

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 28 May 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

Order of: 28 May 2020

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

ORDER REGARDING THE HEARING OF THE APPEALS

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;³

RECALLING that, on 16 December 2019, the Appeals Chamber ordered that the hearing of the appeals in the present case take place in The Hague, The Netherlands on 17 and 18 March 2020;⁴

NOTING the motion, filed by Mladić on 28 February 2020, requesting the Appeals Chamber to, *inter alia*, reschedule the hearing of the appeals to a fixed date four to six weeks after his then upcoming surgery;⁵

RECALLING the decision, issued on 6 March 2020, wherein the Appeals Chamber, *inter alia*, stayed the hearing of the appeals until further notice on the basis of Mladić’s surgery and requested the Registrar 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 hearing;⁶

RECALLING that, on 1 May 2020, noting Mladić’s progress in recovering from the surgery, the Appeals Chamber ordered the hearing of the appeals in the present case to take place in The Hague,

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

⁵ 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.

⁶ Decision on a Motion to Stay the Appeal Hearing, 6 March 2020 (confidential; public redacted version filed on 11 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).

The Netherlands on 16 and 17 June 2020 (“Appeal Hearing”), “subject to change should coronavirus pandemic-related restrictions inhibit the necessary travel or the holding of the hearing for other reasons”;⁷

NOTING the submission, filed on 13 May 2020, wherein the Registrar indicated, *inter alia*, that in view of the coronavirus pandemic and particularly the “detainees’ advanced age and medical histories”, measures have been implemented to prevent the occurrence of the coronavirus at the United Nations Detention Unit (“UNDU”)⁸ and that this may be relevant to the Appeal Hearing;⁹

RECALLING that, on 20 May 2020, considering the continued existence of coronavirus pandemic-related restrictions as well as reiterating the need to hold the hearing of the appeals without delay when it is safe and practicable to do so, the Appeals Chamber requested the Registrar to provide submissions on the feasibility of: (i) each Judge’s unhindered ability to travel to The Hague, The Netherlands for the Appeal Hearing from his or her home country and to subsequently return, including any applicable exit, entry, or transit restrictions, taking into account the Judges’ status, and the availability of flights; and (ii) Mladić’s physical presence in the courtroom for the duration of the Appeal Hearing;¹⁰

NOTING the “Defence Notice as to Appeals Hearing”, filed on 21 May 2020 (“Notice of 21 May 2020”), whereby the Defence “g[a]ve notice of unavailability to proceed with the Appeals Hearings” due to the “developments/restrictions relating to the coronavirus pandemic, which are beyond [their] control”;¹¹

NOTING the submissions, filed confidentially on 26 May 2020,¹² wherein the Registrar indicated, *inter alia*, that, in relation to the travel of the Judges to attend the Appeal Hearing: (i) for entry into The Netherlands: four of the Judges would be transiting through areas deemed “high risk” by Dutch authorities, they would be subject to a 14-day self-quarantine upon entry into The Netherlands, and there are no available flights that these Judges could use to travel to The Netherlands to meet the quarantine requirement in time to attend the Appeal Hearing;¹³ (ii) for return travel: the borders and airports in the home country of one of the Judges are closed, there is no available return route for

⁷ Second Order Scheduling the Hearing of the Appeals, 1 May 2020 (“Scheduling Order of 1 May 2020”), p. 2.

⁸ Registrar’s Submission in Response to “Order Scheduling a Status Conference”, 13 May 2020 (“Registrar’s Submission of 13 May 2020”), paras. 2, 3. *See also* Registrar’s Submission in Relation to “Defence Submission in Compliance with the ‘Order Scheduling a Status Conference’ Issued 11 May 2020”, 18 May 2020, paras. 2, 3.

⁹ Registrar’s Submission of 13 May 2020, para. 7. *See also* Registrar’s Submission of 13 May 2020, paras. 2-6.

¹⁰ Order for Submissions Regarding the Appeal Hearing, 20 May 2020 (“Order of 20 May 2020”), pp. 2, 3.

¹¹ Notice of 21 March 2020, para. 9. *See also* Notice of 21 May 2020, paras. 4-7.

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”).

¹³ Registrar’s Submission of 26 May 2020, para. 2. *See also* Registrar’s Submission of 26 May 2020, paras. 3, 4.

another Judge due to transit restrictions, and three of the Judges would be quarantined for 14 days upon return to their home countries;¹⁴

NOTING FURTHER that, according to the Registrar: (i) “Mladić is part of a high risk group due to his age and medical history” and that “it is not advisable to expose [him] to the risks of contact with persons external to the [UNDU]”;¹⁵ (ii) social distancing recommendations would require the number of people in the courtroom limited as much as possible;¹⁶ (iii) for interpreters during the hearing, plans are in place to add two additional booths, and all booths “should be cleaned and aired out for half an hour between interpreters” and that “this requirement is likely to have an impact on the Appeal Hearing schedule” set out in the Scheduling Order of 1 May 2020;¹⁷ (iv) the Registry recommends “no in-person public viewing of the Appeal Hearing” in the gallery due to restrictions in The Netherlands for public gatherings and the Mechanism’s restrictions on visits of groups larger than three persons;¹⁸ and (v) “[a]t the present time, the Mechanism has the capacity to have up to three participants join a courtroom proceeding by secure videoconference link”;¹⁹

CONSIDERING, in these exceptional circumstances, the notice of unavailability given by the Defence;

CONSIDERING ALSO the Registrar’s submissions and, in particular, that, *inter alia*, there are no available flights that four of the Judges could use to travel to The Netherlands to meet the quarantine requirement in time to attend the Appeal Hearing as scheduled and that two of the Judges would not be able to return to their home countries;

FURTHER CONSIDERING that it is not advisable for Mladić to attend the Appeal Hearing as he is part of a “high risk group” due to his age and medical history;

OBSERVING that the present technological capabilities at the Mechanism do not allow for the possibility of conducting the Appeal Hearing with the remote participation of all those who cannot safely attend it in person;

FINDING that, in the present circumstances, it is not feasible to hold the Appeal Hearing as scheduled;

¹⁴ Registrar’s Submission of 26 May 2020, para. 5.

¹⁵ Registrar’s Submission of 26 May 2020, paras. 7, 8.

¹⁶ Registrar’s Submission of 26 May 2020, para. 10.

¹⁷ Registrar’s Submission of 26 May 2020, para. 11.

¹⁸ Registrar’s Submission of 26 May 2020, para. 12.

¹⁹ Registrar’s Submission of 26 May 2020, para. 13.

RECALLING the Appeals Chamber's efforts to expeditiously schedule and reschedule the hearing of the appeals 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 hearing of the appeals without delay when it is safe and practicable to do so;²⁰

RECALLING FURTHER that the parties were granted, at Mladić's request, extensions of time totalling 210 days for the filing of their appeal submissions²¹ and that the Appeals Chamber issued the initial order scheduling the hearing of the appeals on 16 December 2019;²²

CONSIDERING that, as a result, the parties have had ample time for the preparation of their submissions on appeal, including time for counsel to discuss the case with Mladić and time for the parties to prepare their oral arguments;

FINDING, therefore, 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;

CONSIDERING that, in order to reschedule the hearing as soon as possible, the Appeals Chamber needs to receive timely information on all relevant coronavirus pandemic-related restrictions;

FINDING that it is therefore appropriate to request the Registrar to provide a periodic update to the Appeals Chamber on the feasibility of holding a hearing of the appeals in this case taking into account measures that concern the necessary travel of each Judge (including any exit, entry, transit, re-entry, and quarantine restrictions, as well as the availability of flights), those in effect at the UNDU that may affect Mladić, and provisions for the safety of participants in the courtroom ("Feasibility Report");

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 55, 131, and 141 of the Rules of Procedure and Evidence of the Mechanism,

HEREBY VACATES the Scheduling Order of 1 May 2020;

²⁰ See Scheduling Order of 1 May 2020, p. 2; Order of 20 May 2020, p. 2.

²¹ 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). See also Defence Motion for Extension of Time to File Notice of Appeal, 18 December 2017; Urgent Motion for Extension of Time to File Appellant's Brief and for Authorization to Exceed Word Limit, 2 May 2018.

²² Scheduling Order of 16 December 2019.

STAYS the Appeal Hearing until further notice; and

REQUESTS the Registrar to file the Feasibility Report every ten working days, or more frequently whenever relevant information may become available.

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

Done this 28th day of May 2020,
At The Hague,
The Netherlands



Judge Prisca Matimba Nyambe
Presiding Judge

[Seal of the Mechanism]



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Case Name/ Affaire :	PROSECUTOR v. RATKO MLADIĆ		Case Number/ Affaire n° :	MICT-13-56-A
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