

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 11 March 2020

Original: English

IN THE APPEALS CHAMBER

Before: Judge Prisca Matimba Nyambe, Presiding
Judge Aminatta Lois Runeni N'gum
Judge Gberdao Gustave Kam
Judge Seymour Panton
Judge Elizabeth Ibanda-Nahamya

Registrar: Mr. Olufemi Elias

Decision of: 11 March 2020

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC REDACTED

**DECISION ON A MOTION TO RECONSIDER THE DECISION
STAYING THE APPEAL HEARING**

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 (“ICTY”) on 22 November 2017,² and the appeals against the Trial Judgement filed before the Mechanism by Mr. Ratko Mladić (“Mladić”) and the Office of the Prosecutor of the Mechanism (“Prosecution”), and that the filing of the briefs in these appeals is complete;³

RECALLING the scheduling order issued on 16 December 2019, ordering that the hearing of the appeals in the present case shall take place in The Hague, The Netherlands on 17 and 18 March 2020 (“Appeal Hearing”);⁴

NOTING the Registrar’s submission, filed confidentially on 21 February 2020, indicating, on the basis of a report from the Reporting Medical Officer at the United Nations Detention Unit (“Medical Officer” and “UNDU”, respectively), that Mladić is expected to undergo a surgery [REDACTED] to remove a polyp from his colon;⁵

NOTING a motion, filed by Mladić on 28 February 2020, requesting the Appeals Chamber to, *inter alia*, reschedule the Appeal Hearing to a fixed date four to six weeks after his upcoming operation;⁶

NOTING the Prosecution’s response to the Motion for Stay, filed confidentially on 5 March 2020, wherein it opposed the Motion for Stay;⁷

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.

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). See also 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 Rep[li]y Brief, 29 November 2018 (confidential; public redacted version filed on 21 January 2019).

⁴ Scheduling Order for the Hearing of the Appeals, 16 December 2019 (“Scheduling Order”), pp. 1, 2.

⁵ Registrar’s Submission of a Medical Report Prepared by the Reporting Medical Officer and of an Additional Report Prepared by the Medical Officer of the United Nations Detention Unit, 21 February 2020 (confidential) (“Registrar’s Submission of 21 February 2020”), para. 2, Annex A, paras. 2-4, 6.

⁶ Urgent Defence Motion to Stay Appeal Oral Arguments Hearing in Order to Permit Competency Review of Appellant and Hearing on Same, 28 February 2020 (confidential) (“Motion for Stay”), p. 8. See also Motion for Stay, paras. 5, 13.

NOTING that Mladić filed a confidential reply in relation to the Motion for Stay on 6 March 2020;⁸

RECALLING the “Decision on a Motion to Stay the Appeal Hearing”, issued confidentially on 6 March 2020 (“Impugned Decision”), wherein the Appeals Chamber, *inter alia*, vacated the Scheduling Order and stayed the Appeal Hearing until further notice on the basis of the preparation for and recovery from Mladić’s surgery;⁹

BEING SEISED OF the “Urgent Motion for Reconsideration of the Decision on a Motion to Stay the Appeal Hearing”, filed confidentially on 9 March 2020 (“Motion for Reconsideration”), wherein the Prosecution submits, *inter alia*, that the Appeals Chamber should reconsider the Impugned Decision on the basis of a clear error of reasoning;¹⁰

NOTING the response, filed confidentially on 10 March 2020, wherein Mladić submits that the Motion for Reconsideration should be dismissed as it, *inter alia*, fails to meet the requirements for reconsideration and is based on misrepresentations and unsubstantiated conclusions by the Prosecution;¹¹

RECALLING that a party requesting reconsideration of a decision must satisfy the chamber of the existence of a clear error of reasoning in the impugned decision, or of particular circumstances justifying reconsideration in order to avoid injustice, such as any new facts;¹²

NOTING the Prosecution’s submission that there is a clear error of reasoning in the Impugned Decision as: (i) the medical information provided by the Registry and Mladić fails to demonstrate that a delay of the hearing is required;¹³ (ii) no consideration was given to options other than

⁷ Prosecution Response to Urgent Defence Motion to Stay Appeal Oral Arguments Hearing in Order to Permit Competency Review of Appellant and Hearing on Same, 5 March 2020 (confidential) (“Response to Motion for Stay”).

⁸ Consolidated Reply as to Urgent Defence Motion to Stay Appeal Oral Arguments Hearing in Order to Permit Competency Review of Appellant and Hearing on Same, 6 March 2020 (confidential).

⁹ Impugned Decision, p. 4. The Registrar was also requested to inform the Appeals Chamber on a weekly basis of matters relating to the scheduling of Mladić’s surgery and his recovery therefrom to facilitate the expeditious rescheduling of the Appeal Hearing to a date approximately six weeks after the surgery. *See* Impugned Decision, p. 4.

¹⁰ Motion for Reconsideration, paras. 1-7.

¹¹ Defence Response in Opposition to “Urgent Motion for Reconsideration of the Decision on a Motion to Stay the Appeal Hearing”, 10 March 2020 (confidential) (“Response”), paras. 8, 11-19, p. 7. Relying on jurisprudence from the Appeals Chamber of the ICTY, Mladić further submits that the interests of victims do not constitute a legal basis justifying reconsideration. Response, para. 11, n. 5 *referring to Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-A, Decision on Motion for Reconsideration, 20 March 2014, p. 3. The Prosecution advised the Senior Legal Officer of the Appeals Chamber that it does not intend to file a reply to the Response.

¹² Decision on a Motion to Reconsider Decision on Renewed Motion for Contempt, 31 July 2018, p. 2, n. 15 and references cited therein.

¹³ Motion for Reconsideration, paras. 1, 3, 4.

postponement;¹⁴ and (iii) the Appeals Chamber failed to consider the totality of the interests of justice;¹⁵

RECALLING the Appeals Chamber's discretion to issue orders as may be necessary for the conduct of appeal proceedings;¹⁶

RECALLING the Medical Officer's statement that "an operation is needed for complete removal of the larger polyp for 100% accuracy and prevention of the benign polyp developing into a malignant one" and that "[i]t is important to plan the operation very carefully in regards to the known comorbidity conditions and [his] relative frailty";¹⁷

NOTING that in staying the Appeal Hearing the Appeals Chamber considered that, according to the report of the Medical Officer at the UNDU, dated 19 February 2020, Mladić's surgery is [REDACTED];¹⁸

CONSIDERING that [REDACTED];

NOTING that, in the Impugned Decision, the Appeals Chamber also considered the Medical Officer's report that Mladić's recovery from the surgery is expected to take up to six weeks given his present health condition;¹⁹

CONSIDERING that the Appeals Chamber had before it no medical information that would allow it to reach any other conclusion on the need for or timing of Mladić's surgery or subsequent recovery;

NOTING that, in its Response to Motion for Stay, the Prosecution did not propose any alternatives to the postponement of the Appeal Hearing or point to any interests of justice that would mandate against postponing the Appeal Hearing;

¹⁴ Motion for Reconsideration, paras. 1, 5. According to the Prosecution, other options include moving the hearing to an earlier date, waiver of attendance, video-link from the UNDU, and shortening sitting days. *See* Motion for Reconsideration, para. 5.

¹⁵ Motion for Reconsideration, para. 6. The Prosecution submits that, given the inherent uncertainty of the medical predictions of recovery time, it is possible that the hearing could be delayed longer than the projected recovery time of up to six weeks, and that there is a "heightened concern of unnecessary delay in light of Mladić's history of failing to comply with medical advice". *See* Motion for Reconsideration, para. 6.

¹⁶ *See* Rules 55, 131, 135(B) of the Rules of Procedure and Evidence of the Mechanism ("Rules"); Public Redacted Version of the "Decision on a Motion for Reconsideration and Certification to Appeal Decision on a Motion to Vacate the Trial Judgement and Stay the Proceedings", 26 June 2018, p. 3, n. 20. Rule 55 of the Rules provides authority to a Judge or a Trial Chamber to issue such orders as may be necessary for, *inter alia*, conduct of trial. Rule 131 of the Rules makes this applicable *mutatis mutandis* to proceedings in the Appeals Chamber.

¹⁷ Registrar's Submission of 21 February 2020, Annex A, para. 2. *See also* Impugned Decision, pp. 3, 4.

¹⁸ Impugned Decision, p. 1.

¹⁹ Impugned Decision, p. 4.

CONSIDERING that the Prosecution does not introduce any new facts in the Motion for Reconsideration that would justify reconsideration of the Impugned Decision;

FINDING therefore that the Prosecution fails to demonstrate any error in the reasoning in the Impugned Decision or any circumstances that would justify its reconsideration in order to avoid injustice;

FOR THE FOREGOING REASONS,

HEREBY DISMISSES the Motion in its entirety.

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

Done this 11th day of March 2020,
At The Hague,
The Netherlands



Judge Prisca Matimba Nyambe
Presiding Judge

[Seal of the Mechanism]



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