

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 5 June 2020

Original: English

BEFORE THE MECHANISM PRESIDENT

Before: The Honorable President Carmel Agius

Registrar: Mr. Olufemi Elias

Date: 5 June 2020

PROSECUTOR

v.

RATKO MLADIĆ

Public with Confidential Annexes

**URGENT MOTION TO ADJUDICATE COMPLAINT FILED UNDER THE
IRMCT COMPLAINTS PROCEDURE FOR DETAINEES**

Office of the Prosecutor:

Ms. Laurel Baig
Ms. Barbara Goy

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Mr. Branko Lukić
Mr. Dragan Ivetić

Independent Monitoring Body

(As assigned)

THE INTERNATIONAL RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS

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**URGENT MOTION TO ADJUDICATE COMPLAINT FILED UNDER THE IRMCT
COMPLAINTS PROCEDURE FOR DETAINEES**

RATKO MLADIĆ by and through counsel, and submits the following Urgent Motion to Adjudicate Complaint Filed Under the IRMCT Complaints Procedure For Detainees, requesting the President to urgently rule given the Registrar's failure to abide by the Regulation and issue any Decision on Mladić's well-founded Complaint, supported by 3 independent medical opinions.

I. Applicable Law

1. At all times relevant hereto, the International Residual Mechanism for Criminal Tribunals Regulations on the Complaints for Detainees¹ were in full force and effect. Under the Mechanism Regulation, Regulations 3, 4 and 7(C) permit a detainee to submit a complaint at any time concerning the conditions of his detention. The aforesaid right to file a complaint extends to the legal representatives of a detainee pursuant to Regulation 3. Regulation 4 permits a detainee to submit a complaint at any time concerning the conditions of his detention. Per Regulation 7(C) a detainee may exceptionally seize the Registrar of a complaint directly without first seeking review by the Commanding Officer where: the subject matter of the complaint concerns disciplinary measures imposed by the Commanding Officer; the Commanding Officer's determination of the matter places him or her in a conflict of interest; or the subject matter of the complaint is time-sensitive.² Likewise, Regulation 7(C) provides

¹ MICT/25 (hereinafter "Mechanism Regulation"), available at <https://www.irmct.org/sites/default/files/documents/IRMCT%20Regulations%20on%20Complaints%20MICT-25%20%28E%29.pdf>.

² Emphasis added.

the Registrar with a 24-hour deadline from receipt of a complaint to raise any issues of not being properly seized of the matter, so as to dismiss the complaint and permit re-filing before the appropriate authority. If not so dismissed, the Registrar, is duty-bound to acknowledge same within 72 hours receipt and forward a copy of the complaint to the Mechanism President,³ and issue a decision to the complaining party within a maximum of 14 calendar days.⁴

2. Regulation 14 of the Mechanism Regulation allows a Detainee to raise a complaint with the Independent Monitoring Body at any time, irrespective of the process before the Registrar and President. The Independent Monitoring Body is recognized under Rule 2, 15 and 95, among others of the Rules of Detention.⁵

II Relevant Procedural History

3. Since the Appeals Chamber's Decision of 6 March 2020 (public on 11 March 2020) Mr. Ratko Mladić's continuing post-operative treatment and medical reporting has been in place.

4. Obligation on part of the Registry specifically related to: a) to report on a weekly basis as to the scheduling and recovery of Mr. Mladić from surgery to as to facilitate the re-scheduling of the Appeals Hearing; b) Mr. Mladić rights for consulting with and/or receiving visits under the Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Mechanism or Otherwise Detained on the Authority of the Mechanism; c) Medical documentation to be provided for the accused and counsel to review.

5. On 13 May 2020 Defence for Mr. Mladić, applying the aforesaid Mechanism Regulation, served the Registrar of the Mechanism "Complaint as to Medical Reporting and Medical Treatment at UNDU" [hereinafter "Complaint"] made on his client's behalf as to the lack of information and vagueness that has arisen from the reports sent by the Registrar and the UNMO to the Chamber and Counsel, as well as the failure to fully disclose the medical documentation sought by Mr. Mladić, problems in diagnosis, problems in post-operative recovery and problems in the planned treatment for extremely low and unsafe haemoglobin

³ Regulation 8(A).

⁴ Regulation 8(C).

⁵ <https://www.irmct.org/sites/default/files/documents/181105-irmct-rules-of-detention.pdf>.

levels, resulting in a severe anaemia which was life-threatening and posed a threat to the recovery of Mladić, both cognitively and physically. On that same date the Defence filed a Defence Notice, publicly, with a confidential Annex (containing the Complaint to the Registrar, to keep the Appeals Chamber apprised.

6. A copy of the Complaint to the Registrar is attached as *Confidential Annex A* to this filing. In sum, the Registrar Complaint was filed in order to undertake immediate, and urgent steps to save Mr. Mladić's life and prevent a potential catastrophic and fatal event, by ordering his hospitalization and further treatment in accord with that as recommended by the opinions of the attached independent medical expert physicians/consultants, also requesting immediate access to all previously sought (undisclosed) medical records.

7. The Complaint to the Registrar is supported by no fewer than 3 reports of independent medical professionals (also attached in Annex A) who have separately reviewed the Registry reporting and what limited hospital documentation has been provided to the Mr. Mladić and his Defense and family.

8. These medical practitioners from both the United States of America and Republic of Serbia have independently concurred that:

- A. The anemia of Mr. Mladić has not been address adequately and the propsoed treatment of the Registry is inappropriate;
- B. The immediate hospitalization of Mr. Mladić is necessary to determine the cause of anemia (likely internal bleeding), and to provide a transfusion of packed red blood cells to prevent a catastrophic event;
- C. The dramatic drop in hemoglobin in a short period of time is serious and potentially indicative of a fatal condition and thus warrants urgent attention;
- D. Any significant anemia could prove damaging, even fatal, from a CVA (stroke), MI (myocardial infarction) or more insidiously worsening renal function and further cognitive decline.; and

E. The Therapy proposed by the Registry alone, even if no bleeding, would take many months to correct considering Mr. Mladić's other co-morbidities.

9. Pursuant to the Mechanism Regulation, the Registrar had a time period of exactly twenty-four (24) hours in which to determine if not properly seized of the complaint, and to inform the Detainee (in this case counsel bringing the complaint on his client's behalf, as allowed under the Mechanism Regulation, under Regulation 3) of the dismissal of the complaint, so as to permit a re-filing before the appropriate authority.⁶ That time expired without the Registrar taking any such action. Following the expiration of the 24-hour deadline, the Registrar failed to notify counsel of dismissal of the Complaint and thus remained seized of same per the Mechanism Regulations provisions cited above. Any objection to the Complaint being directly served on the Registrar (pursuant to the reasons therein) were thus waived or conceded by the Registrar at that point.

10. Thereafter, pursuant to the application of the aforesaid Mechanism Regulation, the Registrar was duty-bound to acknowledge receipt of the complaint and *forward the same to the President*.⁷ That time has expired and to date while the Registrar, did acknowledge the Complaint's receipt within the requisite time (attached hereto as *Confidential Annex B*), there is no indication that it was timely sent to the President, as no recipients from the President's office are indicated. As such the Registrar has apparently materially breached the Mechanism Regulation as to Mladić's complaint.

11. Upon such a complaint, the Mechanism Regulation foresees a maximum period of 14 days for the Registrar to issue a decision on the complaint. As to Mladić's Complaint. That period expired 27 May 2020. Accordingly, Registrar has materially breached the Mechanism Regulation, thereby violating the rights of Mr. Mladić. Finally, following the expiration of the 14-calendar day deadline, the Registry failed to notify Counsel of any decision on the Complaint. By operation of law, the failure to answer the complaints renders facts pleaded in the complaint admitted.

⁶ See, Regulation 7(c).

⁷ See, Regulation 8(a).

12. On 27 May 2020, the Defence received a letter from the Registrar, informing inter alia, that a “few issues” must be clarified with external doctors, hoping to be in a position to render a decision within 7 (seven) working days. A copy is attached as *Confidential Annex C* to this filing. While the Defence at no time acquiesced to the unilateral extension of time referenced, it should be noted that this time would also be expired by today’s date, and Defence has not been advised of any update or Registrar’s compliance with regulations. By operation of law, the failure to answer the complaints renders facts pleaded in the complaint admitted.

III Submissions

13. While unaware of reasons for such non-compliance with the Mechanism Regulation, it should be noted that the reporting required by the Appeals Chamber on the health of Mr. Mladić from the Registrar has been generic, vague, scant, and contradictory in nature of late. Thus, we consider the Registrar is in breach of the reporting required by the Appeals Chamber, as well as a breach of the Rules on Detention. There is no logical explanation for this behaviour except that the Registrar is engaged in purposeful neglect or is acting with such a careless and callous disregard of Mr. Mladić’s rights in order to obstruct and obfuscate illumination of the serious medical issues that he is facing as a direct result of their actions and inactions in providing care to him.

14. The Defence has received informal and formal but alarming information of a further sudden drop in the of level of haemoglobin of Mr. Mladić **to value of 4.4 as well as that only now is a transfusion being implemented as part of his treatment.**

15. Such an important medical information, has not been timely disclosed neither to Defence, neither to the Appeals Chamber and requests immediate intervention. It should be recalled that the Defence first raised the need for full time hospitalization of Mr. Mladić to stabilize his anaemia and low haemoglobin at least since 28 February 2020.⁸ The anaemia/haemoglobin issue was constantly being raised by the Defence since that time. The Defence again sought precisely a detailed course of treatment including transfusion as recommended by three independent Medical Experts on 13 May 2020.⁹

⁸ Urgent Defence Motion to Stay Appeal Oral Arguments Hearing in Order to Permit Competency Review of Appellant And Hearing On Same, 28 February 2020 (Public and Confidential).

⁹ Defence Notice, 13 May 2020 (Public with Confidential Annexes)

16. That the Registrar has allowed Mr. Mladić's health and state of severe anaemia and low haemoglobin worsen to a state worse than before surgery, in contravention to the medical advice given by the defence, is a miscarriage of justice and constitutes medical neglect.

17. Given that the Mechanism Regulation foresees the involvement of the President, we feel we must address the President in light of the failure of the Registrar to take any visible action (at least none known to counsel) to adhere to the Mechanism Regulation to apprise the President of the same nor issue a decision within the statutory maximum time limit for same. The instant motion seeks the **immediate hospitalization of Mr. Mladić, full disclosure of medical documentation and undertaking of all steps for appropriate medical diagnosis and medical treatment for the reasons set forth in the Complaint.**

18. At this point, the Registrar's breach and violation of the Mechanism Regulation and other Regulations applicable to Detainees is a denial of Mr. Mladić's fundamental rights to a fair and humane detention.

IV Conclusion

19. Based on the foregoing reasons, and fairness and judicial efficiency and economy, an expeditious decision should be reached on the Complaint. Mr. Mladić's life and his health has been subjected to grave danger without any justification of the Registrar's inaction as to Medical Staff's inappropriate conduct as to his post-operative recovery treatment and reporting.

WHEREFORE it is sought that the President urgently issue a Decision on the pending Complaint and:

- A) IMMEDIATELY ORDER the hospitalization and further treatment of Mr. Mladić in accord with that as recommended by the opinions of the attached independent medical expert physicians/consultants;

B) FIND that the Registrar has breached its duties in the consideration of Mladić's Complaint and REPRIMAND the Registrar for its flagrant failure to address the Complaint in accord with the mandated procedure of the Mechanism Regulation.

Word Count: 2072

RESPECTFULLY SUBMITTED BY:



Branko Lukić

Lead Counsel for Ratko Mladić



Dragan Jevetic

Co-Counsel for Ratko Mladić

Dated this 5th of June 2020

Belgrade, Serbia &

The Hague, Netherlands



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