

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 28 May 2021

Original: English

IN THE APPEALS CHAMBER

Before: Judge Prisca Matimba Nyambe, Presiding
Judge Aminatta Lois Runeni N’gum
Judge Seymour Panton
Judge Elizabeth Ibanda-Nahamya
Judge Mustapha El Baaj

Registrar: Mr. Abubacarr Tambadou

Decision of: 28 May 2021

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON DEFENCE URGENT MOTION
TO POSTPONE PRONOUNCEMENT OF JUDGEMENT**

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

RECALLING that, on 30 April 2021, the Appeals Chamber ordered that the judgement on the appeals in the present case be pronounced publicly in The Hague, The Netherlands, on 8 June 2021 (“Pronouncement of Judgement”), and requested the parties to inform the Registrar of the Mechanism by 25 May 2021 in the event that, due to coronavirus pandemic-related restrictions, any counsel or Mr. Mladić would elect to participate in the hearing by means of a videoconference;⁴

NOTING that, on 24 May 2021, the Defence filed a notice indicating that Mr. Dragan Ivetić, Co-Counsel for Mr. Mladić, is not able to participate in the scheduled Pronouncement of Judgement “in any capacity whatsoever” due to his “unexpected hospitalization and urgent need for continued hospitalization and treatment”;⁵

BEING SEIZED OF the “Defence Notice in Compliance with Scheduling Order and Urgent Motion to Postpone Pronouncement of Judgment”, filed on 25 May 2021 (“Motion”), wherein the Defence requests that the Appeals Chamber stay and postpone the Pronouncement of Judgement until a time when both counsel can be present in court in person with Mr. Mladić;⁶

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; Order Replacing a Judge in a Case before the Appeals Chamber, 18 February 2021, 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); 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 Pronouncement of Judgement, 30 April 2021 (“Scheduling Order”), p. 1.

⁵ Defence Urgent Notice of Unavailability of Co-Counsel, 24 May 2021 (“Notice of 24 May 2021”), paras. 12, 13. See also Notice of 24 May 2021, paras. 7-11.

⁶ Motion, p. 4.

NOTING that, in support of this request, the Defence submits, *inter alia*, that: (i) Mr. Mladić has rejected the use of videoconference link and “insist[ed] to be present personally in the courtroom accompanied by both of his acquainted Legal Counsels, Mr. Branko Lukić and Mr. Dragan Ivetić”;⁷ (ii) Mr. Ivetić is unavailable to participate in the Pronouncement of Judgement “in any form” due to his “emergency hospitalization and ongoing treatment”;⁸ (iii) Lead Counsel Mr. Lukić, having received Mr. Mladić’s “strict instructions” and citing the Serbian Attorney Ethical Code, has indicated that “under the current circumstances [he] cannot confirm his presence” during the Pronouncement of Judgement, either in person or via videoconference link;⁹ (iv) the Scheduling Order was issued despite the existence of the same reasons that previously led to the staying of a status conference;¹⁰ and (v) Mr. Mladić’s mental capacity remains “unverified”;¹¹

NOTING the response, filed on 27 May 2021, wherein the Prosecution submits that the Motion should be denied as, *inter alia*, the inability of Co-Counsel to attend the Pronouncement of Judgement does not justify the requested postponement, Mr. Mladić’s instructions to be accompanied by both counsel do not demonstrate good cause, and further, Mr. Mladić fails to show that he cannot be adequately represented by his Lead Counsel;¹²

RECALLING that, pursuant to Rule 144(D) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), the judgement on appeal shall be pronounced in public by the Appeals Chamber or a Judge thereof, on a date of which notice shall be given to the parties and counsel and at which they shall be entitled to be present;

RECALLING that, on 10 November 2020, the Presiding Judge stayed a status conference in this case, scheduled for 19 November 2020, having considered Mr. Mladić’s preference for the status conference to be deferred to a time when either Lead Counsel or Co-Counsel would be able to appear in court with him;¹³

OBSERVING that the Rules do not restrict the scheduling or conduct of appeal proceedings, including the pronouncement of judgement, on the basis of a stayed status conference;¹⁴

⁷ Motion, para. 2.

⁸ Motion, para. 4.

⁹ Motion, para. 5. The Defence further submits that availability of other team members, namely the Legal Consultants, is contingent upon, *inter alia*, counsel’s presence. *See* Motion, para. 8.

¹⁰ Motion, para. 6.

¹¹ Motion, para. 7.

¹² Prosecution Response to “Urgent Motion to Postpone Pronouncement of Judgment”, 27 May 2021, para. 1.

¹³ Order on the Scheduling of a Status Conference, 10 November 2020, p. 2. *See also* Order Scheduling a Status Conference, 28 October 2020, p. 2.

¹⁴ *See* Rules 69(B) and 144(D) of the Rules. *Cf.* Decision on the Scheduling of the Appeal Hearing and a Status Conference, 17 July 2020 (“Decision of 17 July 2020”), para. 13.

RECALLING that the right to be present during appeal proceedings does not require *physical* presence in the courtroom, at least where no additional evidence is being admitted, and can be satisfied through videoconference link;¹⁵

RECALLING that counsel have an obligation to represent their client and to comply with orders of the Appeals Chamber,¹⁶ and that, where the client is represented by counsel and co-counsel, either one may assume the responsibility for participating in proceedings;¹⁷

CONSIDERING that, during the Pronouncement of Judgement, a Judge of the Appeals Chamber will read a summary of the written judgement and publicly pronounce the verdict, with no action required from the parties or counsel;¹⁸

CONSIDERING that, notwithstanding Co-Counsel’s unavailability, the Defence has failed to demonstrate that Mr. Mladić or his Lead Counsel cannot be present for the Pronouncement of Judgement, in court or via videoconference;¹⁹

RECALLING that the Appeals Chamber has, on numerous occasions, rejected requests to facilitate medical examinations as the Defence has repeatedly failed to meet the burden of demonstrating that Mr. Mladić is unable to communicate, consult with counsel, and/or understand the essentials of proceedings due to a lack of fitness;²⁰

CONSIDERING that, according to the Motion, Mr. Mladić has been able to communicate with his legal team and provide instructions following the issuance of the Scheduling Order, and in doing so he, *inter alia*, “spoke definitively” and “provided his unwavering position”;²¹

FINDING that, in light of the considerations above, the Defence has failed to justify the request to stay the Pronouncement of Judgement and postpone it until a time when both counsel can be present in court in person with Mr. Mladić;

¹⁵ See Decision of 17 July 2020, paras. 16, 17.

¹⁶ See Decision on a Defence Motion to Reconsider the “Decision on Defence Submissions”, 20 August 2020 (“Decision of 20 August 2020”), p. 3, n. 17; Decision on Defence Submissions, 14 August 2020 (“Decision of 14 August 2020”), p. 5, n. 30 and references cited therein.

¹⁷ See Decision of 20 August 2020, p. 3, n. 17; Decision of 14 August 2020, p. 5, n. 31 and references cited therein.

¹⁸ See Rule 144(D) of the Rules.

¹⁹ The Appeals Chamber recalls that the Defence has previously contacted the Senior Legal Officer of the Appeals Chamber requesting a waiver of Dutch quarantine requirements for the presence of Mr. Lukić and five Legal Consultants on the Mechanism’s premises. The Appeals Chamber granted such a waiver on 18 May 2021. See Memorandum “Prosecutor v. Ratko Mladić: Waiver of Quarantine Requirements for Defence Team, including Legal Consultants”, 18 May 2021, para. 4.

²⁰ See, e.g., Decision of 20 August 2020, p. 3; Decision of 14 August 2020, p. 3; Decision on a Motion to Stay the Appeal Hearing, 6 March 2020, p. 4; Decision on a Motion to Vacate the Trial Judgement and to Stay Proceedings, 30

FOR THE FOREGOING REASONS,

HEREBY DENIES the Motion.

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

Done this 28th day of May 2021,
At The Hague,
The Netherlands



Judge Prisca Matimba Nyambe
Presiding Judge

[Seal of the Mechanism]

April 2018 (confidential; public redacted version filed on 8 June 2018) (“Decision of 30 April 2018”), p. 4. *See also* Decision of 30 April 2018, p. 3, nn. 15, 16, 18 and references cited therein.

²¹ Motion, para. 2.



TRANSMISSION SHEET FOR FILING OF DOCUMENTS / FICHE DE TRANSMISSION POUR LE DEPOT DE DOCUMENTS

I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	IRMCT Registry/ <i>Greffe du MIFRTP</i>	<input type="checkbox"/> Arusha/ <i>Arusha</i>	<input checked="" type="checkbox"/> The Hague/ <i>La Haye</i>
From/ De :	<input type="checkbox"/> President / <i>Président</i>	<input checked="" type="checkbox"/> Chambers / <i>Chambre</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i>
	<input type="checkbox"/> Registrar / <i>Greffier</i>	<input type="checkbox"/> Other/ <i>Autre</i>	<input type="checkbox"/> Defence / <i>Défense</i>
Case Name/ Affaire :	PROSECUTOR v. RATKO MLADIĆ	Case Number/ Affaire n° :	MICT-13-56-A
Date Created/ Daté du :	28 May 2021	Date transmitted/ Transmis le :	28 May 2021
			No. of Pages/ Nombre de pages : 5
Original Language / Langue de l'original :	<input checked="" type="checkbox"/> English/ <i>Anglais</i>	<input type="checkbox"/> French/ <i>Français</i>	<input type="checkbox"/> Other/Autre (specify/préciser) :
		<input type="checkbox"/> Kinyarwanda / <i>B/C/S</i>	
Title of Document/ Titre du document :	DECISION ON DEFENCE URGENT MOTION TO POSTPONE PRONOUNCEMENT OF JUDGEMENT		
Classification Level/ Catégories de classification :	<input checked="" type="checkbox"/> Unclassified/ <i>Non classifié</i>	<input type="checkbox"/> Ex Parte Defence excluded/ <i>Défense exclue</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>
	<input type="checkbox"/> Confidential/ <i>Confidentiel</i>	<input type="checkbox"/> Ex Parte R86(H) applicant excluded/ <i>Art. 86 H) requérant exclu</i>	<input type="checkbox"/> Ex Parte Amicus Curiae excluded/ <i>Amicus curiae exclu</i>
	<input type="checkbox"/> Strictly Confidential/ <i>Strictement confidentiel</i>	<input type="checkbox"/> Ex Parte other exclusion/ <i>autre(s) partie(s) exclue(s)</i> (specify/préciser) :	
Document type/ Type de document :			
<input type="checkbox"/> Motion/ <i>Requête</i>	<input type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i>	<input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i>	<input type="checkbox"/> Warrant/ <i>Mandat</i>
<input checked="" type="checkbox"/> Decision/ <i>Décision</i>	<input type="checkbox"/> Submission from parties/ <i>Écritures déposées par des parties</i>	<input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</i>	<input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i>
<input type="checkbox"/> Order/ <i>Ordonnance</i>	<input type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i>	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>	

II - TRANSLATION STATUS ON THE FILING DATE/ ÉTAT DE LA TRADUCTION AU JOUR DU DÉPÔT

<input type="checkbox"/> Translation not required/ <i>La traduction n'est pas requise</i>
<input checked="" type="checkbox"/> Filing Party hereby submits only the original, and requests the Registry to translate/ <i>La partie déposante ne soumet que l'original et sollicite que le Greffe prenne en charge la traduction :</i> (Word version of the document is attached/ <i>La version Word est jointe</i>)
<input type="checkbox"/> English/ <i>Anglais</i> <input checked="" type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input checked="" type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre (specify/préciser) :
<input type="checkbox"/> Filing Party hereby submits both the original and the translated version for filing, as follows/ <i>La partie déposante soumet l'original et la version traduite aux fins de dépôt, comme suit :</i>
Original/ Original en <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda / <i>B/C/S</i> <input type="checkbox"/> Other/Autre (specify/préciser) :
Translation/ Traduction en <input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda / <i>B/C/S</i> <input type="checkbox"/> Other/Autre (specify/préciser) :
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s)/ <i>La partie déposante soumettra la (les) version(s) traduite(s) sous peu, dans la (les) langue(s) suivante(s) :</i>
<input type="checkbox"/> English/ <i>Anglais</i> <input type="checkbox"/> French/ <i>Français</i> <input type="checkbox"/> Kinyarwanda <input type="checkbox"/> B/C/S <input type="checkbox"/> Other/Autre (specify/préciser) :

Send completed transmission sheet to/ *Veillez soumettre cette fiche dûment remplie à :*

JudicialFilingsArusha@un.org OR/ *OU* JudicialFilingsHague@un.org

Rev: August 2019/ *Rév. : Août 2019*