/184 Rev. 2, 16 September 2005, paras 5, 7.

¹¹ The Chamber has only considered the arguments in the Reply that relate to the Motion and not those that relate to a separate motion before the President of the Tribunal.

judges' purview, and that the work of Chamber's staff in other cases is irrelevant to the impartiality of the judges;¹²

CONSIDERING THEREFORE that the Defence allegations against Chamber's staff have been litigated and dismissed;

CONSIDERING that with regard to the further allegations concerning institutional bias, the Defence has failed to plead with sufficient specificity how such alleged bias has affected the Accused's fair trial rights in the present case;

CONSIDERING that the basis of the allegations against the Registry, namely moderately delayed filings due to concerns about confidentiality and the status of a non-party to the proceedings, do not demonstrate the existence of bias;¹³

CONSIDERING that it is not within the competence of the Chamber to grant relief under Rule 15 (B) of the Rules, that the President of the Tribunal has declined to address the merits of the Motion, and that the President of the MICT has dismissed the Motion;

CONSIDERING that the Defence has failed to establish that the Accused's fair trial rights have been violated;

CONSIDERING THEREFORE that there is no basis upon which to order a stay of proceedings or a mistrial;

FOR THE FOREGOING REASONS

PURSUANT TO Rule 54 of the Rules;

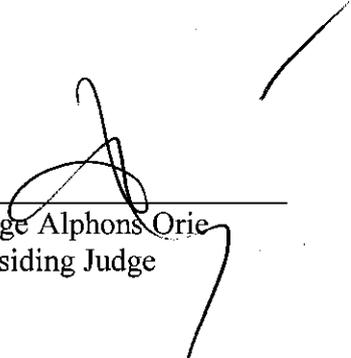
GRANTS the Defence request to exceed the word limit in the Motion;

GRANTS the Defence request to reply; and

¹² Decision on Defence Motion for a Fair Trial and the Presumption of Innocence or, in the Alternative, a Mistrial, 4

DENIES the Motion.

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



Judge Alphons Orie
Presiding Judge

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

[Seal of the Tribunal]

July 2016, paras 18-20.

¹³ See Fourth Defence Case Omnibus Decision, 2 August 2016, paras 3-4.