

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 11 March 2020

Original: English

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. Olufemi Elias

Decision of: 11 March 2020

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC REDACTED

**PUBLIC REDACTED VERSION OF "DECISION ON A MOTION TO
STAY THE APPEAL HEARING" OF 6 MARCH 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

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

NOTING the judgement issued in this case by Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) on 22 November 2017,² and the appeals against the Trial Judgement filed before the Mechanism by Mr. Ratko Mladić (“Mladić”) and the Office of the Prosecutor of the Mechanism (“Prosecution”), and that the filing of the briefs in these appeals is complete;³

RECALLING the scheduling order issued on 16 December 2019, ordering that the hearing of the appeals in the present case shall take place in The Hague, The Netherlands on 17 and 18 March 2020 (“Appeal Hearing”);⁴

NOTING the Registrar’s submission, filed confidentially on 24 January 2020, submitting the report dated 16 January 2020 of neurologist Dr. [REDACTED] (“Dr. [REDACTED]”);⁵

NOTING the Registrar’s submission, filed confidentially on 21 February 2020, indicating, on the basis of a report from the Reporting Medical Officer at the United Nations Detention Unit (“Medical Officer” and “UNDU”, respectively), that Mladić is expected to undergo a surgery [REDACTED] to remove a polyp from his colon;⁶

BEING SEISED OF a motion, filed by Mladić on 28 February 2020, requesting the Appeals Chamber to, *inter alia*: (i) stay the Appeal Hearing; (ii) issue an order permitting parties to arrange their own “multidisciplinary” medical examinations to ascertain the state of his health; (iii) order a

¹ 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.

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

³ 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 Reply Brief, 29 November 2018 (confidential; public redacted version filed on 21 January 2019).

⁴ Scheduling Order for the Hearing of the Appeals, 16 December 2019 (“Scheduling Order”), pp. 1, 2.

⁵ Registrar’s Submission of Independent Medical Expert’s Report, 24 January 2020 (confidential) (“Registrar’s Submission of 24 January 2020”), Annex A.

⁶ Registrar’s Submission of a Medical Report Prepared by the Reporting Medical Officer and of an Additional Report Prepared by the Medical Officer of the United Nations Detention Unit, 21 February 2020 (confidential) (“Registrar’s Submission of 21 February 2020”), para. 2, Annex A, paras. 2-4, 6.

hearing to establish, among others, Mladić's ability, capacity, and fitness to participate in legal proceedings, or his capacity to knowingly waive his presence due to cognitive decline and fatigue; and (iv) reschedule the Appeal Hearing to a fixed date four to six weeks after his upcoming operation;⁷

NOTING the Prosecution's response, filed confidentially on 5 March 2020, submitting that the Motion should be denied as it fails to demonstrate that Mladić is unfit, has cognitive limitations,⁸ or that an inquiry into his fitness is warranted;⁹

NOTING the reply, filed by Mladić confidentially on 6 March 2020,¹⁰ submitting, *inter alia*, that the Appeals Chamber should reject the Prosecution's submission, grant the requests in the Motion, and order that this filing be made public;¹¹

NOTING that Mladić's requests for "multidisciplinary" medical examinations and for a hearing on his fitness and/or capacity to participate in legal proceedings rest on submissions in the Motion that, *inter alia*, recent medical documentation provided by the Registrar raises "previously unconfirmed" medical issues relating to "existing cognitive impairments and diminished function and/or other issues pertaining to [his] capacity";¹²

NOTING that the submissions in the Motion refer, *inter alia*, to a report of 10 December 2019 signed by Dr. [REDACTED] ("Dr. [REDACTED]") discussing Mladić's "impaired cognitive taxability", which according to Mladić contradicts Dr. [REDACTED]'s report dated 16 January 2020;¹³

⁷ Urgent Defence Motion to Stay Appeal Oral Arguments Hearing in Order to Permit Competency Review of Appellant and Hearing on Same, 28 February 2020 (confidential) ("Motion"), paras. 3, 4, 14, p. 8. *See also* Notice by the Defence as to Registry Arbitrary Actions Refusing to File Public-Redacted Filing, 2 March 2020; Registrar's Submission in Relation to the Public Redacted Version of Mr. Mladić's "Urgent Defence Motion to Stay Appeal Oral Arguments Hearing in Order to Permit Competency Review of Appellant and Hearing on Same", 2 March 2020 (confidential); Order on "Notice by the Defence as to Registry Arbitrary Actions Refusing to File Public-Redacted Filing", 5 March 2020 (confidential); Defence Submission Pursuant to "Order on Notice by the Defence as to Registry Arbitrary Actions Refusing to File Public-Redacted Filing", 6 March 2020 (confidential).

⁸ Prosecution Response to Urgent Defence Motion to Stay Appeal Oral Arguments Hearing in Order to Permit Competency Review of Appellant and Hearing on Same, 5 March 2020 (confidential) ("Response"), paras. 1-7, 9.

⁹ Response, paras. 1, 8, 9.

¹⁰ Consolidated Reply as to Urgent Defence Motion to Stay Appeal Oral Arguments Hearing in Order to Permit Competency Review of Appellant and Hearing on Same, 6 March 2020 (confidential) ("Reply").

¹¹ Reply, paras. 10-12, p. 6. The Reply indicates that Mladić has also received additional medical documentation regarding his hemoglobin levels. *See* Reply, para. 8.

¹² Motion, para. 2. *See also* Motion, paras. 3, 4, 6-13.

¹³ Motion, paras. 7-9, Annex B, Registry Pagination ("RP") 10023-10020. Dr. [REDACTED] is an "internist" in "geriatrics". *See* Motion, Annex B, RP. 10020. The Motion also refers to medical reports from Dr. Milan Lekic, who was privately consulted by Mladić's Counsel regarding his "impaired cognitive taxability" and his general medical treatment. *See* Motion, para. 12, Annex C.

CONSIDERING that, according to Dr. [REDACTED]'s report, medical examinations show "impaired cognitive taxability", but that "[o]verall, [Mladić's] response is quick", his participation in neuropsychological exams "is fine", and that in conclusion there is "no significant cognitive decline despite a familiar vulnerable brain";¹⁴

CONSIDERING that Dr. [REDACTED]'s conclusions do not contradict Dr. [REDACTED]'s report, which refers to Dr. [REDACTED]'s "[g]eriatric consult with cognitive testing" and states that "[t]here seem to be no cognitive abnormalities, not in the screening exam that I performed, nor in the more detailed neuropsychological examination performed on the 10th of December 2019";¹⁵

CONSIDERING that a review of reports of Drs. [REDACTED] and [REDACTED] as well as the Registrar's Submission of 21 February 2020 indicates that Mladić is receiving extensive medical attention and treatment for his various medical conditions, including the upcoming operation following his colonoscopy;¹⁶

CONSIDERING that processing the wealth of complex information inherent in international criminal proceedings is the role of defence counsel, in order to advise their clients;¹⁷

CONSIDERING FURTHER the late stage of the appeal proceedings in this case, where briefing has been fully completed;

CONSIDERING, however, Mladić's request to reschedule the Appeal Hearing until four to six weeks after his surgery,¹⁸ and the Registrar's Submission of 21 February 2020, based on a report from the Medical Officer at the UNDU, that Mladić's upcoming operation to remove a "benign polyp" from his colon is [REDACTED] "allowing for adequate preparations", and that "[i]t is

¹⁴ Motion, Annex B, RP. 10022-10020.

¹⁵ Registrar's Submission of 24 January 2020, Annex A, RP. 9935.

¹⁶ See Motion, Annex B, RP. 10022, 10021; Registrar's Submission of 24 January 2020, Annex A, RP. 9938-9935; Registrar's Submission of 21 February 2020, Annex A, paras. 2-8, Annex B, RP. 9974.

¹⁷ See Public Redacted Version of the "Decision on a Motion to Vacate the Trial Judgement and to Stay Proceedings" Filed on 30 April 2018, 8 June 2018, p. 3, n. 17; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Public Redacted Version of 30 November 2012 Decision on Request to Terminate Appellate Proceedings in Relation to Milan Gvero, 16 January 2013, para. 22. See also *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Judgement, 17 July 2008 ("Strugar Appeal Judgement"), paras. 55, 60. The ICTY Appeals Chamber in the *Strugar* case emphasized that "fitness to stand trial should be distinguished from fitness to represent oneself. An accused represented by counsel cannot be expected to have the same understanding of the material related to his case as a qualified and experienced lawyer. Even persons in good physical and mental health, but without advanced legal education and relevant skills, require considerable legal assistance, especially in cases of such complex legal and factual nature as those brought before the Tribunal". See *Strugar Appeal Judgement*, para. 60. See also *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Public Redacted Version of 13 December 2010 Decision on Motion by Counsel Assigned to Milan Gvero Relating to his Present Health Condition, 16 May 2011, para. 13, where the ICTY Appeals Chamber considered that counsel may file a notice of appeal on the appellant's behalf, on the basis that a variation of the grounds of appeal might be sought later in light of the appellant's alleged present incapacity.

¹⁸ Motion, p. 8. See also Motion, paras. 5, 13.

important to plan the operation very carefully in regards to the known comorbidity conditions and [his] relative frailty”;¹⁹

CONSIDERING that, according to the Medical Officer, given Mladić’s present health condition, his recovery from the upcoming surgery is expected to take up to six weeks;²⁰

FINDING therefore that, while the Motion does not demonstrate the need for the Appeals Chamber to order additional medical examinations or a hearing before it to ascertain Mladić’s fitness and/or capacity to participate in legal proceedings, the preparation for and recovery from Mladić’s upcoming surgery necessitates the postponement of the Appeal Hearing;

RECALLING that nothing prevents Mladić from consulting with and/or receiving visits from health professionals of his choice in accordance with Rules 48, 51, and 71(2) of the Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Mechanism or Otherwise Detained on the Authority of the Mechanism;

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 55 and 141 of the Rules of Procedure and Evidence of the Mechanism,

HEREBY GRANTS the Motion, in part;

VACATES the Scheduling Order and **STAYS** the Appeal Hearing until further notice on the basis of Mladić’s upcoming surgery;

REQUESTS the Registrar to inform the Appeals Chamber on a weekly basis of matters relating to the scheduling of Mladić’s surgery and his recovery therefrom to facilitate the expeditious rescheduling of the Appeal Hearing to a date approximately six weeks after the surgery; and

DISMISSES the remainder of the Motion.

¹⁹ Registrar’s Submission of 21 February 2020, Annex A, paras. 2, 6. The Medical Officer further indicates that recent laboratory tests show “a minor iron deficient anaemia (hemoglobin of 6.2) which may suggest some chronic light bleeding of the polyp, notably in combination with his anti-thrombotic medication (increasing the susceptibility to bleed), and is another reason for operative removal of the polyp”. See Registrar’s Submission of 21 February 2020, Annex A, para. 3. See also Motion, para. 5; Reply, para. 8 (discussing Mladić’s hemoglobin levels at 6.2). Furthermore, the Medical Officer states that the “anaemia seems to have stabilised” but Mladić continues to be monitored closely with regular blood tests and general medical check-ups. See Registrar’s Submission of 21 February 2020, Annex A, para. 3. See also Motion, paras. 5, 13.

²⁰ Registrar’s Submission of 21 February 2020, Annex A, para. 6.

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

Done this 11th day of March 2020,
At The Hague,
The Netherlands



Judge Prisca Matimba Nyambe
Presiding Judge

[Seal of the Mechanism]



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