

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 31 July 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: 31 July 2018

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON A MOTION TO RECONSIDER 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 Ratko Mladić (“Mladić”) and the Office of the Prosecutor (“Prosecution”) have appealed² the judgement issued in this case by Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia (“Trial Chamber”);³

RECALLING the “Decision on Renewed Motion for Contempt”, issued on 15 May 2018 (“Impugned Decision”), wherein the Appeals Chamber dismissed Mladić’s motion for contempt, filed on 31 January 2018;⁴

BEING SEISED OF a motion, filed on 22 May 2018, wherein Mladić requests reconsideration, or, in the alternative, certification to appeal the Impugned Decision before a different panel of judges of the Appeals Chamber;⁵

NOTING the response, filed on 30 May 2018, wherein the Prosecution submits that the Motion should be denied;⁶

NOTING the reply, filed by Mladić on 5 June 2018;⁷

NOTING that, on 8 June 2018, the Registrar filed confidential submissions addressing the Motion⁸ and contending that Mladić’s practice of naming United Nations Detention Unit (“UNDU”) medical

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

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 Renewed Motion for Contempt of Court against UNDU Staff for their Obstruction with Provision of Medical Records and Rule 31 Visit, 31 January 2018 (public with public and confidential annexes) (“Motion of 31 January 2018”).

⁵ Motion to Reconsider Decision on Renewed Motion for Contempt, 22 May 2018 (public with confidential annex) (“Motion”), paras. 1-4, 7, 10-23, p. 11.

⁶ The Prosecution argues, *inter alia*, that Mladić has failed to demonstrate a clear error of reasoning or particular circumstances justifying reconsideration in order to avoid injustice. It further submits that contempt proceedings are not the correct procedure for his complaints directed at the contents of the medical reports. Prosecution Response to Motion to Reconsider Decision on Renewed Motion for Contempt, 30 May 2018 (public with confidential appendix), paras. 1-4.

⁷ Defence Reply in Support of Motion to Reconsider Decision on Renewed Motion for Contempt, 5 June 2018 (public with confidential annexes; public redacted version of the annexes was filed on the same date).

⁸ Registrar’s Submission in Relation to Defence Motions for Reconsideration, 8 June 2018 (confidential; public redacted version filed on 12 June 2018) (“Registrar’s Submission”), paras. 1, 3-15 (wherein the Registrar submits, *inter alia*, that: (i) the provision of monthly medical reports, done in accordance with Mladić’s wishes, is conducted on the basis of the Registrar’s request, rather than a judicial order; (ii) Mladić’s repeated attempts to undermine the status and role of Registry-appointed independent medical experts should be rejected; and (iii) the UNDU is not obscuring Mladić’s medical conditions).

officers rather than using their functional titles is not in compliance with the applicable practice direction;⁹

NOTING that, on 15 June 2018, Mladić filed a confidential response to the Registrar's Submission,¹⁰ arguing, *inter alia*, that the UNDU medical officer in question has testified in open court and has been publicly identified in filings;¹¹

NOTING the Registrar's further submission, filed confidentially on 28 June 2018;¹²

NOTING Mladić's response to the Registrar's Further Submission, filed confidentially on 9 July 2018;¹³

RECALLING that there is no legal basis for appealing a decision of the Appeals Chamber;¹⁴

FINDING, therefore, that Mladić's request for certification to appeal the Impugned Decision is without 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;¹⁵

NOTING Mladić's submissions that the Appeals Chamber committed a clear error of reasoning by: (i) concluding that Mladić did not show a violation of an order of any Chamber, whereas a violation

⁹ See Registrar's Submission, paras. 16, 17, referring to, *inter alia*, Practice Direction on Filings Made Before the Mechanism for International Criminal Tribunals, MICT/7/Rev.2, 24 August 2016 ("Practice Direction"), Article 8.2.

¹⁰ Defence Response to Registrar's Submission in Relation to Defence Motions for Reconsideration, 15 June 2018 (confidential with confidential Annex A; public redacted version filed on 18 June 2018) ("Response to Registrar's Submission"). Mladić argues, *inter alia*, that the Registrar's Submission misconstrues the Motion, "obscure[s] further the mis-deeds" of Registry staff, and that reports on Mladić's health have been conducted on the basis of an order by the Trial Chamber. See Response to Registrar's Submission, paras. 8, 12-15, referring to, *Prosecutor v. Mladić*, Case No. IT-09-92-T, T. 4 June 2013 p. 12017 ("Oral Order of 4 June 2013").

¹¹ Response to Registrar's Submission, para. 10.

¹² Registrar's Submission in Relation to Defence Response to Registrar's Submission in Relation to Motions for Reconsideration, 28 June 2018 (confidential) ("Registrar's Further Submission").

¹³ Defence Response to Second Registrar's Submission in Relation to Defence Motions for Reconsideration, 9 July 2018 (confidential with confidential annexes; public redacted version filed on 11 July 2018) ("Response to Registrar's Further Submission").

¹⁴ Decision on a Motion to Reconsider the Decision for Reconsideration and Certification to Appeal the Decision on a Request for Provisional Release, 16 July 2018 (confidential; public redacted version filed on the same date) ("Decision of 16 July 2018"), p. 2, n. 16; Decision on a Motion for Reconsideration and Certification to Appeal Decision on a Motion to Vacate the Trial Judgement and Stay the Proceedings, 26 June 2018 (confidential; public redacted version filed on the same date) ("Decision of 26 June 2018"), p. 2, n. 12; 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, nn. 15, 16.

¹⁵ Decision of 16 July 2018, p. 3; Decision of 26 June 2018, p. 2; Decision of 22 May 2018, p. 3; Decision on Ratko Mladić's Motions for Reconsideration, 16 March 2018, p. 3; *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on a Motion to Reclassify Filings, 3 October 2017, p. 5, nn. 20, 21 and references cited therein.

of UNDU guidelines was at issue;¹⁶ (ii) failing to consider “its own orders to the Registry to provide regular reporting [as to Mladić’s health], which have been violated by the UNDU”;¹⁷ and (iii) relying on the reports of two Registry-appointed medical examiners that lack credibility and independence;¹⁸

RECALLING the finding in the Impugned Decision that Mladić did not demonstrate that staff at the UNDU knowingly or wilfully interfered with the administration of justice by failing to comply with an order of a Chamber or a Single Judge, as set out under Rule 90(A)(iii) of the Rules, and that he therefore failed to demonstrate a reason to believe that UNDU staff may be in contempt of the Mechanism pursuant to Rule 90(C) of the Rules;¹⁹

CONSIDERING that Rule 90(A) of the Rules pertains to the interference with the administration of justice through, *inter alia*, a failure to comply with an order of a Chamber or a Single Judge, and not to an alleged violation of UNDU guidelines in the absence of a judicial order;²⁰

FINDING, therefore, that Mladić’s contention, that the Appeals Chamber erred by concluding that he did not show a violation of an order of any Chamber whereas a violation of UNDU guidelines was at issue, does not demonstrate a clear error of reasoning in the Impugned Decision;

CONSIDERING FURTHER that, contrary to Mladić’s contention that the Appeals Chamber failed to consider its own orders to the Registry, the order to which Mladić refers appears to be an order of the Trial Chamber issued in relation to proceedings before it,²¹ that trial proceedings in this case have concluded,²² and that, based on the Registrar’s request to his staff, the Registry files reports on Mladić’s health on the record on a periodic basis;²³

FINDING, therefore, that Mladić has failed to demonstrate that, in the Impugned Decision, the Appeals Chamber failed to consider its own orders to the Registry;

¹⁶ Mladić contends that obstruction of justice and contempt of court “do not require a previous order that is being violated”. Motion, para. 12, *referring to*, Rule 90(A) of the Rules of Procedure and Evidence of the Mechanism (“Rules”).

¹⁷ Motion, para. 13. *See also* Response to Registrar’s Submission, para. 13, *referring to*, Oral Order of 4 June 2013; Response to Registrar’s Further Submission, paras. 9-13.

¹⁸ Motion, paras. 15, 19. *See also* Response to Registrar’s Submission, paras. 16-19; Response to Registrar’s Further Submission, paras. 16, 17.

¹⁹ *See* Impugned Decision, p. 3.

²⁰ *See* Impugned Decision, p. 3.

²¹ *See* Motion, para. 13; Response to Registrar’s Submission, paras. 12, 13, *referring to*, Oral Order of 4 June 2013 (“The Chamber hereby instructs the Registry to file any such future reports [regarding Mladić’s health] on the record until further notice, subject [...] to the accused’s consent”). *See supra*, n. 10.

²² *See* Trial Judgement.

²³ *See, e.g.*, Registrar’s Submission, para. 3; Registrar’s Submission of Medical Report, 20 July 2018 (confidential with confidential annex); Registrar’s Submission of Medical Report, 14 June 2018 (confidential with confidential annex);

RECALLING that, in adjudicating matters related to Mladić's health, the Appeals Chamber has considered all submissions, including medical reports filed by the Registry and Mladić, and has not considered the two Registry-appointed medical examiners as "independent";²⁴

FINDING, therefore, that Mladić has failed to demonstrate a clear error of reasoning in the Impugned Decision with respect to the reliance on medical reports submitted by the Registry;

NOTING Mladić's further submissions that "newly obtained facts" demonstrate a new medical condition²⁵ and corroborate the fact that staff at the UNDU have, *inter alia*, misrepresented or hidden the true state of his medical conditions, refused or delayed access to his medical documentation, and are otherwise unwilling or unable to adequately care for him;²⁶

CONSIDERING that the "newly obtained facts" presented in the Motion are identical to medical documents that Mladić annexed to a confidential motion filed on 29 May 2018, and that the Appeals Chamber examined these documents in the Decision of 16 July 2018²⁷ and considered them supportive of findings that Mladić's health conditions are continuously being monitored and treated;²⁸

RECALLING that, in the Impugned Decision, the Appeals Chamber found that Mladić's complaints regarding the medical services and staff at the UNDU did not demonstrate a reason to believe that UNDU staff may be in contempt of the Mechanism pursuant to Rule 90(C) of the Rules and recalled that Mladić may raise such matters, which pertain to the conditions of his detention, through established administrative procedures;²⁹

CONSIDERING that the present Motion raises similar complaints regarding the conditions of his detention at the UNDU;

Registrar's Submission of Medical Report, 17 May 2018 (confidential with confidential annex); Registrar's Submission of Medical Report, 20 April 2018 (confidential with confidential annex).

²⁴ In this regard, the Appeals Chamber recalls that it has made no findings as to the "independent" status of the two Registry-appointed medical examiners or how any such status would bear upon the "weight" of their medical reports. See Decision of 16 July 2018, p. 3, n. 24.

²⁵ See Motion paras. 7, 16.

²⁶ Motion, paras. 16-23. See also Response to Registrar's Submission, paras. 14, 20-24; Response to Registrar's Further Submission, paras. 18-21.

²⁷ Compare Motion, Annex A (confidential), Registry Pagination ("RP") 3328-3299 and Decision of 16 July 2018, p. 4, n. 26, referring to, Motion to Reconsider Decision on a Motion for Reconsideration and Certification to Appeal Decision on a Request for Provisional Release, 29 May 2018 (confidential with confidential Annex A), Annex A, RP. 3370-3342.

²⁸ See Decision of 16 July 2018, p. 4.

²⁹ Impugned Decision, pp. 3, 4, referring to, *inter alia*, Rules 81-83 of the 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 ("Detention Rules"), United Nations Detention Unit Complaints Procedure for Detainees, IT/96/Rev.1, 14 December 2016 ("Complaints Procedure").

FINDING, therefore, that Mladić's submissions regarding "newly obtained facts" do not demonstrate circumstances justifying reconsideration in order to avoid injustice;

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

REITERATING that, should Mladić be dissatisfied with the conditions of his detention, including the provision of medical services and documentation at the UNDU, the appropriate course of action is to make a complaint through established administrative procedures;³⁰

RECALLING that, pursuant to Article 8.2 of the Practice Direction, a party or a non-party shall, in their records submitted for filing, refer to Mechanism staff members using their functional titles whenever possible, and shall not publicly disclose any personal information relating to staff members, except where necessary;

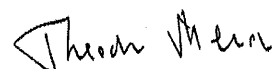
FOR THE FOREGOING REASONS,

HEREBY DISMISSES the Motion in its entirety; and

ORDERS all parties and non-parties to comply with Article 8.2 of the Practice Direction in any records they may henceforth submit for filing in this case.

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

Done this 31st day of July 2018,
At The Hague,
The Netherlands



Judge Theodor Meron
Presiding Judge

[Seal of the Mechanism]

³⁰ See Rules 81-83 of the Detention Rules; Complaints Procedure. See also Decision of 16 July 2018, p. 4; Impugned Decision, pp. 3, 4.