

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-56-A

Date: 15 May 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: 15 May 2018

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

DECISION ON RENEWED MOTION FOR CONTEMPT

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);¹

NOTING that both Ratko Mladić (“Mladić”) and the Office of the Prosecutor of the Mechanism (“Prosecution”) have appealed² the judgement issued in this case by Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia (“Trial Chamber” and “ICTY”, respectively) on 22 November 2017;³

NOTING that Mladić’s allegations of contempt against medical staff at the United Nations Detention Unit (“UNDU”), leading up to the delivery of the Trial Judgement, have been extensively litigated before various organs of the ICTY and a Single Judge of the Mechanism,⁴ and that his allegations, in particular against Dr. Paulus Falke (“Dr. Falke”), a UNDU Medical Officer, have been dismissed by the Trial Chamber;⁵

BEING SEISED OF the “Renewed Motion for Contempt of Court against UNDU Staff for their Obstruction with Provision of Medical Records and Rule 31 Visit” filed publicly with confidential annexes on 31 January 2018 (“Motion”), wherein Mladić requests the Appeals Chamber to: (i) find probable cause of contempt by Dr. Falke, the UNDU Deputy Medical Officer, and the UNDU Commanding Officer (“UNDU Staff”) for their “constant, continuous, and obstructive policy” to interfere with obtaining medical records and “potential malpractice of medical care” and commence an investigation; and (ii) issue an order enjoining the UNDU Staff from further interference with Mladić’s rights to have access to “medical documentation/imagery” as well as to receive visits by Serbian doctors, pursuant to Rule 31 of the Rules Governing the Detention of Persons Awaiting

¹ Order Assigning Judges to a Case Before the Appeals Chamber, 19 December 2017.

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

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

⁴ See *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Decision on Motion to Reconsider Decision on Urgent Defence Motions of 10 November 2017 or in the Alternative Motion for Certification to Appeal, 21 November 2017 (“Trial Chamber Decision of 21 November 2017”); *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Decision on Urgent Motion to Reconsider Decision of 13 November 2017, 21 November 2017; *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56, Decision on Motion for Contempt Proceedings and Related Orders, 20 November 2017; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Decision on Three Defence Motions, 13 November 2017; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Decision on Urgent Defence Motions, 10 November 2017; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Decision on Second Additional Submission in Support of Urgent Defence Motion to Compel Registrar and United Nations Detention Unit to Provide Medical Records, 23 October 2017; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Decision on Urgent Defence Motion to Compel Registrar and United Nations Detention Unit to Provide Medical Records, 20 October 2017.

⁵ Trial Chamber Decision of 21 November 2017, para. 15. The Trial Chamber explicitly considered that the “alleged contemptuous behaviour” relates to an “alleged conversation” between Dr. Falke and Mladić prior to 3 November 2017, wherein Dr. Falke “allegedly ‘implied that no doctor visit of Serbian doctors was going to ever take place for [Mladić]’”. In light of the “very scant information” and the fact that medical visits from Serbian doctors were scheduled, the Trial Chamber found no basis for the allegation of contempt. See Trial Chamber Decision of 21 November 2017, para. 13.

Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal (“Detention Rules” and “Rule 31 visits”, respectively);⁶

NOTING Mladić’s submissions that, *inter alia*: (i) he “re-iterates” arguments set forth in his prior motions for contempt against Dr. Falke regarding the Rule 31 visits;⁷ (ii) the UNDU Staff obstructed the Rule 31 visits that were eventually scheduled on 18 and 19 December 2017;⁸ and (iii) UNDU Staff altered his medical records to obscure a reference to a serious condition,⁹ and have attempted to minimize Mladić’s medical complaints, made in late January 2018;¹⁰

NOTING the response, filed on 12 February 2018, in which the Prosecution submits that the Motion should be dismissed;¹¹

NOTING Mladić’s reply, filed on 19 February 2018, wherein he, *inter alia*, requests in the alternative that the “Presiding Judge (in his role as MICT President) issue a waiver of immunity against the impugned officials to allow proper proceedings in another venue”;¹²

NOTING the Registrar’s submission, filed confidentially on 21 February 2018;¹³

NOTING Mladić’s response to the Registrar’s Submission of 21 February 2018, filed confidentially on 5 March 2018;¹⁴

NOTING the Registrar’s submission, filed confidentially on 20 March 2018;¹⁵

⁶ Motion, para. 25, pp. 8, 9. *See also* Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal, IT/38/Rev.10, 15 November 2016.

⁷ Motion, paras. 1-6.

⁸ Motion, paras. 7-11. *See also* Motion, paras. 12-14.

⁹ Motion, paras. 15-18.

¹⁰ Motion, paras. 21-24

¹¹ Prosecution Response to Defence Renewed Motion for Contempt of Court Against UNDU Staff, 12 February 2018 (“Response”), para. 1.

¹² Defence Reply to Prosecution Response to Defence Renewed Motion for Contempt of Court Against UNDU Staff for their Obstruction with Provision of Medical Records and Rule 31 Visit, 19 February 2018 (“Reply”), para. 9.

¹³ 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 21 February 2018”). The Registrar submits, *inter alia*, that Mladić’s allegations concerning the adequacy of his medical care and his contempt allegations against Dr. Falke have already been considered by the Trial Chamber and President of the ICTY. *See* Registrar’s Submission of 21 February 2018, paras. 4, 5.

¹⁴ 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 the Registrar’s Submission of 21 February 2018”). Mladić, *inter alia*, repeats his submissions that he is not well and not being provided with adequate medical care, and submits that the Registrar concedes this. He requests that the Appeals Chamber “dismiss the assertions” in the Registrar’s Submission of 21 February 2018, or grant “all” his motions and order the Registrar to “provide the Defence with contracts/licensure/payment information of [independent medical experts]”. *See* Response to the Registrar’s Submission of 21 February 2018, paras. 3, 5, 8-14, p. 13.

¹⁵ 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) (“Registrar’s Submission of 20 March

NOTING Mladić's response to the Registrar's Submission of 20 March 2018, filed confidentially on 3 April 2018;¹⁶

CONSIDERING that, pursuant to Rule 90(A) of the Rules of Procedure and Evidence of the Mechanism ("Rules"), the Mechanism in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with the administration of justice including any person who, *inter alia*: "(iii) without just excuse fails to comply with an order by a Chamber or Single Judge [...]";

CONSIDERING that the Motion, the Reply, the Response to the Registrar's Submission of 21 February 2018, and the Response to the Registrar's Submission of 20 March 2018 do not point to any order by a Chamber or Single Judge that has been violated by the UNDU Staff;¹⁷

CONSIDERING FURTHER that Mladić's submissions, reflecting his dissatisfaction with medical services at the UNDU, do not demonstrate that the UNDU Staff knowingly and wilfully interfered with the administration of justice by failing to comply with an order of a Chamber or Single Judge;¹⁸

FINDING, therefore, that Mladić has failed to demonstrate a reason to believe that the UNDU Staff may be in contempt of the Mechanism pursuant to Rule 90(C) of the Rules;

RECALLING that where a detainee is not satisfied with the conditions of his detention, including the provision and administration of medical services at the UNDU, he or she is entitled to make a

2018"). The Registrar's submissions contain two medical reports from external medical experts, according to which, the Registrar states, Mladić is being provided with adequate medical care at the UNDU. The Registrar also states that Mladić has been provided with all the requested medical documents. *See* Registrar's Submission of 20 March 2018, paras. 4, 5, 13-16, 21, Annexes 1, 2 (confidential).

¹⁶ 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 9 April 2018) ("Response to the Registrar's Submission of 20 March 2018"). Mladić submits, *inter alia*, that the information and reports submitted by the Registrar are incorrect and misleading. *See* Response to the Registrar's Submission of 20 March 2018, paras. 6-9, 17-25.

¹⁷ In this regard, the Appeals Chamber observes that Mladić points to Dr. Falke's alleged violation of Rule 31 of the Detention Rules, and an alleged violation "of the written communications/agreements with the [Commanding Officer]" to establish "an obstruction that go[es] to support the contempt motion". *See* Motion, paras. 2, 9, 12; Response to the Registrar's Submission of 21 February 2018, para. 16.

¹⁸ The Appeals Chamber observes that Mladić's only attempts at linking the behaviour of the UNDU Staff with legal provisions on contempt are references to his multiple earlier filings before various organs of the ICTY and the Mechanism. *See* Motion, paras. 1, 5, 6. In this regard, the Appeals Chamber notes that in a prior motion before the ICTY, Mladić based allegations of contempt against UNDU Staff on an alleged "deliberate and intentional obstruction of [...] [an] order of the UNDU Commander". *See Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Urgent Motion for a Hearing to Decide on Pending Urgent Filings and for Issuance of an Order of Contempt or Hearing upon Issuance of a Rule to Show Cause against UNDU Medical Officer (Dr. Paulus Falke- Ranking UN Medical Officer), 6 November 2017, paras. 8-10.

complaint in accordance with the procedures set out in Rules 81 to 83 of the Detention Rules and the United Nations Detention Unit Complaints Procedure for Detainees;¹⁹

CONSIDERING that Mladić may use the procedures provided under the Detention Rules and the Complaints Procedure with respect to complaints or requests related to the conditions of his detention, including the provision of medical documentation and medical services;²⁰

CONSIDERING FURTHER that Mladić's alternative request for a waiver of immunity of the UNDU Staff raised in the Reply is addressed to the President of the Mechanism²¹ and, consequently, is not before the Appeals Chamber;

REITERATING that raising issues addressed to the Appeals Chamber and the President of the Mechanism in a single filing is not efficient as this unnecessarily complicates the proceedings before the Appeals Chamber;²²

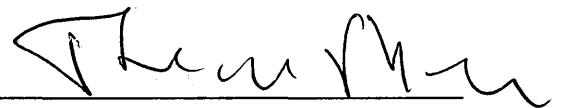
EMPHASIZING that, should Mladić wish to raise any matter before the President, he should do so in a separate filing before the President;

FOR THE FOREGOING REASONS,

HEREBY DISMISSES the Motion in its entirety.

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

Done this 15th day of May 2018,
At The Hague,
The Netherlands



Judge Theodor Meron
Presiding Judge

[Seal of the Mechanism]

¹⁹ See United Nations Detention Unit Complaints Procedure for Detainees, IT/96/Rev.1, 14 December 2016 ("Complaints Procedure"). The Detention Rules and the Complaints Procedure apply *mutatis mutandis* to the Mechanism. See Decision on a Motion to Strike Registrar's Submission of Medical Report of 15 February 2018, 3 May 2018 (confidential), nn. 9, 13; *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Order Relating to Matters Raised at the Status Conference, 14 December 2016, p. 2.

²⁰ The Appeals Chamber observes that Mladić has made complaints to the UNDU Commanding Officer regarding the actions of Dr. Falke and the Deputy Medical Officer. See Motion, paras. 9-19. Notwithstanding, Mladić has not demonstrated that he has followed through with procedures provided for under the Detention Rules and the Complaints Procedure.

²¹ See Reply, para. 9.

²² Cf. Decision on Ratko Mladić's Motions for Reconsideration, 16 March 2018, p. 3.



**TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH THE
MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS/
FICHE DE TRANSMISSION POUR LE DÉPÔT DE DOCUMENTS DEVANT LE
MÉCANISME POUR LES TRIBUNAUX PÉNAUX INTERNATIONAUX**

I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

To/ À :	MICT Registry/ <i>Greffe du MTPI</i>	<input type="checkbox"/> Arusha/ <i>Arusha</i>	<input checked="" type="checkbox"/> The Hague/ <i>La Haye</i>		
From/ De :	<input checked="" type="checkbox"/> Chambers/ <i>Chambre</i>	<input type="checkbox"/> Defence/ <i>Défense</i>	<input type="checkbox"/> Prosecution/ <i>Bureau du Procureur</i>	<input type="checkbox"/> Other/ <i>Autre</i> :	
Case Name/ Affaire :	Prosecutor v. RATKO MLADIĆ		Case Number/ Affaire n° :	MICT-13-56-A	
Date Created/ Daté du :	15 May 2018	Date transmitted/ Transmis le :	15 May 2018	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"/> Kinyarwanda	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
Title of Document/ Titre du document :	DECISION ON RENEWED MOTION FOR CONTEMPT				
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"/> Confidential/ <i>Confidentiel</i>	<input type="checkbox"/> Ex Parte Prosecution excluded/ <i>Bureau du Procureur exclu</i>			
	<input type="checkbox"/> Strictly Confidential/ <i>Strictement 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"/> 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"/> Submission from parties/ <i>Écritures déposées par des parties</i>	<input type="checkbox"/> Indictment/ <i>Acte d'accusation</i>		
	<input checked="" type="checkbox"/> Decision/ <i>Décision</i>	<input type="checkbox"/> Submission from non-parties/ <i>Écritures déposées par des tiers</i>	<input type="checkbox"/> Warrant/ <i>Mandat</i>		
	<input type="checkbox"/> Order/ <i>Ordonnance</i>	<input type="checkbox"/> Book of Authorities/ <i>Recueil de sources</i>	<input type="checkbox"/> Notice of Appeal/ <i>Acte d'appel</i>		
	<input type="checkbox"/> Judgement/ <i>Jugement/Arrêt</i>	<input type="checkbox"/> Affidavit/ <i>Déclaration sous serment</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/ <i>Autre</i> (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	<input type="checkbox"/> B/C/S	<input type="checkbox"/> Other/ <i>Autre</i> (specify/préciser) :
Translation/ Traduction en	<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/ <i>Autre</i> (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/ <i>Autre</i> (specify/préciser) :	

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

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

Rev: April 2014/Rév. : Avril 2014