

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-56-A
Date: 6 June 2020
Original: English

BEFORE THE PRESIDENT OF THE MECHANISM

Before: Judge Carmel Agius, President

Registrar: Mr. Olufemi Elias

Date: 6 June 2020

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

WITH CONFIDENTIAL AND EX PARTE ANNEX

**REGISTRAR'S SUBMISSION IN COMPLIANCE WITH THE ORDER
FOR SUBMISSIONS OF 5 JUNE 2020**

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

1. Pursuant to Rule 31(B) of the Rules of Procedure and Evidence of the International Residual Mechanism for Criminal Tribunals (“Mechanism”) and the President’s “Order for Submissions” of 5 June 2020 (“Order”),¹ I respectfully file my submissions in relation to the “Urgent Motion to Adjudicate Complaint Filed Under the IRMCT Complaints Procedure for Detainees” of 5 June 2020 (“Complaint”).²

Submissions

2. On 13 May 2020, Mr. Mladić’s Counsel submitted a complaint to me on behalf of Mr. Mladić (“Initial Complaint”).³ Pursuant to the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Mechanism or Otherwise Detained on the Authority of the Mechanism (“Rules of Detention”), and the Regulations on the Complaints Procedure for Detainees (“Complaints Procedure”), I acknowledged receipt of the Initial Complaint on 15 May 2020,⁴ confirming my intention to provide a reasoned written decision as soon as practicable, or at the latest within 14 calendar days of its receipt by my office. Counsel’s observation in paragraph 8 of the Complaint, *i.e.* that I failed to notify them of my dismissal of the Initial Complaint and therefore remained seized of it, is therefore incorrect. I clearly communicated to Mr. Mladić and Counsel that I accepted and would consider the Initial Complaint within the timeframe provided by Regulation 8(A) of the Complaints Procedure.⁵
3. As the President has acknowledged in the Order that I have indeed complied with Regulation 8(A) of the Complaints Procedure by forwarding a copy of the Initial Complaint to the President, I consider the matter raised in paragraph 10 of the Complaint moot.

¹ *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A (“*Mladić*”), Order for Submissions, public, 5 June 2020 (“Order”).

² *Mladić*, Urgent Motion to Adjudicate Complaint Filed Under the IRMCT Complaints Procedure for Detainees, public with confidential annexes, 5 June 2020 (“Complaint”).

³ I shall refer to Mr. Mladić’s 13 May 2020 complaint as “Initial Complaint”, consistent with the language used by the President in the Order.

⁴ As further detailed below, I exceptionally accepted the Initial Complaint as correctly filed before me pursuant to Regulation 7(C) of the Complaints Procedure.

⁵ Complaint, para. 9.

4. Counsel further argues that I have materially breached the Mechanism’s Complaints Procedure and violated Mr. Mladić’s rights by failing to issue a reasoned decision within 14 calendar days of receipt of the Initial Complaint, as envisaged in Regulation 8(C) of the Complaints Procedure.⁶ As indicated in my acknowledgement letter to Mr. Mladić of 15 May 2020, I had expected to issue my reasoned decision “as soon as practicable, or at the latest within 14 calendar days of its receipt at my office”.⁷ However, during my assessment of the Initial Complaint, I determined that to be able to make a fully informed decision on the issue of Mr. Mladić’s medical treatment, it was imperative that I obtain further information from the relevant external doctors involved in Mr. Mladić’s current treatment. This was particularly in view of the gravity of the medical issues raised in the Initial Complaint. I expected to receive the required information and therefore be in a position to render my decision within seven working days.
5. I immediately informed Mr. Mladić and his Counsel⁸ of this further consideration and associated delay of the decision, as well as the President.⁹ I note in this regard that contrary to what is stated by Counsel in paragraph 12 of the Complaint, the timeframe of seven working days expires on Monday, 8 June 2020.¹⁰ Considering that I issued my reasoned written decision on the Initial Complaint on 5 June 2020 (“Decision on the Initial Complaint” or “Decision”), that is within the seven working days extended deadline, I consider the observation in the Complaint that the Registry failed to respond to the Initial Complaint premature and now moot.¹¹ As requested in the Order, I attach to this submission my Decision on the Initial Complaint as a confidential and *ex parte* annex.
6. In view of the fact that the Initial Complaint related to the medical treatment of Mr. Mladić, I considered the additional time required to obtain further information pertaining to his treatment not fully justified but necessary. I was not in a position to make an informed decision on the Initial Complaint without having access to all relevant information, including information from external doctors familiar with the

⁶ Complaint, para. 11.

⁷ Letter from Registrar to Mr. Ratko Mladić, 15 May 2020.

⁸ Letter from Registrar to Mr. Ratko Mladić, confidential, 27 May 2020.

⁹ Internal Memorandum from the Registrar to the President, confidential, 29 May 2020.

¹⁰ The letter was transmitted on Wednesday, 27 May 2020. 31 May, 1 and 2 June and 6 and 7 June 2020 are not official working days for the Mechanism.

medical history of Mr. Mladic. Only when I received all relevant information was I in a position to decide on the Initial Complaint in a comprehensive, conscientious and reasoned manner. Issuing a decision, particularly one relating to medical matters, without having conducted a full review and having obtained all relevant materials, would have been inappropriate and in violation of Mr. Mladić's right to receive a reasoned written decision pursuant to Regulation 8(C) of the Complaints Procedure.

7. Furthermore, while I exceptionally accepted the Initial Complaint pursuant to Regulation 7(C) of the Complaints Procedure, which was said by Counsel to be time sensitive, during my review, it became clear to me on the basis of the medical information provided that Mr. Mladić did not require urgent hospitalization. Moreover, as is evident from the weekly medical reports that I file on Mr. Mladić's health following the request of the Appeals Chamber,¹² Mr. Mladić was being actively treated for his medical conditions and monitored accordingly. The need to obtain additional information so as to be able to decide on the Initial Complaint, while ensuring that Mr. Mladić continued to receive adequate medical treatment, outweighed the element of urgency claimed by Counsel.
8. I note in this regard that complaints relating to medical concerns are often complex and time consuming to determine, especially since this frequently involves obtaining information from external medical specialists. In the Registry's experience in dealing with medical complaints, also at the time of the International Criminal Tribunal for the former Yugoslavia, it is not abnormal that additional time is required to obtain supplementary information from medical or dental specialists before a proper determination of a complaint can be made.¹³
9. As a matter of proper procedure, Counsel should have awaited the rendering of my Decision on the Initial Complaint, in particular after having been informed that this Decision was forthcoming within seven working days, instead of filing the Complaint before the President before the expiration of the deadline. This would have allowed Mr.

¹¹ Complaint, para. 12.

¹² *Mladić*, Decision on a Motion to Stay the Appeal Hearing, confidential, 6 March 2020. The most recent medical report, dated 4 June 2020, was filed on 5 June 2020. Hence, Counsel's claim in paragraph 15 of the Complaint that neither it nor the Appeals Chamber was informed of further developments in relation to Mr. Mladić's health is not correct.

¹³ It is noted that the ICTY complaints procedure was slightly different from that of the Mechanism. Further, the decisions on complaints were not filed on the judicial record.

Mladić and his Counsel to first review my Decision to see if any or all of the issues complained about had been resolved. Pursuant to Regulation 9(C), Mr. Mladić could have subsequently availed himself of the possibility to make a complaint to the President challenging my Decision in accordance with the Complaints Procedure, in the event that he does not accept it.

10. I note that the Complaint to the President is largely duplicitous of the Initial Complaint, in that it raises the same matters pertaining to (a) the provision of medical documentation by the United Nations Detention Unit (“UNDU”) and/or the UNDU’s Medical Service; (b) the medical treatment Mr. Mladić is receiving at the UNDU; and (c) the Registry’s reporting obligations. These elements of the Complaint, including developments that occurred after the filing of the Initial Complaint and up to the date of the issuance of my Decision on the Initial Complaint, are addressed in full in my Decision.
11. Due to confidentiality reasons, I am not in a position to provide information about Mr. Mladić’s medical health in the public part of this submission. In view of the fact that Counsel has filed both the Initial Complaint and the Complaint publicly, however, I do find it appropriate to state for the public record that after carefully considering the Initial Complaint and having taken into account all relevant information before me, I decided that the Initial Complaint was unfounded and dismissed it in its entirety for the reasons stated in the Decision.
12. Finally, I note that Counsel has previously been criticized by the Appeals Chamber for filing repetitive submissions.¹⁴ Considering that the Initial Complaint was before me and was actively being considered by me at the time of the submission of the Complaint, and that Counsel had been so advised, I am of the view that this Complaint may also be considered repetitive.¹⁵

Conclusion

13. I am of the firm conviction that the Registry, the UNDU, and/or the UNDU’s Medical Service have not failed to disclose medical information to Mr. Mladić of his Counsel

¹⁴ E.g., *Mladić*, Order on Defence Submissions of 30 March 2020, public, 3 April 2020.

and that they have not failed to meet their reporting obligations. I am also fully satisfied that the medical care Mr. Mladić receives is adequate and aimed at promptly addressing any health concerns he might have. In view of all of the above and the fact that I have issued my Decision on the Initial Complaint on 5 June 2020, I respectfully submit that the Complaint should be dismissed.

14. The Registry remains available should the President require further information.

Respectfully submitted,



Olufemi Elias
Registrar

Done this 6th day of June 2020
At The Hague,
The Netherlands.

¹⁵ I also note that Counsel has, in separate filings, appraised the Appeals Chamber of the Initial Complaint and Complaint.



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			No. of Pages/ Nombre de pages : 6
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