



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: 21 October 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: 21 October 2016

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE URGENT MOTION FOR STAY OF
PROCEEDINGS PENDING APPEALS**

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 Defence Urgent Motion for Stay of Proceedings Pending Appeals (“Motion”), filed on 10 October 2016, in which the Defence requests a suspension of all deadlines and scheduled hearings until such time as certain pending appeals, motions, and a potential appeal (collectively “Pending Motions”) have been decided upon, or, in the alternative, a declaration of mistrial on the basis that the fair trial rights of Ratko Mladić (“Accused”) have been violated;¹

NOTING the Defence arguments that the Chamber has already confirmed that the conditions for a stay of proceedings have been met because the Chamber granted certification to appeal one of its decisions,² and that a stay of proceedings is necessary because: (i) if any grounds of the Pending Motions are granted, this could nullify deadlines set by the Chamber thereby wasting resources and leading to injustice; and (ii) it is in the interests of justice for the Defence to be permitted to fully substantiate its arguments in relation to the Pending Motions and its final trial brief;³

NOTING the Prosecution Response to Defence Urgent Motion for Stay of Proceedings Pending Appeals (“Response”), filed on 12 October 2016, in which the Prosecution submits that it does not oppose the Chamber granting a stay of proceedings if the Appeals Chamber does not render a

¹ Motion, paras 1-4, 11. *See* Defence Motion for Certification to Appeal Decision on Defence Motion for Stay of Proceedings for Systemic Bias or, in the Alternative, a Mistrial (a Protest Against Trial Chamber I’s “Insert Defence Acknowledgment Here” Decision-Making Process), 29 September 2016; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.6, Interlocutory Appeal Brief Challenging the Decision of the Trial Chamber on the Defence Motion for a Fair Trial and Presumption of Innocence, 4 October 2016; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.7, Interlocutory Appeal Brief Challenging the Decision of the Trial Chamber on the Defence Motion Regarding Scheduling Order (with Confidential Annex A), 5 October 2016 (“Scheduling Appeal”); *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.6, Appellant’s Motion Pursuant to Rule 15(B) Seeking Disqualification of Judge Theodor Meron from the Appeals Chamber, 10 October 2016; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.6, Appellant’s Motion Pursuant to Rule 15(B) Seeking Disqualification of Judge Carmel Agius from the Appeals Chamber, 10 October 2016; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.6, Appellant’s Motion Pursuant to Rule 15(B) Seeking Disqualification of Judge Fausto Pocar from the Appeals Chamber, 10 October 2016; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.7, Appellant’s Motion Pursuant to Rule 15(B) Seeking Disqualification of Judge Theodor Meron from the Appeals Chamber, 10 October 2016; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.7, Appellant’s Motion Pursuant to Rule 15(B) Seeking Disqualification of Judge Carmel Agius from the Appeals Chamber, 10 October 2016; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.7, Appellant’s Motion Pursuant to Rule 15(B) Seeking Disqualification of Judge Fausto Pocar from the Appeals Chamber, 10 October 2016.

² *See* Decision on Defence Motion for Reconsideration or Certification to Appeal Decision on Motion for a Fair Trial or Mistrial, 27 September 2016.

³ Motion, paras 6-10. *See* Decision on Defence Motion for Reconsideration or Certification to Appeal Decision on Motion for a Fair Trial or Mistrial, 27 September 2016; Decision on Defence Motion Seeking Reconsideration of or Certification to Appeal Scheduling Order, 28 September 2016.

decision on one of the Pending Motions by 21 October 2016, but that a stay is not warranted on any other grounds put forward by the Defence;⁴

NOTING that on 17 October 2016, the Defence filed a request for leave to reply, attaching its reply as an annex in which it opposes the Prosecution's proposal with respect to a stay of proceedings as well as its characterization of the recent volume of written litigation;⁵

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 Tribunal's Rules of Procedure and Evidence ("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, a trial chamber may issue such orders as necessary for the conduct of the trial, which could include an order for a stay of proceedings;⁶

RECALLING that a stay of proceedings is an exceptional measure ordered by a chamber to avoid prejudice to a party, and for which a chamber must consider whether the continuation of proceedings would have an impact on the fairness or expeditiousness of the trial;⁷

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;

CONSIDERING that if the Chamber were to accept the Defence's arguments concerning certification to appeal, it would mean that decisions certified for appeal which concern the fair-trial rights of an accused would also necessitate a stay of proceedings;

CONSIDERING that this approach stands in such stark contrast to the jurisprudence and practice of the Tribunal that the Defence's arguments in this regard demonstrate a fundamental misunderstanding of, or wilful inattention to, the interlocutory appeals process;

⁴ Response, paras 1-6. *See* Scheduling Appeal.

⁵ Defence Motion for Leave to Reply in Support of Urgent Motion for Stay Pending Appeals: Annex A, Defence Reply in Support of Urgent Motion for Stay Pending Appeals, 17 October 2016, paras 2-3.

⁶ *See Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-A, Judgement, 19 July 2010, para. 36.

⁷ *See Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR73.8, Decision on Prosecution's Appeal against the Trial Chamber's Order Regarding the Resumption of Proceedings, 16 September 2008, paras 8-9; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67, Order Regarding the Resumption of Proceedings, 15 August 2008, p. 4; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Decision on Defence Motion to Stay Proceedings, 28 September 2005, p. 2; *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Decision on Milan Lukić's Notice of Verification of Alleged Victim Survivors and Application for Stay of Proceedings with Exhibits A through H, 12 March 2009, para. 12.

CONSIDERING that under the current circumstances, a continuation of the proceedings means only that the parties must meet the deadlines for filing their final trial briefs and the presentation of their closing arguments;⁸

CONSIDERING that if the Pending Motions are unsuccessful, the Accused will not have been prejudiced by the scheduling of deadlines for the final trial briefs and closing arguments;

CONSIDERING that if the Pending Motions are successful, there would be no irreversible consequences for the trial or prejudice to the Accused which could not be remedied by, *inter alia*, an opportunity to supplement the final trial brief or by closing arguments being scheduled at a later date;

CONSIDERING therefore that regardless of the outcomes of the Pending Motions, the Defence will have had adequate time to prepare its final trial brief and closing arguments, and that a stay of proceedings under such circumstances would constitute an unjustified delay in the trial;

CONSIDERING that the Defence has failed to establish that the Accused's fair trial rights have been violated, or that continuation of the proceedings would have a negative impact on the fairness or expeditiousness of the trial;

CONSIDERING that the Defence has not made specific submissions as to why a declaration of a mistrial would be justified;

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

FOR THE FOREGOING REASONS

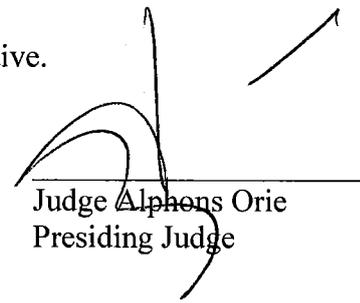
PURSUANT TO Rule 54 of the Rules;

HEREBY GRANTS the Defence request to reply; and

⁸ See Scheduling Order, 9 September 2016.

DENIES the Motion.

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



Judge Alphons Orie
Presiding Judge

Dated this twenty-first day of October 2016
At The Hague
The Netherlands

[Seal of the Tribunal]