

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-56-ES

Date: 8 November 2024

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Graciela Gatti Santana, President
Registrar: Mr. Abubacarr M. Tambadou
Decision of: 8 November 2024

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC REDACTED VERSION

**DECISION ON THE APPLICATION FOR RELEASE
OF RATKO MLADIĆ**

Counsel for Mr. Ratko Mladić:

Mr. Dragan Ivetić
Mr. Branko Lukić

1. I, Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seised of a motion filed by Mr. Ratko Mladić on 24 September 2024 (“Mladić” and “Application”, respectively), seeking his urgent provisional release to the Republic of Serbia (“Serbia”).¹

I. BACKGROUND

2. On 26 May 2011, Mladić was arrested in Serbia, and, on 31 May 2011, he was transferred to the United Nations Detention Unit (“UNDU”) in The Hague, Kingdom of the Netherlands (“Netherlands”).²

3. On 22 November 2017, Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) convicted Mladić, pursuant to Article 7(1) of the Statute of the ICTY, of genocide, persecution, extermination, murder, deportation and inhumane acts (forcible transfer) as crimes against humanity, and murder, terror, unlawful attacks on civilians and taking of hostages as violations of the laws or customs of war, and sentenced him to life imprisonment.³

4. On 8 June 2021, the Appeals Chamber of the Mechanism rendered its judgement and affirmed Mladić’s convictions and his sentence of life imprisonment.⁴

5. Mladić has since remained at the UNDU, awaiting designation of and his transfer to a State where he will serve the remainder of his sentence. Mladić has served 13 years of his life sentence.

6. On 10 May 2024, I denied Mladić’s previous application for release, holding that the purported compelling humanitarian circumstances invoked by Mladić had not been substantiated and that Mladić receives all necessary care at the UNDU.⁵

II. APPLICATION AND RELEVANT MATERIAL

7. Regular reports on the state of Mladić’s health have been prepared by the UNDU Medical Service throughout Mladić’s detention at the UNDU. Even after all proceedings against Mladić were

¹ Urgent Defence Motion for Provisional Release of Ratko Mladić for the Purpose of Medical Treatment in Relation to the Latest [REDACTED] Medical Complications Identified by the Medical Service, 24 September 2024 (confidential), paras. 4-5, 13, 21, 30.

² *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Judgement, 22 November 2017 (public with confidential annex) (“Trial Judgement”), para. 5222.

³ Trial Judgement, paras. 5214-5215.

⁴ *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Judgement, 8 June 2021 (public redacted), para. 592.

⁵ Decision on the Application for Release of Ratko Mladić, 10 May 2024 (public redacted) (“Decision of 10 May 2024”), para. 46. *See also* Urgent Defence Motion for Provisional Release of Ratko Mladić Based on Compassionate and Humanitarian Grounds or in the Alternative, Allowing Him to Serve the Remainder of his Sentence in Serbia, 26 April 2024 (confidential).

completed, my predecessor and I implemented a strict monitoring regime in relation to Mladić's health, given the President's supervisory role over the conditions of detention of the persons under the authority of the Mechanism at the UNDU. On 18 January 2022, my predecessor ordered the Registrar of the Mechanism ("Registrar") to request and file on the record such reports, as well as those of independent medical experts.⁶ On 15 September 2022, I, *inter alia*: (i) amended the frequency of the reporting to ensure that I receive reports on Mladić's health from the UNDU Medical Service every month, or more frequently if deemed necessary by the UNDU Medical Service; and (ii) instructed the Registrar to appoint on an urgent basis two independent medical experts in the fields of [REDACTED] and [REDACTED], who shall each examine Mladić once every two months and promptly prepare reports on his health to be filed before me.⁷

8. On 18 September 2024, the UNDU Medical Service reported that the situation pertaining to Mladić's [REDACTED] had deteriorated, requiring [REDACTED] intervention.⁸ Following consultation with a [REDACTED], it was decided that Mladić is a "too high-risk patient" for [REDACTED] intervention.⁹ Mladić was offered and agreed to seek a second opinion at the [REDACTED] Department at the [REDACTED].¹⁰ According to the UNDU Medical Service, Mladić [REDACTED].¹¹

9. On 24 September 2024, Mladić filed the Application, requesting urgent provisional release to "Serbia for the purposes of permitting a full and appropriate diagnostic review and second opinion on possible treatments to be obtained in a language he fully understands, and if so indicated (and if he consents) to perform the recommended course of treatment, including [REDACTED]".¹²

10. On 25 September 2024, considering the need for more comprehensive information before adjudicating the Application, I instructed the Registrar to file submissions, setting out the latest available information regarding Mladić's current health condition, including, *inter alia*, detailed information on: (i) medical treatments and/or evaluations undertaken since the filing of the UNDU Report of 18 September 2024, including any update on Mladić's consultation with the [REDACTED] Department at the [REDACTED]; (ii) the availability of medical examinations and treatment in the Netherlands, both at the UNDU and in civilian hospitals, to treat Mladić's current condition; and (iii)

⁶ Order on Medical Reports, 18 January 2022 (confidential).

⁷ See Public Redacted Version of "Third Order on Medical Reports" of 15 September 2022, 19 October 2023. See also Further Order on Medical Reports, 3 August 2022 (confidential).

⁸ Registrar's Submission in Relation to the "Third Order on Medical Reports" of 15 September 2022, 18 September 2024 (confidential), para. 4, Annex ("UNDU Report of 18 September 2024"), p. 1.

⁹ UNDU Report of 18 September 2024, p. 1.

¹⁰ UNDU Report of 18 September 2024, p. 1.

¹¹ UNDU Report of 18 September 2024, p. 1.

¹² Application, para. 4.

the arrangements in place or to be set up to facilitate Mladić's access to an interpreter during his regular and *ad hoc* medical examinations at the UNDU and in civilian hospitals in the Netherlands, including in connection with the instant medical issue.¹³

11. On 26 September 2024, Mladić filed the [REDACTED] in relation to his prospective release.¹⁴

12. On 30 September 2024, the Registrar filed the requested submissions, which, *inter alia*, set out that: (i) there are ongoing conversations between the UNDU Medical Service and Mladić and there is "no imminent plan to [REDACTED] nor is there a medical reason that this should take place in the immediate future"; (ii) Mladić has anyhow not consented to [REDACTED]; (iii) no treatment pathways have been excluded and a second opinion consultation with the [REDACTED] has been planned; (iv) Mladić is being treated for his current condition by a multidisciplinary team headed by the treating [REDACTED] at the civilian hospital; and (v) the Registry of the Mechanism has a Bosnian/Croatian/Serbian language assistant on standby for internal and external appointments for all UNDU detainees, including Mladić, and interpretation services can also be supplemented by the Mechanism's Language Services Section.¹⁵

13. On 4 October 2024, the Registrar filed another periodic medical report on Mladić's health condition, wherein the UNDU's Reporting Medical Officer stated, *inter alia*, that "there has been an improvement of his condition in the past week" in relation to Mladić's [REDACTED], with "[REDACTED] levels [...] decreased".¹⁶

14. Also on 4 October 2024, the Defence replied to the Registrar Submissions, arguing that the UNDU Report of 27 September 2024, authored by the UNDU's Deputy Medical Officer, is inconsistent with what has been reported to Mladić by the UNDU's Medical Officer.¹⁷

15. On 18 October 2024, the Registrar filed a supplementary medical report, following Mladić's appointment for a second opinion at the [REDACTED].¹⁸ Therein, the UNDU Medical Service

¹³ Order for Submissions, 25 September 2024 (confidential) ("Order of 25 September 2024"), pp. 2-3.

¹⁴ Notice of [REDACTED], 26 September 2024 (confidential), para. 2, Annex.

¹⁵ Registrar's Submission in relation to the "Order for Submissions" of 25 September 2024, 30 September 2024 (confidential) ("Registrar Submissions"), paras. 4-8, Annex ("UNDU Report of 27 September 2024"), p. 1.

¹⁶ Registrar's Submission in relation to the "Third Order on Medical Reports" of 15 September 2022, 4 October 2024 (confidential), para. 4, Annex ("UNDU Report of 3 October 2024"), para. 5.

¹⁷ Defence Reply in Support of Urgent Motion and Addressing the "Registrar's Submission in relation to the 'Order for Submissions' of 25 September 2024", 4 October 2024 (confidential) ("Reply"), paras. 4-10, 12.

¹⁸ Registrar's Further Submission in Relation to the "Order for Submissions" of 25 September 2024, 18 October 2024 (confidential), paras. 4, 6, Annex ("UNDU Report of 16 October 2024").

reports that the consulted [REDACTED] agrees with the current treatment plan and notes a steady improvement of Mladić's [REDACTED].¹⁹

16. On 31 October 2024 and 5 November 2024, the Registrar filed additional periodic reports, which, *inter alia*, confirmed that Mladić's [REDACTED] was healing, albeit slowly.²⁰

III. PRELIMINARY ISSUE

17. At the outset, I note that Mladić is requesting "provisional release" but fails to comprehensively discuss the relevant jurisprudence in this regard. Moreover, the arguments advanced in the Application suggest that Mladić is not seeking "release" as such, but temporary transfer for the purposes of being medically examined and, if necessary, treated, in Serbia before returning to the UNDU.²¹ Such a scenario differs from traditional provisional release and is more akin to a temporary transfer to a medical facility while remaining in custody.

18. I consider that, fundamentally, it is immaterial to precisely determine whether Mladić is seeking provisional release, early release, or some sort of temporary modification of his conditions of detention for the purposes of medical diagnosis and treatment. Under any scenario, Mladić would have to meet a very high threshold, and as detailed below, he simply fails to substantiate that his current health condition or treatment options in the Netherlands warrant the extraordinary relief that he seeks.²²

IV. ANALYSIS

19. Mladić submits that he "currently is faced with a [REDACTED]".²³ He submits that "it would appear that the medical investigation and treatment undertaken at the Prison Hospital and/or Civilian Hospital have not exhausted all appropriate/available steps, [REDACTED], for this ailment".²⁴ According to the Application, a doctor of his choice has identified several medical steps/procedures that could be explored to treat the [REDACTED], prior to [REDACTED].²⁵ That doctor also stated that treatment "within the UNDU and Dutch Hospital seems to lack integration of consultations from

¹⁹ UNDU Report of 16 October 2024, p. 1.

²⁰ Registrar's Submission in Relation to the "Third Order on Medical Reports" of 15 September 2022, 31 October 2024 (confidential), para. 4, Annex, para. 6; Registrar's Submission in Relation to the "Third Order on Medical Reports" of 15 September 2022, 5 November 2024 (confidential), para. 3, Annex, pp. 2, 4.

²¹ See Application, paras. 3-4.

²² See Decision of 10 May 2024, para. 18, fn. 26. See also *Prosecutor v. Félicien Kabuga*, Case No. MICT-13-38-T, Decision on Félicien Kabuga's Application for Modification of Conditions of Detention, 29 October 2024, pp. 3-4.

²³ Application, para. 17.

²⁴ Application, para. 18.

²⁵ Application, para. 18.

medical opinions from various specialties to address the [REDACTED], and that in Serbia, such a Medical Concilium, comprised of experts from a variety of specialties, is the standard approach to these matters, and would be employed as to Mr. Mladić in Serbia”.²⁶ Lastly, Mladić submits that his language barrier causes “another [REDACTED] complication to already difficult treatment”.²⁷

20. In the Reply, Mladić submits that the Application was based on the findings of the UNDU’s Medical Officer that there was a “[REDACTED]” situation.²⁸ Yet, the Registrar Submissions present an “incompatible, inconsistent and different medical picture”, denying that there is any medical emergency.²⁹ With regard to the language barrier, Mladić contends that the availability of interpreters could only solve the problem if they were medically trained.³⁰

21. According to the UNDU Report of 27 September 2024, there is “no current medical emergency that has excluded treatment pathways”.³¹ In fact, a multidisciplinary team is treating Mladić’s [REDACTED], and several options are being discussed with Mladić.³² In addition, the UNDU Report of 3 October 2024 shows signs of improvement.³³

22. The UNDU Report of 16 October 2024 indicates that Mladić had a second opinion consultation at the [REDACTED], and that the [REDACTED] who examined Mladić agreed with the current treatment plan, which focuses on [REDACTED] with different techniques, without any [REDACTED] intervention.³⁴ In addition, it was again reported that Mladić’s [REDACTED] is healing and improving steadily and that he was in agreement with continuing the current treatment.³⁵ The two latest medical reports confirm this positive development.³⁶

23. While the Application suggests that the medical professionals in the Netherlands have insufficiently investigated Mladić’s current health complications and too quickly suggested [REDACTED], the evidence before me does not substantiate this submission. On 18 September 2024, the UNDU Medical Service reported a deterioration in Mladić’s condition, necessitating [REDACTED]. After consultation, such [REDACTED] was deemed too risky in Mladić’s case. Mladić then agreed to seek a second opinion at the [REDACTED]. The second opinion agreed that

²⁶ Application, paras. 19, 22-23.

²⁷ Application, paras. 24, 26-29.

²⁸ Reply, para. 5.

²⁹ Reply, para. 9.

³⁰ Reply, para. 14.

³¹ UNDU Report of 27 September 2024, p. 1.

³² UNDU Report of 27 September 2024, p. 1.

³³ UNDU Report of 3 October 2024, para. 5.

³⁴ UNDU Report of 16 October 2024, p. 1.

³⁵ UNDU Report of 16 October 2024, p. 1.

³⁶ See *supra* para. 16.

[REDACTED] should be pursued. There is no indication that the medical professionals have insufficiently considered and discussed treatment options with Mladić or that certain treatment options are unavailable in the Netherlands. In addition, Mladić appears to be in agreement with the current treatment plan.

24. Furthermore, I am satisfied by the Registrar's submissions on the availability of interpretation in all of Mladić's engagements with Dutch and international medical professionals and do not consider that any interpreters present during such engagements would need to be medically trained to provide high quality assistance.

25. In these circumstances, Mladić has not substantiated any need to travel to Serbia to receive a further medical opinion. He has received a second opinion at the [REDACTED] and is free to have doctors of his choice travel to the UNDU to assess him and suggest treatment options. I recall in this regard that, pursuant to Rule 47 of the Rules of Detention,³⁷ a detainee at the UNDU is expected to enjoy the same standard of healthcare as in the community, namely the Netherlands.³⁸

26. As a result, I am not satisfied that Mladić has substantiated that his current situation requires that he be transferred to Serbia for consultation and possible treatment. Mladić continues to receive high-quality care in the Netherlands, has various treatment options for his ailments, and is involved in all relevant discussions.

V. CONCLUSION

27. Based on the information before me, I am of the view that Mladić has not substantiated his request at this stage, and that he receives all necessary care at the UNDU and at civilian hospitals. Accordingly, I consider that the Application should be denied.

VI. DISPOSITION

28. For the foregoing reasons, I hereby **DENY** the Application.

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

³⁷ Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Mechanism or Otherwise Detained on the Authority of the Mechanism, 5 November 2018.

³⁸ See Decision of 10 May 2024, para. 35.

Done this 8th day of November 2024,
At The Hague,
The Netherlands.



Judge Graciela Gatti Santana
President

[Seal of the Mechanism]



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