

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 20 August 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: 20 August 2020

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON A DEFENCE MOTION TO RECONSIDER THE
“DECISION ON DEFENCE SUBMISSIONS”**

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 (“Mladić”) and the Office of the Prosecutor of the Mechanism (“Prosecution”);³

RECALLING that, in a decision issued on 17 July 2020, the Appeals Chamber, *inter alia*, rescheduled the hearing of the appeals in this case to take place on 25 and 26 August 2020 in The Hague, The Netherlands (“Appeal Hearing”), provided for the remote participation of the parties at the hearing given the circumstances of the coronavirus pandemic-related restrictions, and ordered the parties to inform the Appeals Chamber by 11 August 2020 whether any counsel or Mladić would participate in the hearing by means of a videoconference (“Notice of Participation”);⁴

RECALLING that, on 14 August 2020, the Appeals Chamber denied requests from the Defence⁵ to, *inter alia*, vacate the dates of the Appeal Hearing, adjourn the proceedings until the coronavirus pandemic-related restrictions are eased so as to allow Mladić to be examined by medical

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 Reply Brief, 29 November 2018 (confidential; public redacted version filed on 21 January 2019).

⁴ Decision on the Scheduling of the Appeal Hearing and a Status Conference, 17 July 2020 (“Decision of 17 July 2020”), paras. 14, 19, 20, pp. 10, 11. See also, Scheduling Order for the Hearing of the Appeals, 16 December 2019; Decision on a Motion to Stay the Appeal Hearing, 6 March 2020 (confidential; public redacted version filed on 11 March 2020); Second Order Scheduling the Hearing of the Appeals, 1 May 2020; Order Regarding the Hearing of the Appeals, 28 May 2020.

⁵ See Defence Submission Pursuant to the Appeals Chamber Decision on the Scheduling of the Appeal Hearing and a Status Conference and the Oral Request Made at the Status Conference by the Presiding Judge, 5 August 2020 (“Defence Submission”); Defence Submission of Ratko Mladić’s Non-Consent to Appeals Hearing via Videolink, 10 August 2020 (“Defence Further Submission”).

professionals, and order a competency review process to determine Mladić's capacity for legal proceedings;⁶

RECALLING FURTHER that the Impugned Decision also ordered the Defence to file its Notice of Participation within one day of the filing of this decision;⁷

BEING SEISED OF a motion, filed on 17 August 2020, wherein the Defence submits that the Appeals Chamber should reconsider the Decision of 14 August 2020 on the basis that "it is manifestly unreasonable and contains clear errors of reasoning amounting to an injustice", provides notice as to the presence of the Defence team for the Appeal Hearing, and reiterates the request to vacate the Appeal Hearing as scheduled and order a competency review of Mladić's capacity to participate in legal proceedings;⁸

NOTING the response, filed on 19 August 2020, wherein the Prosecution submits that the Motion for Reconsideration should be denied as Mladić's disagreement with the Impugned Decision shows neither a clear error of reasoning nor new facts justifying reconsideration to avoid injustice;⁹

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;¹⁰

NOTING the Defence's submissions that reconsideration is warranted as: (i) the Impugned Decision, in rejecting the request for a competency review hearing and additional medical examinations, failed to address cogent Defence arguments, including all medically relevant events negatively impacting Mladić's health and that external visitation of medical professionals has not been possible due to the coronavirus pandemic-related restrictions at the United Nations Detention Unit ("UNDU");¹¹ (ii) the Impugned Decision "completely ignore[d] professional duties" of Defence counsel, who have had "no direct contact or visit" for most of this year, and that the finding regarding Mladić's lack of consent for the modalities of the Appeal Hearing is "manifestly

⁶ Decision on Defence Submissions, 14 August 2020 ("Impugned Decision"), p. 6; Dissenting Opinion of Judge Prisca Matimba Nyambe to the "Decision on Defence Submissions" Filed on 14 August 2020, 14 August 2020 ("Dissenting Opinion of Judge Nyambe").

⁷ Impugned Decision, p. 6.

⁸ Defence Urgent Motion for Reconsideration of the Decision on Defence Submissions; and Notice as to Same, 17 August 2020 ("Motion for Reconsideration"), paras. 2-25, p. 11.

⁹ Prosecution Response to Defence Urgent Motion for Reconsideration of the Decision on Defence Submissions; and Notice as to Same, 19 August 2020, paras. 1-9. The Registry informed the Appeals Chamber that the Defence will not file a reply. Email to the Senior Legal Officer, 19 August 2020.

¹⁰ See Decision on a Motion to Reconsider the Decision Staying the Appeal Hearing, 11 March 2020 (confidential; public redacted version filed on the same date), p. 2, n. 12 and references cited therein.

¹¹ Motion for Reconsideration, paras. 2, 4-10.

unreasonable”;¹² (iii) there are new facts relevant to coronavirus pandemic-related restrictions that may affect the availability of the Defence team;¹³ and (iv) Mladić is unaware of the Impugned Decision and the Defence, which has filed a motion with the Appeals Chamber to have him urgently hospitalized, has not been able to meaningfully communicate with him;¹⁴

RECALLING that the duty to provide a reasoned opinion does not require the articulation of every step of reasoning, and that the Appeals Chamber has an inherent discretion to select submissions which merit a detailed discussion in writing;¹⁵

RECALLING that, in the Impugned Decision, the Appeals Chamber, cognizant of the relevant standard of fitness in relation to appeal proceedings and the pertinent facts regarding Mladić’s health, considered that neither the Defence Submission nor the Defence Further Submission substantiated that Mladić is unable to communicate, consult with his counsel, and/or understand the essentials of proceedings;¹⁶

CONSIDERING that the Motion for Reconsideration equally does not meet the burden of demonstrating that Mladić is presently unable to communicate, consult with counsel, and/or understand the essentials of proceedings due to lack of fitness;

CONSIDERING that the Defence’s disagreement with the rejection of requests to vacate the date of the Appeal Hearing to facilitate additional medical examinations and a competency review process of Mladić’s capacity does not amount to a clear error of reasoning or a circumstance justifying reconsideration in order to avoid injustice;

RECALLING that the Impugned Decision considered that counsel have an obligation to represent their client and comply with orders of the Mechanism, and that where lead counsel is unavailable, co-counsel shall assume responsibility for carrying on with the proceedings,¹⁷ and explicitly noted that Defence counsel have consulted with Mladić prior to the filing of the Defence Further Submission;¹⁸

¹² Motion for Reconsideration, paras. 13-16.

¹³ Motion for Reconsideration, paras. 17-23.

¹⁴ Motion for Reconsideration, paras. 24, 25. *See also* Defence Urgent Motion to Hospitalize Mr. Mladić, 14 August 2020 (confidential).

¹⁵ Decision on a Motion for Reconsideration and Certification to Appeal Decision on a Request for Provisional Release, 22 May 2018 (confidential; public redacted version filed on 8 June 2018), p. 4, nn. 24, 25 and references cited therein.

¹⁶ Impugned Decision, p. 3, n. 18 *referring to* Decision on a Motion to Vacate the Trial Judgement and to Stay Proceedings, 30 April 2018 (confidential; public redacted version filed on 8 June 2018), pp. 3, 4, nn. 15, 16 and references cited therein.

¹⁷ Impugned Decision, p. 5, nn. 30, 31.

¹⁸ Impugned Decision, n. 20.

CONSIDERING that the Defence submissions that the Appeals Chamber “completely ignore[d] professional duties of Defence” are without merit, and that they also fail to demonstrate how the lack of “direct contact or visit” with Mladić at the UNDU has prevented necessary consultation;

CONSIDERING that these submissions fail to demonstrate a clear error of reasoning or a circumstance justifying reconsideration in order to avoid injustice;

RECALLING that the Impugned Decision recalled that the Decision of 17 July 2020 provided for remote participation of the parties in the Appeal Hearing;¹⁹

CONSIDERING that the option of remote participation remains open, and that, according to submissions filed by the Registrar on 14 August 2020, the Mechanism will be able to support more than five remote participants in the Appeal Hearing, if so required, and, further, that the Mechanism has implemented a policy that provides for the possibility of an exception to coronavirus quarantine measures for individuals who have traveled to affected regions but where operational requirements necessitate their presence in the Mechanism’s premises;²⁰

CONSIDERING that submissions in the Motion for Reconsideration pertinent to alleged new facts regarding the changing coronavirus pandemic-related restrictions or that Mladić is unaware of the Impugned Decision fail to demonstrate that reconsideration is warranted to avoid injustice;

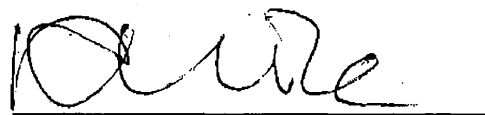
FINDING, therefore, that the Motion for Reconsideration fails to justify the requests for reconsideration of the Impugned Decision, as well as the requests to stay the Appeal Hearing and order a competency review of Mladić’s capacity to participate in legal proceedings;

FOR THE FOREGOING REASONS, the Appeals Chamber, Judge Nyambe dissenting,²¹

HEREBY DENIES the Motion for Reconsideration.

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

Done this 20th day of August 2020,
At The Hague,
The Netherlands



Judge Prisca Matimba Nyambe
Presiding Judge

[Seal of the Mechanism]

¹⁹ Impugned Decision, p. 5, n. 29, *referring to* Decision of 17 July 2020, para. 19, pp. 10, 11.

²⁰ Registrar’s Fourth Weekly Report in Response to “Decision on the Scheduling of the Appeal Hearing and a Status Conference”, 14 August 2020 (confidential), paras. 3, 4, n. 5.

²¹ As set out in her dissenting opinion to the Impugned Decision, Judge Nyambe maintains her position that the Defence Submission and Defence Further Submission should be granted. *See* Dissenting Opinion of Judge Nyambe.



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