

**UNITED  
NATIONS**



International Residual Mechanism  
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 28 August 2020

Original: English

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**IN THE APPEALS CHAMBER**

**Before:** Judge Prisca Matimba Nyambe, Presiding  
Judge Aminatta Lois Runeni N’gum  
Judge Gberdao Gustave Kam  
Judge Seymour Panton  
Judge Elizabeth Ibanda-Nahamya

**Registrar:** Mr. Abubacarr Tambadou

**Decision of:** 28 August 2020

**PROSECUTOR**

**v.**

**RATKO MLADIĆ**

***PUBLIC***

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**DECISION ON A MOTION TO RECONSIDER THE “DECISION ON  
MOTIONS FOR HOSPITALIZATION”**

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**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

**THE APPEALS CHAMBER** of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively);<sup>1</sup>

**NOTING** the judgement issued in this case by Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) on 22 November 2017,<sup>2</sup> and that Mr. Ratko Mladić (“Mladić”) and the Office of the Prosecutor of the Mechanism (“Prosecution”) have appealed against the Trial Judgement;<sup>3</sup>

**RECALLING** the decision, issued confidentially on 20 August 2020, wherein the Appeals Chamber dismissed two motions by Mladić’s counsel requesting that Mladić be urgently hospitalized;<sup>4</sup>

**BEING SEISED OF** a motion, filed confidentially on 23 August 2020, wherein Mladić’s counsel request reconsideration of the Impugned Decision on the basis that it is “manifestly unreasonable and contains clear errors of reasoning amounting to an injustice”, and reiterate the request to urgently hospitalize Mladić;<sup>5</sup>

**NOTING** that the Prosecution has not yet filed a response;<sup>6</sup>

**NOTING** the “Registrar’s Combined Submissions in Relation to the Medical Care Provided to Mr. Ratko Mladić at the United Nations Detention Unit”, filed confidentially on 24 August 2020;

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<sup>1</sup> Order Assigning Judges to a Case Before the Appeals Chamber, 19 December 2017, p. 1; Order Assigning Three Judges Pursuant to Rule 18 of the Rules, 4 September 2018 (originally filed in French; English translation filed on 5 September 2018), p. 1; Order Replacing a Judge, 14 September 2018 (originally filed in French; English translation filed on 27 February 2019), p. 1.

<sup>2</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Judgment, 22 November 2017 (public with confidential annex) (“Trial Judgement”).

<sup>3</sup> See Notice of Appeal of Ratko Mladić, 22 March 2018 (public with public and confidential annexes); Appeal Brief on Behalf of Ratko Mladić, 6 August 2018 (confidential); Notice of Filing of Corrigendum to: Appeal Brief on Behalf of Ratko Mladić, 16 August 2018 (confidential; public redacted version filed on 11 September 2018); Prosecution Response Brief, 14 November 2018 (confidential; public redacted version filed on 1 February 2019); Reply to Prosecution’s Response Brief on Behalf of Ratko Mladić, 29 November 2018 (confidential; public redacted version filed on the same date). See also Prosecution’s Notice of Appeal, 22 March 2018; Prosecution Appeal Brief, 6 August 2018 (confidential; public redacted version filed on 7 August 2018); Response to Prosecution’s Appeal Brief on Behalf of Ratko Mladić, 14 November 2018; Prosecution Rep[li]y Brief, 29 November 2018 (confidential; public redacted version filed on 21 January 2019).

<sup>4</sup> Decision on Motions for Hospitalization, 20 August 2020 (confidential) (“Impugned Decision”), pp. 2, 3, *referring to, inter alia*, Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Mechanism or Otherwise Detained on the Authority of the Mechanism (“Detention Rules”); Dissenting Opinion of Judge Prisca Matimba Nyambe to the “Decision on Motions for Hospitalization” Filed on 20 August 2020, 20 August 2020 (confidential) (“Dissenting Opinion of Judge Nyambe”). See Defence Urgent Motion to Hospitalize Mr. Mladić, 14 August 2020 (confidential) (“First Motion”); Second Defence Urgent Motion to Hospitalize Mr. Mladić; and Simultaneous Complaint to the Registrar Regulations 3, 4 and 7(C) of the International Residual Mechanism for Criminal Tribunals Regulations on the Complaints Procedure for Detainees, 18 August 2020 (confidential) (“Second Motion”) (collectively, “Motions for Hospitalization”).

<sup>5</sup> Defence Urgent Motion for Reconsideration of the Decision on Motions for Hospitalization, 23 August 2020 (confidential) (“Motion for Reconsideration”), paras. 2-9, p. 5.

**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;<sup>7</sup>

**NOTING** the submissions in the Motion for Reconsideration that reconsideration is warranted as the Impugned Decision is prejudicial to Mladić's fair trial and due process rights because, *inter alia*, it does not address the opinion of medical professionals and all medically relevant information negatively impacting Mladić's health, "substitute[s] the opinions of non-doctor judges", and fails to provide a reasoned opinion;<sup>8</sup>

**NOTING** the further submission in the Motion for Reconsideration that the "ultimate and supreme jurisdiction as to the issues concerning the health of [Mladić] which undisputedly affects issue[s] of the fairness of the proceedings, lies within the authority of the Appeals Chamber";<sup>9</sup>

**RECALLING** that the duty to provide a reasoned opinion does not require the articulation of every step of reasoning, and that the Appeals Chamber has an inherent discretion to select submissions which merit a detailed discussion in writing;<sup>10</sup>

**RECALLING** that, in the Impugned Decision, the Appeals Chamber dismissed the Motions for Hospitalization on the basis that, *inter alia*: (i) Mladić may use procedures under the Detention Rules to file complaints related the provision of medical services; (ii) the Defence, through the Second Motion, has already brought a complaint regarding hospitalization before the Registrar; and (iii) the Motions for Hospitalization have not requested the Appeals Chamber to review any decision taken by the Registrar or the President under the Detention Rules, and have not demonstrated that the issue closely relates to the fairness of appeal proceedings in this case;<sup>11</sup>

**CONSIDERING** that the Motion for Reconsideration equally does not point to any decision issued by the Registrar or the President requiring review by the Appeals Chamber and further fails to demonstrate why the Appeals Chamber should intervene in matters related strictly to the management of Mladić's medical care;

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<sup>6</sup> Given that the Prosecution would not be prejudiced, the Appeals Chamber considers it in the interests of justice to proceed with the present Decision without awaiting submissions from the Prosecution.

<sup>7</sup> See Decision on a Defence Motion to Reconsider the "Decision on Defence Submissions", 20 August 2020 ("Reconsideration Decision of 20 August 2020"), p. 2, n. 10 and references cited therein.

<sup>8</sup> Motion for Reconsideration, paras. 2-7.

<sup>9</sup> Motion for Reconsideration, para. 8.

<sup>10</sup> See Reconsideration Decision of 20 August 2020, p. 3, n. 15 and references cited therein.

<sup>11</sup> Impugned Decision, pp. 2, 3.

**CONSIDERING** that the submissions in the Motion for Reconsideration, that the Appeals Chamber “has ultimate and supreme jurisdiction” on issues regarding a detainee’s health or that the Impugned Decision “substitute[d] the opinions of non-doctor judges”, are wholly without merit;

**CONSIDERING** that the disagreement with the rejection of requests in the Motions for Hospitalization does not amount to a clear error of reasoning or a circumstance justifying reconsideration in order to avoid injustice;

**FINDING**, therefore, that the Motion for Reconsideration fails to justify the request for reconsideration of the Impugned Decision and for Mladić to be urgently hospitalized;

**RECALLING** that filing repetitive requests, including to intervene in respect of matters that have already been disposed of by the Appeals Chamber, does not serve the interests of justice, wastes valuable judicial resources, and may amount to an abuse of process;<sup>12</sup>

**CONSIDERING** that the Appeals Chamber has previously reminded Defence counsel to “refrain from filing repetitive submissions”,<sup>13</sup> and that the Appeals Chamber has repeatedly dismissed Defence requests to intervene in matters related strictly to conditions of detention, including the provision of medical services to Mladić;<sup>14</sup>

**CONSIDERING** that the Motion for Reconsideration, which again requests the Appeals Chamber to intervene in matters strictly related to the management of Mladić’s medical care, is frivolous and amounts to an abuse of process;

**FINDING**, therefore, that it is appropriate to withhold all fees<sup>15</sup> associated with the Motion for Reconsideration from Defence counsel;

**FOR THE FOREGOING REASONS**, the Appeals Chamber, Judge Nyambe dissenting,<sup>16</sup>

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<sup>12</sup> See Rule 80(D) of the Rules of Procedure and Evidence of the Mechanism (“Rules”); Decision on a Motion to Reconsider the Decision for Reconsideration and Certification to Appeal the Decision on a Request for Provisional Release, 16 July 2020, p. 2, n. 17; Order on Defence Submissions of 30 March 2020, 3 April 2020 (“Order of 3 April 2020”), p. 6, n. 27.

<sup>13</sup> See Order of 3 April 2020, p. 6.

<sup>14</sup> See, e.g., Impugned Decision; Decision on Defence Submissions, 14 August 2020; Order on Defence Submissions of 25 and 27 March 2020, 31 March 2020 (public with confidential annex); Order of 3 April 2020.

<sup>15</sup> See Rule 80(D) of the Rules. See also, *mutatis mutandis*, Rule 73(D) of the Rules of Procedure and Evidence of the ICTY; Rule 73(F) of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Decision on Dragomir Milošević’s Third Motion to Present Additional Evidence, 8 September 2009, para. 21; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza’s Motions for Leave to Submit Additional Grounds of Appeal, to Amend the Notice of Appeal and to Correct His Appellant’s Brief, 17 August 2006, para. 56.

<sup>16</sup> As set out in her dissenting opinion to the Impugned Decision, Judge Nyambe maintains her position that the Motions for Hospitalization should be granted. See Dissenting Opinion of Judge Nyambe. Regarding the non-payment of fees,

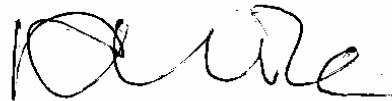
**HEREBY DENIES** the Motion for Reconsideration;

**ORDERS** the non-payment of fees in whole associated with the Motion for Reconsideration to Mladić's counsel, pursuant to Rules 55, 80(D), and 131 of the Rules; and

**REMINDS** Mladić's counsel to refrain from filing repetitive requests on matters that have already been adjudicated by the Appeals Chamber.

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

Done this 28<sup>th</sup> day of August 2020,  
At The Hague,  
The Netherlands



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Judge Prisca Matimba Nyambe  
Presiding Judge

**[Seal of the Mechanism]**

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Judge Nyambe does not agree that the Motions for Hospitalization can be said to be frivolous even under non-COVID-19 circumstances when medical evidence indicated that Mladić had a temperature of over 38 degrees Celsius. *See* First Motion, paras. 2, 3; Second Motion, paras. 2-4. In her view, the Motions for Hospitalization cannot amount to an abuse of process and withholding fees in the circumstances is unduly punitive as this is a condition requiring urgent and immediate hospitalization. Furthermore, having reviewed Rules 55, 80(D), and 131 of the Rules relied upon for ordering non-payment of fees, Judge Nyambe considers that these Rules do not provide for non-payment of fees to counsel specifically. In her view, since Rules 55, 80(D), and 131 of the Rules do not provide for non-payment of fees to counsel, the Majority's order for non-payment is without legal basis.



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