

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 17 July 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. Abubacarr Tambadou

Decision of: 17 July 2020

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON THE SCHEDULING OF THE
APPEAL HEARING AND A STATUS CONFERENCE**

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

1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively) is seised of a motion filed by the Office of the Prosecutor of the Mechanism (“Prosecution”) on 19 June 2020 seeking to reschedule the hearing of the appeals in this case for the week of 20 July 2020.¹ Mr. Ratko Mladić (“Mladić”) filed a response on 30 June 2020,² and the Prosecution replied on 3 July 2020.³

I. BACKGROUND

2. On 22 November 2017, Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) convicted Mladić of genocide, crimes against humanity, and violations of the laws or customs of war for his participation in four joint criminal enterprises in Bosnia and Herzegovina between May 1992 and November 1995,⁴ and sentenced him to life imprisonment.⁵ Since the delivery of the Trial Judgement, Mladić has remained in custody at the United Nations Detention Unit (“UNDU”). Both Mladić and the Prosecution have filed appeals against the Trial Judgement and briefing of the appeal submissions is complete.⁶

3. On 16 December 2019, the Appeals Chamber scheduled the hearing of the appeals to take place on 17 and 18 March 2020.⁷ Following a motion filed by Mladić,⁸ the Appeals Chamber stayed the hearing on 6 March 2020 on the basis of Mladić’s then upcoming surgery, and requested weekly reports from the Registrar on the scheduling of Mladić’s surgery and his recovery therefrom in order to facilitate the expeditious rescheduling of the hearing.⁹ On 1 May 2020, noting Mladić’s

¹ Prosecution Urgent Motion for Scheduling of Appeal Hearing, 19 June 2020 (public with confidential annex) (“Motion”), paras. 1, 22.

² Defence Response to Prosecution Urgent Motion for Scheduling of Appeal Hearing, 30 June 2020 (public with confidential annex) (“Response”).

³ Prosecution Reply to Defence Response to Prosecution Urgent Motion for Scheduling of Appeal Hearing, 3 July 2020 (public with confidential annex) (“Reply”).

⁴ See *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Judgement, 22 November 2017 (“Trial Judgement”), paras. 4612, 4688, 4893, 4921, 5098, 5128, 5130, 5131, 5156, 5163, 5188-5193, 5214.

⁵ Trial Judgement, paras. 5213, 5215.

⁶ 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 Rep[ly] Brief, 29 November 2018 (confidential; public redacted version filed on 21 January 2019).

⁷ Scheduling Order for the Hearing of the Appeals, 16 December 2019 (“Scheduling Order of 16 December 2019”), p. 1.

⁸ See 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; public redacted version filed on 10 March 2020), para. 5, p. 8.

⁹ Decision on a Motion to Stay the Appeal Hearing, 6 March 2020 (confidential; public redacted version filed on 11 March 2020) (“Decision of 6 March 2020”), p. 4. See also Decision on a Motion to Reconsider the Decision Staying the Appeal Hearing, 11 March 2020 (confidential; public redacted version filed on the same date).

progress in recovering from the surgery, the Appeals Chamber rescheduled the appeal hearing to take place on 16 and 17 June 2020, “subject to change should coronavirus pandemic-related restrictions inhibit the necessary travel or the holding of the hearing for other reasons”.¹⁰

4. On 21 May 2020, the Defence filed a notice of its unavailability to proceed with the hearing due to “developments/restrictions relating to the coronavirus pandemic”,¹¹ and, on 26 May 2020, the Registrar filed a confidential submission relating to the feasibility of holding a hearing.¹² On 28 May 2020, based on the Registrar’s Submission of 26 May 2020 and the Defence Notice of 21 May 2020, the Appeals Chamber, *inter alia*, found it not feasible to hold the appeal hearing on 16 and 17 June 2020, vacated the Scheduling Order of 1 May 2020, and stayed the hearing until further notice.¹³ The Appeals Chamber also requested the Registrar to file periodic reports on the feasibility of holding a hearing in light of coronavirus pandemic-related restrictions, taking into account measures that concern the necessary travel of each judge, those in effect at the UNDU that may affect Mladić, and provisions for the safety of participants in the courtroom (“Feasibility Reports”).¹⁴

5. In parallel to the scheduling of the appeal hearing, on 11 May 2020, the Pre-Appeal Judge scheduled a status conference to take place on 29 May 2020, pursuant to Rule 69(B) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), by means of a videoconference and with participation of Mladić and/or his counsel via teleconference or videoconference, pursuant to Rule 69(C)(ii) of the Rules, due to coronavirus pandemic-related restrictions.¹⁵ The Pre-Appeal Judge stayed this status conference on 22 May 2020 in light of Mladić’s preference for postponement until a time when he can be present in the courtroom with Defence counsel.¹⁶

¹⁰ Second Order Scheduling the Hearing of the Appeals, 1 May 2020 (“Scheduling Order of 1 May 2020”), p. 2.

¹¹ Defence Notice as to Appeals Hearing, 21 May 2020 (“Defence Notice of 21 May 2020”), paras. 4-7, 9.

¹² Registrar’s Submission in Response to “Order for Submissions Regarding the Appeal Hearing”, 26 May 2020 (confidential) (“Registrar’s Submission of 26 May 2020”), paras. 2-5, 7, 8, 10-13, setting out, *inter alia*: (i) coronavirus pandemic-related restrictions pertinent to each Judge’s travel to and from The Hague, The Netherlands to attend the hearing of the appeals, and to Mladić’s contact with external persons at the UNDU; (ii) the Registry’s measures to ensure the safety of participants in the courtroom; and (iii) the Mechanism’s capacity at that time to have up to three participants join a courtroom proceeding by secure videoconference-link. *See also* Order for Submissions Regarding the Appeal Hearing, 20 May 2020 (“Order of 20 May 2020 Regarding Appeal Hearing”).

¹³ Order Regarding the Hearing of the Appeals, 28 May 2020 (“Order of 28 May 2020”), pp. 3-5.

¹⁴ Order of 28 May 2020, pp. 4, 5.

¹⁵ Order Scheduling a Status Conference, 11 May 2020, pp. 1, 2.

¹⁶ Order Concerning the Status Conference and Medical Reporting by the Registrar, 22 May 2020 (“Order of 22 May 2020”), pp. 2, 3. *See also* Order Relating to the Status Conference, 20 May 2020 (“Order of 20 May 2020 Regarding Status Conference”).

II. SUBMISSIONS

6. The Prosecution requests that the appeal hearing in this case be rescheduled for the week of 20 July 2020, and that the Registry be instructed to provide appropriate technology to conduct “(partly) remote proceedings”, as well as to arrange the courtroom to observe health and safety requirements.¹⁷ The Prosecution submits that, notwithstanding the coronavirus pandemic, the Appeals Chamber has an obligation to ensure the expeditious completion of appeal proceedings and to avoid undue delay.¹⁸ It also submits that partly remote proceedings are consistent with fair trial rights as the “right of the accused (and other participants) to attend the appeal hearing in person is not absolute” and “may be limited when the restrictions imposed are proportionate to other protected interests, including the right to expeditious proceedings”.¹⁹ To this effect, the Prosecution contends that, “[g]iven the nature of an appeal hearing”, Mladić’s presence in the courtroom “is less important than it was at trial”.²⁰ It argues that the Registry can ensure Mladić’s ability to hear and follow proceedings and effectively and confidentially communicate with counsel during the course of the hearing, and that participation by means of a videoconference-link would sufficiently protect his rights.²¹ The Prosecution adds that there is “no requirement that an appellant be able to communicate with Defence [c]ounsel in person or in the same room”.²² The Prosecution further submits that partly remote proceedings are feasible,²³ that feasibility does not require the physical presence of all the judges or of the parties, who can participate remotely,²⁴ and that measures can be implemented for safe participation in the courtroom.²⁵

7. The Defence responds that the Appeals Chamber should deny the Motion as it is without merit.²⁶ The Defence submits that the Prosecution has not demonstrated reasons to urgently reschedule the appeal hearing and that an “expeditious trial cannot be applied to the detriment of fair trial rights and integrity of the proceedings”.²⁷ According to the Defence, the “only justifiable ‘urgency’” relates to the “rapid decline” of Mladić’s health in the past few weeks,²⁸ and that his recovery “has not been completed” in light of his worsening anemia following the operation, which “supports the continued stay already imposed by the Appeals Chamber to permit his ‘recovery’ in

¹⁷ Motion, paras. 1, 22.

¹⁸ Motion, paras. 2, 4, 5.

¹⁹ Motion, para. 19.

²⁰ Motion, para. 20.

²¹ Motion, paras. 20, 21.

²² Motion, para. 21.

²³ Motion, paras. 6-15.

²⁴ Motion, paras. 13, 15.

²⁵ Motion, paras. 16-18.

²⁶ Response, paras. 3-7, 9-24, Registry Pagination (“RP.”), 10883.

²⁷ Response, paras. 4, 8.

²⁸ Response, paras. 5-8.

the first place”.²⁹ The Defence argues that it is necessary to schedule a status conference well in advance of any appeal hearing to enable Mladić to raise any and all unresolved issues regarding his health, that the Motion fails to take this into account, and further requests a rescheduling of the status conference for the week of 20 July 2020.³⁰ The Defence further responds that remote participation via videoconference in an appeal hearing is not supported by precedent or the Rules,³¹ is not feasible for technical and substantive reasons,³² and would violate the principle of equality of arms³³ as well as be detrimental to Mladić’s fair trial rights, including the right to be tried in his presence and the right to be equal before the Mechanism, that is to be treated as all other accused.³⁴

8. In reply, the Prosecution reiterates that the appeal hearing should be rescheduled to the week of 20 July 2020, and submits that the Response fails to demonstrate otherwise.³⁵ Pointing to proceedings at the International Criminal Court (“ICC”), the Prosecution submits that partially remote international appeal hearings have been held in circumstances where the defendants requested to postpone the hearing until the parties could be present in the courtroom and the ICC Appeals Chamber decided that holding a partially remote hearing would allow for effective participation and not violate the rights of the defendants or impair the fairness of the proceedings.³⁶ The Prosecution further reiterates that Mladić’s right to be present in the courtroom is not absolute, and that, if Mladić cannot be physically present in the courtroom, videoconference participation is the least restrictive option which allows for the participants to see and hear each other.³⁷ The Prosecution adds that consent to participate by videoconference should not be required.³⁸

III. ANALYSIS

A. Rescheduling the Hearing of Appeals

1. Expeditious Proceedings

9. The Prosecution argues that the Appeals Chamber has an obligation to ensure the expeditious completion of the appeal proceedings and requests that the hearing of the appeals be

²⁹ Response, para. 7, n. 8, *referring to* Order of 28 May 2020.

³⁰ Response, para. 8, RP. 10884, 10883.

³¹ Response, paras. 9-12.

³² Response, paras. 20, 21. The Defence states that even the Registry has admitted obstacles rendering “ALL the remote participation modes” set forth in the Motion “to be unworkable solutions for the Mechanism”. *See* Response, para. 21.

³³ Response, para. 9.

³⁴ Response, paras. 22-24.

³⁵ Reply, paras. 1, 6, 8.

³⁶ Reply, para. 3, *referring to, inter alia, The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Case No. ICC-02-11-01-15 A, Decision Rescheduling the Hearing Before the Appeals Chamber, 17 June 2020 (“ICC Appeal Decision of 17 June 2020”), paras. 17, 21.

³⁷ Reply, para. 4.

³⁸ Reply, para. 5.

rescheduled for the week of 20 July 2020.³⁹ The Appeals Chamber observes at the outset of its consideration that the Motion does not provide any basis for the specific proposed date for the hearing. The Appeals Chamber therefore dismisses the request to schedule the hearing for the specified week as unfounded and proceeds to consider the submissions on expeditious proceedings.

10. The Appeals Chamber is well aware of statutory provisions that proceedings be expeditious.⁴⁰ In this respect, the Appeals Chamber recalls its efforts to expeditiously schedule and reschedule the appeal hearing in this case, including through the Scheduling Order of 16 December 2019 and the Scheduling Order of 1 May 2020, and its repeated emphasis on the need to hold the appeal hearing in this case without delay and when it is safe and practicable to do so.⁴¹ The Appeals Chamber also recalls that, despite its efforts to proceed expeditiously, it stayed the hearing scheduled for 17 and 18 March 2020 on Mladić's request to allow for his then upcoming surgery and recovery, and further stayed the hearing rescheduled for 16 and 17 June 2020 given the unavailability of the Defence and complications arising from the coronavirus pandemic-related restrictions.⁴²

11. The Appeals Chamber also recalls its Order of 28 May 2020 and reiterates that: (i) at Mladić's request, it granted the parties extensions of time totalling 210 days for the filing of their respective appeal submissions; (ii) it issued the initial order scheduling the appeal hearing on 16 December 2019; and (iii) the parties have therefore had ample time for the preparation of their written submissions on appeal, including time for counsel to discuss the case with Mladić, and time for the parties to prepare their oral arguments.⁴³ Moreover, the Appeals Chamber recalls its position set out in the Order of 28 May 2020 that, as soon as the circumstances will allow, the Appeals Chamber will set the date for the hearing of the appeals in accordance with Rule 141 of the Rules without further delay.⁴⁴ The procedural history therefore amply demonstrates the Appeals Chamber's efforts to ensure that the proceedings are conducted expeditiously.

12. Regarding Defence submissions on the state of Mladić's recovery,⁴⁵ the Appeals Chamber recalls that the Scheduling Order of 1 May 2020 rescheduled the appeal hearing for 16 and 17 June

³⁹ See Motion, paras. 1, 2, 4, 22.

⁴⁰ See, e.g., Articles 18, 19(4)(c) of the Statute of the Mechanism ("Statute").

⁴¹ See, e.g., Order of 28 May 2020, p. 4; Order of 20 May 2020 Regarding Appeal Hearing, p. 2; Scheduling Order of 1 May 2020, pp. 1, 2; Decision of 6 March 2020, p. 4.

⁴² See Decision of 6 March 2020, p. 4; Order of 28 May 2020, pp. 3-5.

⁴³ Order of 28 May 2020, p. 4, referring to, *inter alia*, Scheduling Order of 16 December 2019, Decision on Motion for Extension of Time to File Notice of Appeal, 21 December 2017, pp. 1, 2 (granting a 90-day extension for the filing of the notices of appeal), Decision on Ratko Mladić's Motion for Extensions of Time and Word Limits, 22 May 2018, pp. 1, 3, 4 (granting 60-day extensions for each of the appellant's and the respondent's briefs).

⁴⁴ Order of 28 May 2020, p. 4.

⁴⁵ See Response, para. 7.

2020 specifically given his “progress in recovering from the surgery”.⁴⁶ The holding of the hearing on 16 and 17 June 2020 was stayed on 28 May 2020 due to coronavirus pandemic-related measures and restrictions, not due to any issue related to Mladić’s health or recovery from surgery.⁴⁷ A review of the Registrar’s weekly submissions on Mladić’s health also indicates that, notwithstanding concerns related to, *inter alia*, anemia, Mladić has largely recovered from the surgery and there is no reason why he would be physically unable to take part in hearings.⁴⁸

13. The Appeals Chamber also notes the Defence’s submission that the scheduling of the appeal hearing is contingent on a status conference being held “before and well in advance” thereof to raise any unresolved issues concerning Mladić’s health and treatment.⁴⁹ The Appeals Chamber observes that the Rules do not provide for any such restriction on the scheduling of an appeal hearing.⁵⁰ Notably, when addressing the Defence request that the next status conference be held “at least 21 days prior to the hearing of the appeals”, the Order of 22 May 2020 stated that:

rather than setting a time limit on when Mr. Mladić could bring issues pertaining to his mental and physical condition that may impact upon the hearing of the appeals, such as by ordering that the next status conference take place 21 days prior to the hearing, it is more appropriate to grant Mr. Mladić leave to bring such issues to the attention of the Appeals Chamber at any time irrespective of when the next status conference will be held in order to apprise the Appeals Chamber of developments as may be necessary.⁵¹

The Appeals Chamber notes that the Defence has kept the Appeals Chamber informed of matters pertinent to Mladić’s detention at the UNDU, including his health and medical treatments.⁵²

14. Taking all the information before it into account, the Appeals Chamber finds that at present nothing precludes it from setting the dates of the hearing, in accordance with Rule 141 of the Rules. In doing so, the Appeals Chamber highlights the ample time for preparation which the parties and

⁴⁶ See Scheduling Order of 1 May 2020, p. 2, n. 9 and references cited therein; Order of 20 May 2020 Regarding Appeal Hearing, p. 2; Order of 28 May 2020, pp. 1, 2.

⁴⁷ See Order of 28 May 2020, pp. 3, 4.

⁴⁸ See, e.g., Registrar’s Submission of a Medical Report Prepared by the Deputy Medical Officer of the United Nations Detention Unit Concerning Mr. Mladić’s Recovery from Surgery, 8 May 2020 (confidential), Annex, para. 3; Registrar’s Submission of a Medical Report Prepared by the Medical Officer of the United Nations Detention Unit Concerning Mr. Mladić’s Recovery from Surgery, 15 May 2020 (confidential), Annex, paras. 2, 5; Registrar’s Submission of a Medical Report Prepared by the Medical Officer of the United Nations Detention Unit, 22 May 2020 (confidential), Annex, para. 2; Registrar’s Submission of a Medical Report Prepared by the Medical Officer of the United Nations Detention Unit, 5 June 2020 (confidential), Annex, para. 2; Registrar’s Submission of a Medical Report Prepared by the Medical Officer of the United Nations Detention Unit, 11 June 2020 (confidential), Annex, para. 2; Registrar’s Submission of a Medical Report Prepared by the Medical Officer of the United Nations Detention Unit, 3 July 2020 (confidential), Annex, para. 2.

⁴⁹ See Response, para. 8.

⁵⁰ See Rules 69(B) and 141 of the Rules.

⁵¹ Order of 22 May 2020, p. 3.

⁵² See, e.g., Second Defence Notice, 5 June 2020 (public with public and confidential annexes); Third Defence Notice, 10 June 2020; Defence Submission on Behalf of Ratko Mladić to Address Untruths Presented to the Appeals Chamber in His Name, 16 June 2020 (confidential); Defence Notice of Filing 4th Expert Medical Report, 24 June 2020 (public with confidential annexes).

the Registrar have already had and, cognizant of the present circumstances, allows time for the necessary arrangements to be made.

2. Fair Trial Rights and Feasibility of Remote Proceedings

15. The Prosecution further argues that, if necessary, it is feasible to conduct the hearing with Mladić, some of Defence or Prosecution counsel, or some of the judges participating remotely, and that doing so would be consistent with fair trial rights.⁵³ The Appeals Chamber recalls that Article 19(4)(d) of the Statute bestows the right upon an accused “to be tried in his or her presence”.⁵⁴ This right is “one of the most basic and common precepts of a fair criminal trial”, and, at trial, an “accused’s right to be tried in his or her presence implies a right to be physically present”.⁵⁵ This right in trial proceedings is not absolute, however, and, in certain circumstances, may be derogated from.⁵⁶ Given the importance of an accused’s ability to confront witnesses or accusers in person, the “constructive presence” of an accused by means of a videoconference-link in trial proceedings has been considered a derogation from the right to be physically present.⁵⁷

16. Notwithstanding the importance of the accused’s physical presence at trial, the Appeals Chamber considers that, due to the distinct nature of appeal proceedings,⁵⁸ the right to be present does not require the *physical* presence in the courtroom of the convicted person during the hearing of his or her appeal from judgement, at least where no additional evidence is being admitted. In the present case, considering that Mladić’s motions for admission of additional evidence on appeal have been denied,⁵⁹ the Appeals Chamber observes, *inter alia*, that at the appeal hearing there will be no witness or evidence for Mladić to confront. Furthermore, as Mladić is represented, oral submissions will be made exclusively by counsel, who have the main burden on appeal to prepare submissions given their legal expertise,⁶⁰ or other persons granted standing. Mladić, as an appellant

⁵³ See Motion, paras. 1, 13, 15, 19-21.

⁵⁴ See also Article 21(4)(d) of the Statute of the ICTY; Article 20(4)(d) of the Statute of the International Criminal Tribunal for Rwanda (“ICTR”); Article 14(3)(d) of the International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, Vol. 999, p. 171.

⁵⁵ See *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-AR73, Decision on Interlocutory Appeal, 30 October 2006 (“*Zigiranyirazo* Decision of 30 October 2006”), paras. 11-13. See also *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-AR73.1, Decision on Prosecution’s Urgent Interlocutory Appeal from Consolidated Decision on the Continuation of Proceedings, 4 March 2016 (“*Hadžić* Decision of 4 March 2016”), para. 8; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-AR73.2, Decision on Defence Appeal of the Decision on Future Course of Proceedings, 16 May 2008 (“*Stanišić and Simatović* Decision of 16 May 2008”), paras. 6, 19.

⁵⁶ See *Hadžić* Decision of 4 March 2016, para. 8; *Stanišić and Simatović* Decision of 16 May 2008, paras. 6, 18, 19; *Zigiranyirazo* Decision of 30 October 2006, para. 14.

⁵⁷ See *Hadžić* Decision of 4 March 2016, para. 24; *Stanišić and Simatović* Decision of 16 May 2008, paras. 15-19; *Zigiranyirazo* Decision of 30 October 2006, paras. 12, 13, 19, 21, 22.

⁵⁸ Compare, e.g., Rules 100-130 of the Rules to Rules 133-145 of the Rules.

⁵⁹ See Decision on Motions for Admission of Additional Evidence on Appeal, 11 March 2020, para. 117 (where the Appeals Chamber by majority denied Mladić’s motions for admission of additional evidence in their entirety).

⁶⁰ See, e.g., *Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor*, Case No. ICTR-99-50-A, Decision on Prosper Mugiraneza’s Requests for a Writ of Mandamus and an Extension of Time, 10 May 2012, p. 2; *Callixte Kalimanzira v.*

represented by counsel, has no statutory or regulatory “right” to personally address the Appeals Chamber, even if in practice, as a matter of courtesy, the ICTY, ICTR, and the Mechanism have afforded convicted persons appealing against trial judgements the opportunity to make an optional brief personal address at the conclusion of the appeal hearing.⁶¹

17. During the hearing, Mladić, in equality with persons appealing their convictions before the Mechanism, needs to be able to follow the submissions from Defence and Prosecution counsel and any questions from the judges, as well as to communicate confidentially with his counsel, when the need may arise. He may also accept the leave of the Appeals Chamber to make a brief personal address at the conclusion of the hearing. All of this may be accomplished either through Mladić’s physical presence in the courtroom during the hearing or through other means, which will allow him to follow the proceedings and communicate with his counsel, such as a videoconference-link and a separate confidential line to his counsel. In light of the foregoing, the Appeals Chamber considers that participating in an appeal hearing through the means described above is consistent with Mladić’s rights and the notion of a fair hearing.⁶²

18. The Appeals Chamber reiterates that, in light of the considerable time extensions granted to the parties to file their appeal submissions and considering that the appeal hearing was initially scheduled on 16 December 2019, the parties have had ample time to prepare their appeal submissions, including time for Defence counsel to discuss the case with Mladić.⁶³ Additionally, unless specifically authorized, oral arguments are to be confined to those already contained in the briefs.⁶⁴ The Appeals Chamber therefore finds the Defence submission that preparation with counsel for the appeal hearing is “not enabled”,⁶⁵ to be unpersuasive. Furthermore, given the availability of remote participation and the time given to parties to prepare their appeal submissions,

The Prosecutor, Case No. ICTR-05-88-A, Decision on Callixte Kalimanzira’s Motion for an Extension of Time for the Filing of his Reply Brief, 6 April 2010, para. 5; *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009, p. 3; *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-A, Decision on Johan Tarčulovski’s Motion for Extension of Time to File Appeal Brief, 16 October 2008, p. 2; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Hassan Ngeze’s Motions Concerning Restrictive Measures of Detention, 20 September 2006, p. 7.

⁶¹ See *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza’s Motion Concerning the Scheduling Order for the Appeals Hearing, 5 December 2006, p. 5. See also, e.g., Scheduling Order of 1 May 2020, p. 3; Scheduling Order of 16 December 2019, p. 2; *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Scheduling Order for Appeal Hearing and Status Conference, 27 February 2018, p. 2; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-A, Order for the Preparation of the Appeal Hearing, 1 March 2017, p. 4; *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Order Setting the Timetable for the Appeals Hearing, 19 March 2015, p. 3.

⁶² Cf. ICC Appeal Decision of 17 June 2020, paras. 17, 21; *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Case No. ICC-02-11-01-15 A, Decision Vacating the Hearing Before the Appeals Chamber, 22 May 2020, para. 9; *Marcello Viola v. Italy*, Application No. 45106/04, Judgement, 5 October 2006, paras. 56, 63-67.

⁶³ See Order of 28 May 2020, p. 4.

⁶⁴ See *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84-A, Judgement, 19 July 2010, para. 19; *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-A, Decision on Prosecution’s Motion to Strike and on Appellant’s Motion for Leave to File Response to Prosecution Oral Arguments, 5 March 2007, para. 15.

the Defence provides little justification demonstrating how or why oral presentation by counsel, in person or remotely, would be “almost impossible”,⁶⁶ or how the principle of equality of arms would be violated.⁶⁷

19. As to the issue of feasibility of holding the appeal hearing, the Appeals Chamber notes that the Registrar has implemented measures to provide for conducting the hearing in a safe and fair manner, including putting in place measures to accommodate remote participation.⁶⁸ The Appeals Chamber recalls that, pursuant to Rule 96 of the Rules, at the request of a party or *proprio motu*, a Chamber may order that proceedings be conducted by way of videoconference-link, if consistent with the interests of justice. Reiterating the importance of holding the appeal hearing in this case without delay and when it is safe and practicable to do so,⁶⁹ and in light of the foregoing discussion, the Appeals Chamber finds that it would be in the interests of justice to proceed in part by way of a videoconference-link in the event that Mladić, any counsel, or one or more judges could not be physically present in the courtroom during the hearing. In this respect, the Appeals Chamber recalls that it has decided to allow additional time for the necessary arrangements to be made prior to holding the hearing.⁷⁰

3. Conclusion

20. In light of the foregoing, the Appeals Chamber finds it appropriate, pursuant to Rule 141 of the Rules, to set the date of the hearing of the appeals in this case as specified below. Taking into account the safety of all those participating in the hearing in the courtroom in person, the Appeals Chamber adjusts the timetable for the hearing to allow for the necessary cleaning and ventilation, as set out below.

B. Scheduling of a Status Conference

21. Rule 69(C) of the Rules provides that, with the written consent of the person in custody, given after receiving advice from counsel, a status conference may be conducted: (i) in the presence of that person but with counsel participating via teleconference or videoconference; or (ii) in his

⁶⁵ See Response, para. 23.

⁶⁶ See Response, para. 24.

⁶⁷ See Response, para. 9.

⁶⁸ Registrar’s Submission of 26 May 2020, paras. 10, 11, 13; Registrar’s First Feasibility Report in Response to “Order Regarding the Hearing of the Appeals”, 12 June 2020 (confidential), para. 9; Registrar’s Second Feasibility Report in Response to “Order Regarding the Hearing of the Appeals”, 26 June 2020 (confidential), paras. 9-11; Registrar’s Third Feasibility Report in Response to “Order Regarding the Hearing of the Appeals”, 10 July 2020 (confidential), paras. 9, 10.

⁶⁹ See, e.g., Order of 28 May 2020, p. 4; Order of 20 May 2020 Regarding Appeal Hearing, p. 2; Scheduling Order of 1 May 2020, p. 2; Decision of 6 March 2020, p. 4.

⁷⁰ See *supra*, para. 14.

absence, but with his participation via teleconference if he so wishes and/or participation of his counsel via teleconference or videoconference.⁷¹

22. The Appeals Chamber further recalls that, on 22 May 2020, the Pre-Appeal Judge stayed the status conference scheduled for 29 May 2020 “until a time when Mr. Mladić can be present in the courtroom with counsel following the easing of coronavirus pandemic-related restrictions, unless Mr. Mladić will request that [a] [s]tatus [c]onference be held earlier pursuant to Rule 69(C)(ii) of the Rules as outlined in the Order of 20 May 2020 [Regarding Status Conference]”.⁷² Given the Defence’s present request for a status conference in the week of 20 July 2020,⁷³ the Appeals Chamber finds it appropriate in these circumstances to schedule a status conference, as specified below.

IV. DISPOSITION

For the foregoing reasons, the Appeals Chamber, Judge N’gum dissenting as to the modality of Mladić’s participation in the appeal hearing,⁷⁴ hereby **GRANTS**, in part, the Motion;

ORDERS, pursuant to Rule 69(B) of the Rules, that a status conference be held in The Hague, The Netherlands, on Friday, 24 July 2020, at 11:00, in Courtroom 1, which the Pre-Appeal Judge will conduct by means of a videoconference;

ORDERS Mladić to submit in writing by 22 July 2020 whether he intends to be physically present in the courtroom during the status conference or whether he wishes to proceed with the status conference in accordance with Rule 69(C)(ii) of the Rules;

ORDERS, pursuant to Rule 141 of the Rules, that the hearing of the appeals in the present case shall take place in The Hague, The Netherlands on Tuesday and Wednesday, 25 and 26 August 2020 in Courtroom 1;

ORDERS the parties to inform the Appeals Chamber in writing by 11 August 2020 whether any counsel or Mladić will participate in the hearing by means of a videoconference;

ORDERS the Registrar to facilitate Mladić’s physical presence in the courtroom during the status conference and the appeal hearing, with the necessary safety measures in place, or, should Mladić

⁷¹ Order of 20 May 2020 Regarding Status Conference, p. 3.

⁷² Order of 22 May 2020, p. 3.

⁷³ See Response, para. 8, RP. 10884, 10083.

⁷⁴ In light of the fact that Mladić is deemed part of a high risk group due to his age and medical history, Judge N’gum is of the view that he should only participate in the appeal hearing from the UNDU by means of a videoconference.

not wish to be physically present in the courtroom, to facilitate his participation from the UNDU as set out in this Decision;

ORDERS the Registrar to ensure that the courtroom be adapted for the safe conduct of the status conference and of the appeal hearing and that communication equipment for remote participation of Mladić, counsel, or any judge, if required, be in place, be fully operational, and be tested in advance, and that, in the event Mladić will participate in the status conference or the appeal hearing from the UNDU, the necessary means of confidential communication between Mladić and Defence counsel prior to and during the status conference and the appeal hearing be available and fully operational;

VACATES its request to the Registrar to file Feasibility Reports pursuant to the Order of 28 May 2020 and **ORDERS** the Registrar to inform the Appeals Chamber in writing on a weekly basis of the state of preparedness for the status conference and the appeal hearing in line with the present Decision;

DISMISSES the remainder of the Motion; and

INFORMS that the timetable of the hearing of the appeals shall be as follows, subject to adjustments as appropriate:

Tuesday, 25 August 2020

09:20 – 09:30 Introductory Statement by the Presiding Judge (10 minutes)

Appeal of Ratko Mladić

09:30 – 10:30 Submissions of Mladić (1 hour)
 10:30 – 11:15 *Pause (45 minutes)*
 11:15 – 12:15 Submissions of Mladić (1 hour)
 12:15 – 13:15 *Pause (1 hour)*
 13:15 – 14:15 Submissions of Mladić (1 hour)
 14:15 – 15:00 *Pause (45 minutes)*
 15:00 – 16:00 Response of the Prosecution (1 hour)
 16:00 – 16:45 *Pause (45 minutes)*
 16:45 – 17:45 Response of the Prosecution (1 hour)

Wednesday, 26 August 2020**Appeal of Ratko Mladić**

09:30 – 10:30 Response of the Prosecution (1 hour)
10:30 – 11:15 *Pause (45 minutes)*
11:15 – 12:15 Reply of Mladić (1 hour)
12:15 – 13:15 *Pause (1 hour)*
13:15 – 13:45 Reply of Mladić (30 minutes)

Appeal of the Prosecution

13:45 – 14:15 Submissions of the Prosecution (30 minutes)
14:15 – 15:00 *Pause (45 minutes)*
15:00 – 15:30 Response of Mladić (30 minutes)
15:30 – 15:45 Reply of the Prosecution (15 minutes)

Personal Address

15:45 – 15:55 Personal Address by Mladić (10 minutes) *(optional)*

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

Done this 17th day of July 2020,
At The Hague,
The Netherlands



Judge Prisca Matimba Nyambe
Presiding Judge

[Seal of the Mechanism]



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