

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 3 June 2021

Original: English

IN THE APPEALS CHAMBER

Before: Judge Prisca Matimba Nyambe, Presiding
Judge Aminatta Lois Runeni N’gum
Judge Seymour Panton
Judge Elizabeth Ibanda-Nahamya
Judge Mustapha El Baaj

Registrar: Mr. Abubacarr Tambadou

Decision of: 3 June 2021

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON A DEFENCE REQUEST FOR AN EXTENSION OF
RIGHT OF AUDIENCE TO A LEGAL CONSULTANT**

The Office of the Prosecutor

Mr. Serge Brammertz
Ms. Laurel Baig
Ms. Barbara Goy

Counsel for Mr. Ratko Mladić

Mr. Branko Lukić
Mr. Dragan Ivetić

THE APPEALS CHAMBER of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively);¹

NOTING the judgement issued in this case by Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia on 22 November 2017;²

NOTING the appeals against the Trial Judgement filed before the Mechanism by Mr. Ratko Mladić and the Office of the Prosecutor of the Mechanism (“Prosecution”);³

NOTING that the hearing of the appeals in this case was held on 25 and 26 August 2020 (“Appeal Hearing”);⁴

RECALLING that, on 30 April 2021, the Appeals Chamber ordered that the judgement on the appeals in the present case be pronounced publicly in The Hague, The Netherlands, on 8 June 2021 (“Pronouncement of Judgement”), and requested the parties to inform the Registrar of the Mechanism (“Registrar”) by 25 May 2021 in the event that, due to coronavirus pandemic-related restrictions, any counsel or Mr. Mladić would elect to participate in the hearing by means of a videoconference;⁵

NOTING that, on 24 May 2021, the Defence filed a notice indicating that Mr. Dragan Ivetić, Co-Counsel for Mr. Mladić, is not able to participate in the scheduled Pronouncement of Judgement “in any capacity whatsoever” due to his “unexpected hospitalization and urgent need for continued hospitalization and treatment”;⁶

¹ Order Assigning Judges to a Case Before the Appeals Chamber, 19 December 2017, p. 1; Order Assigning Three Judges Pursuant to Rule 18 of the Rules, 4 September 2018 (originally filed in French; English translation filed on 5 September 2018), p. 1; Order Replacing a Judge, 14 September 2018 (originally filed in French; English translation filed on 27 February 2019), p. 1; Order Replacing a Judge in a Case before the Appeals Chamber, 18 February 2021, p. 1.

² *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Judgment, 22 November 2017 (public with confidential annex) (“Trial Judgement”).

³ See Notice of Appeal of Ratko Mladić, 22 March 2018 (public with public and confidential annexes); Appeal Brief on Behalf of Ratko Mladić, 6 August 2018 (confidential); Notice of Filing of Corrigendum to: Appeal Brief on Behalf of Ratko Mladić, 16 August 2018 (confidential; public redacted version filed on 11 September 2018); Prosecution Response Brief, 14 November 2018 (confidential; public redacted version filed on 1 February 2019); Reply to Prosecution’s Response Brief on Behalf of Ratko Mladić, 29 November 2018 (confidential; public redacted version filed on the same date); Prosecution’s Notice of Appeal, 22 March 2018; Prosecution Appeal Brief, 6 August 2018 (confidential; public redacted version filed on 7 August 2018); Response to Prosecution’s Appeal Brief on Behalf of Ratko Mladić, 14 November 2018; Prosecution Reply Brief, 29 November 2018 (confidential; public redacted version filed on 21 January 2019).

⁴ T. 25 August 2020 pp. 1-110; T. 26 August 2020 pp. 1-109. See also Decision on the Scheduling of the Appeal Hearing and a Status Conference, 17 July 2020 (“Decision of 17 July 2020”), pp. 10-12.

⁵ Scheduling Order for Pronouncement of Judgement, 30 April 2021, p. 1.

⁶ Defence Urgent Notice of Unavailability of Co-Counsel, 24 May 2021, paras. 12, 13.

NOTING the “Defence Notice in Compliance with Scheduling Order and Urgent Motion to Postpone Pronouncement of Judgment”, filed on 25 May 2021 (“Motion of 25 May 2021”), wherein the Defence requested that the Appeals Chamber stay and postpone the Pronouncement of Judgement until a time when both counsel can be present in court in person with Mr. Mladić, and in support of this request submitted, *inter alia*, that Lead Counsel Mr. Branko Lukić, having received Mr. Mladić’s “strict instructions” and citing the Serbian Attorney Ethical Code, indicated that he could not confirm his presence during the Pronouncement of Judgement, either in person or via videoconference link;⁷

RECALLING the “Decision on Defence Urgent Motion to Postpone Pronouncement of Judgement”, issued on 28 May 2021 (“Decision of 28 May 2021”), wherein the Appeals Chamber found that the Defence had failed to justify its request to stay the Pronouncement of Judgement and postpone it until a time when both counsel can be present in court in person with Mr. Mladić and denied the Motion of 25 May 2021;⁸

RECALLING that, in denying the Motion of 25 May 2021, the Appeals Chamber, *inter alia*: (i) recalled that counsel have an obligation to represent their client and comply with orders of the Appeals Chamber, and that either the counsel or the co-counsel may assume the responsibility for participating in proceedings; and (ii) considered that notwithstanding the co-counsel’s unavailability, the Defence failed to demonstrate that Mr. Mladić or his lead counsel cannot be present for the Pronouncement of Judgement, in court or via videoconference;⁹

BEING SEIZED OF the “Defence Request for Extension of Rights of Audience”, filed on 31 May 2021 (“Request of 31 May 2021”), wherein the Defence requests that – in the absence of the lead counsel being able to attend the Pronouncement of Judgement either physically or via videoconference and the co-counsel being unavailable to participate due to his health condition and hospitalization – the Appeals Chamber exceptionally extend Legal Consultant Ms. Peta-Louise Bagott the right of audience to enable her to represent Mr. Mladić’s interests at the hearing, and provide Ms. Bagott with a Bosnian/Croatian/Serbian (“B/C/S”) interpreter to communicate, take instructions, and advise Mr. Mladić;¹⁰

NOTING the Defence submissions that its proposals are a “pragmatic way forward to ensure the [Pronouncement of Judgement] is effective, Mr. Mladić is present, and is legally represented”, and that Ms. Bagott: (i) was granted the right of audience at the Appeal Hearing and has sufficient

⁷ Motion of 25 May 2021, paras. 2, 5, p. 4.

⁸ Decision of 28 May 2021, pp. 3, 4.

⁹ Decision of 28 May 2021, p. 3.

experience and knowledge of this case; (ii) had planned to be present in court at the Pronouncement of Judgement with the co-counsel prior to his urgent hospitalization; and (iii) can address the Appeals Chamber should an exceptional issue arise;¹¹

NOTING that the Prosecution does not object to Ms. Bagott being granted the right of audience for the Pronouncement of Judgement;¹²

RECALLING that assigned counsel are responsible for all aspects of defence in a given case before the Mechanism;¹³

RECALLING, however, that the Appeals Chamber may exercise its discretion to allow persons other than counsel and co-counsel to make representations before it;¹⁴

RECALLING that Ms. Bagott was granted the right of audience for the Appeal Hearing and, appearing with the co-counsel, made oral submissions on behalf of Mr. Mladić;¹⁵

CONSIDERING that, through the Request of 31 May 2021, Mr. Mladić consents to having Ms. Bagott represent him at the Pronouncement of Judgement, and that the Prosecution does not oppose this request;

RECALLING that, during the Pronouncement of Judgement, a Judge of the Appeals Chamber will read a summary of the written judgement and publicly pronounce the verdict, with no action required from the parties or counsel;¹⁶

CONSIDERING FURTHER that Ms. Bagott requires the aid of an interpreter to effectively communicate with Mr. Mladić;

FINDING that, in these circumstances, it is appropriate to exceptionally grant Ms. Bagott the right of audience before the Appeals Chamber at the Pronouncement of Judgement and to be provided with B/C/S interpretation;

¹⁰ Request of 31 May 2021, paras. 3, 7. *See also* Request of 31 May 2021, paras. 5, 6.

¹¹ Request of 31 May 2021, paras. 6, 7, 9, 12.

¹² *See* Email from the Prosecution to Senior Legal Officer of the Appeals Chamber, 1 June 2021.

¹³ *See* Directive on the Assignment of Defence Counsel, MICT/5, 14 November 2012, Article 16(B); *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on Karadžić's Request to Participate in the Appeal Hearing, 27 February 2018 (“*Karadžić* Decision of 27 February 2018”), p. 2.

¹⁴ *See Karadžić* Decision of 27 February 2018, p. 2, n. 11 and references cited therein.

¹⁵ *See* T. 25 August 2020 pp. 4, 5, 14-24, 27-40, 60-64; T. 26 August 2020 pp. 2, 43, 44, 59-73, 86-97.

¹⁶ Decision of 28 May 2021, p. 3. *See also* Rule 144(D) of the Rules of Procedure and Evidence of the Mechanism.

RECALLING the Appeals Chamber’s consideration in the Decision of 28 May 2021 that the Defence failed to demonstrate that the lead counsel cannot be present for the Pronouncement of Judgement, either in court or via videoconference;¹⁷

EMPHASIZING that counsel have an obligation to represent their client;¹⁸

OBSERVING that the Appeals Chamber has reiterated the counsel’s obligation to represent the client on several occasions, notably in the Decisions of 28 May 2021, 20 August 2020, and 14 August 2020, respectively, when addressing Defence submissions on the counsel’s unavailability to appear before the Mechanism in person or via videoconference;¹⁹

CONSIDERING that the Request of 31 May 2021 and the Motion of 25 May 2021 indicate that the counsel will not attend the Pronouncement of Judgement, either in person or via videoconference;²⁰

FINDING that, in these circumstances, it is appropriate to remind the lead counsel of his obligation to represent Mr. Mladić;

FOR THE FOREGOING REASONS,

HEREBY EXCEPTIONALLY EXTENDS Legal Consultant Ms. Bagott the right of audience to appear in court and act without either Lead Counsel Mr. Lukić or Co-Counsel Mr. Ivetić being present in the courtroom for the Pronouncement of Judgement;

REQUESTS the Registrar to provide the Defence with a B/C/S interpreter to enable Legal Consultant Ms. Bagott to communicate, take instructions, and advise Mr. Mladić accordingly at the Pronouncement of Judgement; and

REMINDS Mr. Lukić of his obligation to represent Mr. Mladić.

¹⁷ Decision of 28 May 2021, p. 3.

¹⁸ See Code of Professional Conduct for Defence Counsel Appearing Before the Mechanism, MICT/6, 14 November 2012, Articles 8 and 20; Decision of 28 May 2021, p. 3; Decision on a Defence Motion to Reconsider the “Decision on Defence Submissions”, 20 August 2020 (“Decision of 20 August 2020”), p. 3, n. 17; Decision on Defence Submissions, 14 August 2020 (“Decision of 14 August 2020”), p. 5, n. 30; *Théoneste Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, Decision on Aloys Ntabakuze’s Motions for Video-Conference Participation of Lead Counsel in the Appeal Hearing and for the Withdrawal of Registrar’s Public Decision, 15 March 2011, para. 15.

¹⁹ See Decision of 28 May 2021, p. 3; Decision of 20 August 2020, p. 3; Decision of 14 August 2020, p. 5.

²⁰ See Request of 31 May 2021, paras. 3, 5; Motion of 25 May 2021, para. 5.

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

Done this 3rd day of June 2021,
At The Hague,
The Netherlands



Judge Prisca Matimba Nyambe
Presiding Judge

[Seal of the Mechanism]



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