

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 26 June 2018

Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Carmel Agius  
Judge Liu Daqun  
Judge Prisca Matimba Nyambe  
Judge Seymour Panton

**Registrar:** Mr. Olufemi Elias

**Decision of:** 26 June 2018

**PROSECUTOR**

**v.**

**RATKO MLADIĆ**

***PUBLIC (REDACTED)***

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**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”**

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**The Office of the Prosecutor:**

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

**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);<sup>1</sup>

**NOTING** that Ratko Mladić (“Mladić”) and the Office of the Prosecutor of the Mechanism (“Prosecution”) have appealed<sup>2</sup> the judgement issued in this case by Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia (“ICTY”), on 22 November 2017;<sup>3</sup>

**RECALLING** the decision, issued confidentially on 30 April 2018,<sup>4</sup> wherein the Appeals Chamber dismissed Mladić’s motion, filed on 31 January 2018,<sup>5</sup> seeking to stay appeal proceedings and to vacate the Trial Judgement on the basis of his alleged compromised [REDACTED] fitness;<sup>6</sup>

**RECALLING** that, in reaching this conclusion, the Appeals Chamber found that: (i) the Motion of 31 January 2018 did “not satisfy the burden of demonstrating that Mladić is unfit to effectively participate in and understand the essentials of the appeal proceedings”;<sup>7</sup> and (ii) following the conclusion of trial proceedings, the means to address an alleged violation of a procedural right, including matters related to an accused’s fitness during trial, is an appeal from judgement;<sup>8</sup>

**BEING SEISED OF** a confidential motion, filed on 7 May 2018, wherein Mladić requests the Appeals Chamber to reconsider the Impugned Decision, or in the alternative; to certify the appeal of the Impugned Decision before a different panel of judges of the Appeals Chamber;<sup>9</sup>

**NOTING** the confidential response, filed on 17 May 2018, wherein the Prosecution submits that the Motion does not justify reconsideration of the Impugned Decision,<sup>10</sup> and that there is no legal basis for certification to appeal a decision of the Appeals Chamber;<sup>11</sup>

**NOTING** that Mladić did not file a reply;

<sup>1</sup> Order Assigning Judges to a Case Before the Appeals Chamber, 19 December 2017, p. 1.

<sup>2</sup> Notice of Appeal of Ratko Mladić, 22 March 2018 (public with public and confidential annexes); Prosecution’s Notice of Appeal, 22 March 2018.

<sup>3</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Judgement, 22 November 2017 (public with confidential annex) (“Trial Judgement”).

<sup>4</sup> 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) (“Impugned Decision”).

<sup>5</sup> Defence Motion to Vacate Judgement and Impose Stay of Proceedings, 31 January 2018 (confidential with public and confidential annexes; public redacted version filed on 31 January 2018) (“Motion of 31 January 2018”).

<sup>6</sup> Impugned Decision, pp. 1, 4, 5.

<sup>7</sup> Impugned Decision, p. 4.

<sup>8</sup> Impugned Decision, p. 5.

<sup>9</sup> Motion to Reconsider Decision on a Motion to Vacate the Trial Judgement and to Stay of Proceedings or in Alternative Motion for Certification to Appeal, 7 May 2018 (confidential) (“Motion”), paras. 2-4, 6, 10, pp. 9, 10.

<sup>10</sup> Prosecution Response to Motion to Reconsider Decision on a Motion to Vacate the Trial Judgement and Stay Proceedings, 17 May 2018 (confidential) (“Response”), paras. 1-4. In this regard, the Prosecution submits, *inter alia*, that Mladić has not demonstrated a clear error of reasoning or the existence of “new information”, and that his mere disagreement with the Appeals Chamber’s conclusions does not warrant reconsideration. *See* Response, paras. 1-3.

<sup>11</sup> Response, para. 1.

**RECALLING** that there is no legal basis for appealing an order or a decision of the Appeals Chamber;<sup>12</sup>

**FINDING**, therefore, that Mladić's request for certification to appeal the Impugned Decision lacks merit;

**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;<sup>13</sup>

**NOTING** Mladić's submissions that reconsideration is justified given that the Appeals Chamber, *inter alia*: (i) based its findings on an "incomplete, selective and/or erroneous analysis of medically substantiated arguments and facts";<sup>14</sup> (ii) failed to comply with "well-settled procedures" at the ICTY mandating additional medical evaluations and a "competency hearing";<sup>15</sup> and (iii) committed a "manifest error" in deciding that his fitness at trial can be dealt with in the appeal judgement;<sup>16</sup>

**RECALLING** that, in rejecting the request to stay appeal proceedings and to vacate the Trial Judgement, the Appeals Chamber carefully considered the relevant jurisprudence<sup>17</sup> as well as extensive medical documentation, including the reports [REDACTED], on which Mladić relied, and [REDACTED], submitted by the Registry;<sup>18</sup>

<sup>12</sup> 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) ("Decision of 22 May 2018"), p. 2. The Appeals Chamber further recalls that it treats its pre-appeal and interlocutory decisions as binding in ongoing proceedings as to all issues decided therein, and that the only exception to this principle is a reconsideration of its prior decision. *See* Decision of 22 May 2018, p. 2, nn. 15, 16 and references cited therein.

<sup>13</sup> Decision of 22 May 2018, p. 3, n. 17 and references cited therein.

<sup>14</sup> Motion, paras. 1, 11, 21, 24. In this regard, Mladić contends that the Appeals Chamber reached its decision by an "improper and partial examination of all relevant facts, without full regard for medically substantiated arguments as to [his] unfitness to stand trial, *i.e.* appeal proceeding". He further submits, *inter alia*, that the Appeals Chamber erroneously referred to Mladić's communication with his Lead Counsel, and that the Impugned Decision gave more weight to medical documents presented by the Registry rather than medical reports and external literature that he submitted. *See* Motion, paras. 11, 21, 24.

<sup>15</sup> Motion, paras. 13-19, 24.

<sup>16</sup> Motion, paras. 11, 16, 23. Mladić further submits that the filing of his appeal cannot be seen as a waiver of his rights. *See* Motion, para. 16.

<sup>17</sup> Impugned Decision, pp. 2-5.

<sup>18</sup> Impugned Decision, pp. 1-4, nn. 5, 10, 19, 21. The Appeals Chamber also considered submissions filed by the Registry as well as Mladić's responses to these submissions that discuss, among other matters, [REDACTED]. *See* Impugned Decision, p. 2, nn. 8-12. *See also* Registrar's Submission in Relation to Defence Motions, 21 February 2018 (confidential with confidential annexes; public redacted version filed on 8 March 2018); Registrar's Submission of Independent Medical Experts' Reports and Further Submission in Relation to Defence Motions and "Response to Registrar's Submission in Relation to Defence Motions", 20 March 2018 (confidential with confidential annexes; public redacted version filed on 10 April 2018); Response to "Registrar's Submission in Relation to Defence Motions", 5 March 2018 (confidential with confidential annexes; public redacted version filed on 9 March 2018); Response to "Registrar's Submission of Independent Medical Experts' Reports and Further Submission in Relation to Defence Motions and 'Response to Registrar's Submission in Relation to Defence Motions'", 3 April 2018 (confidential with confidential annexes; public redacted version filed on 10 April 2018).

**RECALLING** the Appeals Chamber’s consideration that, despite submissions on Mladić’s [REDACTED], the Motion of 31 January 2018 and [REDACTED], in and of themselves, did not demonstrate an impairment of Mladić’s ability to, *inter alia*, communicate, consult with his counsel, and/or understand the essentials of proceedings;<sup>19</sup>

**RECALLING** the Appeals Chamber’s discretion to issue orders as may be necessary for the conduct of appeal proceedings;<sup>20</sup>

**RECALLING** the abundance of medical documentation filed before the Appeals Chamber with respect to Mladić’s [REDACTED] fitness;<sup>21</sup>

**CONSIDERING** that, in these circumstances, it was not necessary for the Appeals Chamber to order additional medical examinations or a “competency hearing”;<sup>22</sup>

**CONSIDERING FURTHER** that, aside from declaring the existence of a “manifest error”,<sup>23</sup> Mladić fails to demonstrate any legal or factual error in the Appeals Chamber’s conclusion that, following the conclusion of trial proceedings, an appeal from judgement is the appropriate means to address an alleged violation of a procedural right – including matters related to fitness during trial;<sup>24</sup>

**CONSIDERING** that Mladić’s disagreements with conclusions in the Impugned Decision do not demonstrate a clear error of reasoning or circumstances justifying reconsideration in order to avoid injustice;<sup>25</sup>

**FINDING**, therefore, that Mladić has failed to justify his request for reconsideration of the Impugned Decision;

**FOR THE FOREGOING REASONS,**

<sup>19</sup> Impugned Decision, pp. 3-5. Contrary to Mladić’s submissions, the Appeals Chamber did not give more weight to [REDACTED] assessment. Rather, having considered that the Motion of 31 January 2018 and [REDACTED], *per se*, did not demonstrate Mladić’s [REDACTED], the Appeals Chamber then also considered that: (i) [REDACTED]; and (ii) Mladić was in fact able to communicate with his Lead Counsel and challenged the accuracy of substantive parts of a medical report. *See* Impugned Decision, p. 4, nn. 21, 22.

<sup>20</sup> *See* Rules 55, 131, 135(B) of the Rules of Procedure and Evidence.

<sup>21</sup> *See supra* p. 2, n. 18.

<sup>22</sup> *Cf. Prosecutor v. Vujadin Popović et al.* Case No. IT-05-88-A, Public Redacted Version of 30 November 2012 Decision on Request to Terminate Appellate Proceedings in Relation to Milan Gvero, 16 January 2013, para. 28.

<sup>23</sup> *See* Motion, paras. 11, 23.

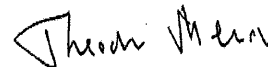
<sup>24</sup> Impugned Decision, p. 5. In this regard, Mladić also misconstrues the Impugned Decision as the Appeals Chamber at no point considered that he waived any rights in the filing of his appeal against the Trial Judgement. *See* Impugned Decision, p. 5.

<sup>25</sup> The Appeals Chamber also notes Mladić’s submission that reconsideration is also warranted due to “new information”. *See* Motion, para. 6. Given that nothing in the Motion substantiates the existence of “new information” arising after the date of the Impugned Decision, this submission is accordingly dismissed.

**HEREBY DISMISSES** the Motion in its entirety.

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

Done this 26<sup>th</sup> day of June 2018,  
At The Hague,  
The Netherlands



Judge Theodor Meron  
Presiding Judge

[Seal of the Mechanism]



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