

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No. IT-09-92-T  
Date: 14 September 2016  
Original: English

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**THE PRESIDENT OF THE TRIBUNAL**

**Before: Judge Carmel Agius, President**

**Registrar: Mr. John Hocking**

**Order of: 14 September 2016**

**PROSECUTOR**

**v.**

**RATKO MLADIĆ**

**PUBLIC**

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**DECISION ON DEFENCE MOTION FOR STAY OF  
PROCEEDINGS FOR SYSTEMIC BIAS**

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**The Office of the Prosecutor:**

Mr. Peter McCloskey  
Mr. Alan Tieger

**Counsel for the Accused:**

Mr. Branko Lukić  
Mr. Miodrag Stojanović

**I, CARMEL AGIUS**, President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”);

**BEING SEISED** of the “Defence Motion for Stay of Proceedings for Systemic Bias”, filed by Ratko Mladić (“Mladić”) on 20 July 2016 (“Motion”), whereby Mladić requests: (i) permission to exceed the applicable word limits for motions; (ii) an indefinite stay of proceedings until “the violations of [Mladić’s] presumption of innocence are resolved”; (iii) that the President of the Tribunal and the President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) request an impartial and independent review of the circumstances and practices described in the Motion by a United Nations Security Council working group, to be completed within three months of the filing of the Motion; (iv) in the alternative, if the stay of proceedings is not granted, that the President of the Tribunal and the President of the Mechanism request the United Nations Security Council to establish the aforementioned working group with additional responsibilities for contemporaneous monitoring of the proceedings to ensure respect for Mladić’s fundamental rights; and (v) further in the alternative, “a mistrial to protect [Mladić’s] right to a fair trial”,<sup>1</sup>

**NOTING** that the Motion was also filed before the President of the Mechanism and before Trial Chamber I of the Tribunal (“Trial Chamber”);

**NOTING** that Mladić submits that: (i) three Judges of the Appeals Chamber, who may decide interlocutory appeals and an appeal from judgement in the present case, have prejudged Mladić’s guilt in previous appeal judgements which contain findings in relation to Mladić;<sup>2</sup> (ii) two Judges of the Trial Chamber, Judges Alphons Orié and Christoph Flügge (“Judge Orié” and “Judge Flügge”, respectively), have already made findings regarding Mladić’s guilt in previous trial judgements and are therefore biased or subject to a reasonable apprehension of bias;<sup>3</sup> (iii) Trial Chamber staff members assigned to the present case have worked on other judgements containing findings in relation to Mladić’s guilt;<sup>4</sup> (iv) the President of the Tribunal has made findings pertaining to Mladić’s guilt in a previous case and is therefore no longer impartial;<sup>5</sup> (v) the former President of the Tribunal and current President of the Mechanism has made statements casting aside Mladić’s presumption of innocence;<sup>6</sup> (vi) senior United Nations officials have made statements illustrating

<sup>1</sup> Motion, paras 6, 74-76, pp 27-28.

<sup>2</sup> Motion, paras 2, 3, 5, 24-43, 68-69.

<sup>3</sup> Motion, paras 2, 3, 5, 43-45, 68-69.

<sup>4</sup> Motion, paras 46-49, 70.

<sup>5</sup> Motion, paras 50-54.

<sup>6</sup> Motion, paras 55-57.

preconceived assumptions on Mladić's guilt;<sup>7</sup> and (vii) the Registry of the Tribunal has demonstrated bias "through inappropriate interventions to disadvantage the Defence";<sup>8</sup>

**NOTING** the "Prosecution Consolidated Response to Defence Motion for Stay of Proceedings and Disqualification of Judges Alphons Orié and Christoph Flüge", filed by the Office of the Prosecutor ("Prosecution") on 3 August 2016 before me as President of the Tribunal ("Response before the President"), seeking dismissal of the Motion for lack of jurisdiction,<sup>9</sup> submitting *inter alia* that Mladić: (i) provides no jurisprudential support for his "improper attempts to seize the President" of relief that is not contemplated by Rule 15(B) of the Tribunal's Rules of Procedure and Evidence ("Rules"); and (ii) fails to provide any legal support for the allegations of bias including, for example, against Appeals Chamber Judges who have no current involvement in the present proceedings against Mladić;<sup>10</sup>

**NOTING** also the "Prosecution Consolidated Response to Defence Motion for Stay of Proceedings and Disqualification of Judges Alphons Orié and Christoph Flüge", filed by the Prosecution on 3 August 2016 before the Trial Chamber ("Response before the Trial Chamber"), seeking dismissal of the Motion,<sup>11</sup> submitting *inter alia* that: (i) Mladić's claims against Judges Orié and Flüge have been dismissed previously;<sup>12</sup> (ii) the Appeals Chamber is not currently seized of any aspects of the Mladić proceedings;<sup>13</sup> (iii) the Mechanism has no jurisdiction;<sup>14</sup> (iv) statements of United Nations officials shed no meaningful light on positions or attitudes of professional Judges;<sup>15</sup> (v) the "attack on the Registry further illuminates the pretextual basis of [Mladić's] claims";<sup>16</sup> and (vi) Mladić's claims regarding Trial Chamber staff have already been rejected in the "Decision on Defence Motion for a Fair Trial and the Presumption of Innocence or, in the Alternative, a Mistrial", issued by the Trial Chamber on 4 July 2016;<sup>17</sup>

<sup>7</sup> Motion, paras 58-61, 70.

<sup>8</sup> Motion, paras 3, 62-67, 71.

<sup>9</sup> Response before the President, paras 1, 3.

<sup>10</sup> Response before the President, para. 2.

<sup>11</sup> Response before the Trial Chamber, paras 1, 13. On 10 August 2016, Mladić filed a "Defence Request for Leave to Reply in Support of Defence Motions for Stay of Proceedings Motion and Disqualification of Judges Alphons Orié and Christophe Flüge" before the Trial Chamber.

<sup>12</sup> Response before the Trial Chamber, paras 1, 4-6, 13.

<sup>13</sup> Response before the Trial Chamber, para. 7.

<sup>14</sup> Response before the Trial Chamber, para. 8.

<sup>15</sup> Response before the Trial Chamber, para. 9. See Response before the Trial Chamber, para. 10.

<sup>16</sup> Response before the Trial Chamber, para. 11.

<sup>17</sup> Response before the Trial Chamber, para. 12.

**NOTING** the “Decision on Two Defence Motions” issued by the President of the Mechanism on 21 July 2016 (“21 July Mechanism Decision”), whereby he declined jurisdiction to consider the Motion;<sup>18</sup>

**NOTING** the “Decision on Defence Motion Seeking to Disqualify the Honourable Judge Alphons Orié and the Honourable Judge Christoph Flügge” issued by the President of the Tribunal on 26 August 2016 (“26 August Decision”), whereby I denied *inter alia* Mladić’s request to disqualify Judges Orié and Flügge;<sup>19</sup>

**RECALLING** that Article 21 of the Statute of the Tribunal (“Statute”) guarantees the right to a fair trial and that the right to be tried before an independent and impartial tribunal is an integral component of this right;<sup>20</sup>

**CONSIDERING** that Mladić’s request to disqualify Judges Orié and Flügge was denied in the 26 August Decision and that the Motion contains no additional arguments in this respect;

**CONSIDERING** that there is currently no appeal pending in the present case, and therefore any allegations of bias pursuant to Rule 15(B) of the Rules concerning Judges of the Appeals Chamber, or myself as President of the Tribunal and Presiding Judge of the Appeals Chamber, are extraneous;<sup>21</sup>

**CONSIDERING** that Mladić otherwise fails to provide any legal basis for seising the President of the Tribunal;

**EMPHASISING** that Article 20(1) of the Statute provides that the trial chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules, with full respect for the rights of the accused and due regard for the protection of victims and witnesses;

**CONSIDERING** therefore that, pursuant to Article 20(1) of the Statute, the Trial Chamber has the primary responsibility to ensure that Mladić receives a fair trial in accordance with the Rules;

<sup>18</sup> 21 July Mechanism Decision, p. 1.

<sup>19</sup> 26 August Decision, p. 5.

<sup>20</sup> *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006, para. 37; *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-A, Judgement, 21 July 2000, para. 177. See *Prosecutor v. François Karera*, Case No. ICTR-01-74-A, Judgement, 2 February 2009, para. 377, referring to *Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, para. 28.

<sup>21</sup> Mladić submits that the “the ICTY President does not have an impartial opinion as to the guilt of the Accused” (Motion, para. 54. See also Motion, paras 3, 5, 50-53). I therefore consider that these submissions pertain to my function as the Presiding Judge of the Appeals Chamber pursuant to Article 14(2) of the Statute of the Tribunal.

**FOR THE FOREGOING REASONS,**

**DECLINE** to address the merits of the Motion.

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



Dated this fourteenth day of September 2016,  
At The Hague,  
The Netherlands.

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Judge Carmel Agius  
President

**[Seal of the Tribunal]**