

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 3 April 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

Order of: 3 April 2020

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**ORDER ON DEFENCE SUBMISSIONS
OF 30 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 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, and that the filing of the briefs in these appeals is complete;³

RECALLING the decision, issued confidentially on 6 March 2020 and publicly on 11 March 2020, *inter alia*, staying the hearing of the appeals in this case until further notice on the basis of Mladić’s surgery, and requesting 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 hearing of the appeals (“Request to the Registrar”);⁴

NOTING the “Urgent Defence Submission Pursuant to the Appeals Chamber Decision of 6 March 2020”, indicated as public but filed confidentially on 25 March 2020 (“Submission of 25 March 2020”),⁵ as well as the “Notice by the Defence as to Registry Arbitrary Actions Refusing to File Public-Redacted Filing and Request for Sanctions due to Arbitrary Nature of Same”, filed publicly on 27 March 2020 (“Notice of 27 March 2020”);

BEING SEISED OF the “Urgent Second Defence Submission Pursuant to the Appeals Chamber Decision of 6 March 2020”, indicated as public but filed confidentially on 30 March 2020 (“Submission of 30 March 2020”), wherein Mladić’s counsel submit, *inter alia*, that Mladić had undergone an elective surgery in violation of the Decision of 6 March 2020 and request the Appeals

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 Rep[l]y Brief, 29 November 2018 (confidential; public redacted version filed on 21 January 2019).

⁴ Decision on a Motion to Stay the Appeal Hearing, 6 March 2020 (confidential; public redacted version filed on 11 March 2020) (“Decision of 6 March 2020”), p. 4. See also Scheduling Order for the Hearing of the Appeals, 16 December 2019, pp. 1, 2.

⁵ The public redacted version of the Submission of 25 March 2020 was filed on 31 March 2020. See Public Redacted Version of the “Urgent Defence Submission Pursuant to the Appeals Chamber Decision of 6 March 2020”, 31 March 2020 (“Public Redacted Version of 25 March 2020 Submission”).

Chamber to: (i) order the Registry to file and redistribute the Submission of 25 March 2020 as public; (ii) intervene in relation to Mladić's post-operative care matters; (iii) clarify the Decision of 6 March 2020 to ensure that "substantive information" is provided by the Registry on Mladić's "precise treatment" and "diagnostic readings"; (iv) instruct the Registry to establish a regime to transfer Mladić's medical documentation to his counsel; (v) order that means of privileged communication with his counsel be established; and (vi) order the Registry to disclose to the Defence who was involved with the decision to proceed with Mladić's surgery,⁶

BEING SEISED OF a notice, filed publicly on 30 March 2020, wherein Mladić's counsel submit, *inter alia*, that the Registry had arbitrarily and unjustifiably refused to publicly file the original version of the Submission of 30 March 2020, forcing counsel to file the submission confidentially,⁷ and request the Appeals Chamber to: (i) order the Registry to file and redistribute the Submission of 30 March 2020 as public; and (ii) sanction the Registry by issuing payment to counsel based on the UN hourly scale "to partly cover and defray the additional expenditure of attorney and staff time and resources occasioned by the arbitrary and unjustified Registry refusal to file" the Submission of 30 March 2020;⁸

BEING SEISED OF a further notice, filed publicly with a confidential annex on 30 March 2020, wherein Mladić's counsel repeat submissions and requests made in the Notice of 30 March 2020,⁹ and provide a public redacted version of the Submission of 30 March 2020 to demonstrate the "good-faith efforts" of the Defence and the "unreasonable and arbitrary efforts of the Registry [...] to censor the truth";¹⁰

RECALLING the "Order on Defence Submissions of 25 and 27 March 2020", filed publicly with a confidential annex on 31 March 2020 ("Order of 31 March 2020") addressing the Submission of 25 March 2020 and the Notice of 27 March 2020;

NOTING the "Registrar's Submission in Relation to Mladić Defence Filings", filed confidentially on 2 April 2020 ("Registrar's Submission of 2 April 2020"), indicating, *inter alia*, that: (i) Mladić had surgery in a civilian hospital on 28 March 2020 and has returned to the United Nations

⁶ Submission of 30 March 2020, paras. 1, 12. *See also* Submission of 30 March 2020, paras. 2-11.

⁷ Second Notice by the Defence as to Registry Arbitrary Actions Refusing to File Public-Redacted Filing and Request for Sanctions due to Arbitrary Nature of Same, 30 March 2020 ("Notice of 30 March 2020"), paras. 1-6.

⁸ Notice of 30 March 2020, paras. 5, 6.

⁹ Third Notice by the Defence as to Registry Arbitrary Actions Refusing to File Public-Redacted Filing and Request for Sanctions due to Arbitrary Nature of Same, 30 March 2020 (public with confidential annex) ("Further Notice of 30 March 2020"), paras. 1, 2, 4-7.

¹⁰ Further Notice of 30 March 2020, para. 3, Annex. *See also* Further Notice of 30 March 2020, para. 2, wherein Mladić's counsel claim that the public redacted version of the Submission of 30 March 2020 had also been refused to be filed over "unspecified 'security concerns'".

Detention Unit (“UNDU”) on 31 March 2020;¹¹ (ii) given Mladić’s return to the UNDU, “the Registry no longer has any security concerns” in relation to the Submission of 25 March 2020, Submission of 30 March 2020, and the annex to the Further Notice of 30 March 2020 (collectively, “Confidential Defence Filings”), whose confidential status can be lifted subject to the Appeals Chamber’s instructions;¹² (iii) the Submission of 25 March 2020 and the Submission of 30 March 2020 were initially submitted as public despite “both containing sensitive security related information concerning the scheduling of Mr. Mladić’s surgery or his stay at the hospital”;¹³ and (iv) the Registrar finds it “very concerning that the Defence has continued to submit documents to the Registry for filing which contain the exact sensitive security related information”, which the Appeals Chamber has previously ordered redacted;¹⁴

CONSIDERING that the Submission of 30 March 2020 does not substantiate in any way the counsel’s contention that Mladić’s surgery violated the Decision of 6 March 2020;

CONSIDERING FURTHER that, in the Decision of 6 March 2020, the Appeals Chamber stayed the hearing of the appeals “on the basis of Mladić’s upcoming surgery”;¹⁵

FINDING, therefore, that the counsel’s submission that Mladić’s surgery violated the Decision of 6 March 2020 has no merit;

RECALLING that, in the Order of 31 March 2020, the Appeals Chamber, *inter alia*: (i) considered that the Submission of 25 March 2020 contained information of Mladić’s transport outside the UNDU; (ii) considered that such information constituted sensitive security information that is not public; and (iii) ordered that any public version of the Submission of 25 March 2020 redact all confidential information pertaining to the timeframe of Mladić’s transport outside the UNDU;¹⁶

FINDING, therefore, that the request in the Submission of 30 March 2020 for the Registrar to file and redistribute the Submission of 25 March 2020 as public has already been disposed of in the Order of 31 March 2020;

¹¹ Registrar’s Submission of 2 April 2020, paras. 2, 3.

¹² Registrar’s Submission of 2 April 2020, para. 3. The Registrar also makes reference to the Public Redacted Version of 25 March 2020 Submission, which was already filed as public. *See* Registrar’s Submission of 2 April 2020, para. 3. *See also supra*, n. 5.

¹³ Registrar’s Submission of 2 April 2020, para. 4.

¹⁴ Registrar’s Submission of 2 April 2020, paras. 4, 5, *referring to, inter alia*, Further Order on “Notice by the Defence as to Registry Arbitrary Actions Refusing to File Public-Redacted Filing”, 10 March 2020 (confidential) (“Order of 10 March 2020”).

¹⁵ Decision of 6 March 2020, p. 4.

¹⁶ Order of 31 March 2020, pp. 3, 4, Annex.

RECALLING that, in the Order of 31 March 2020, the Appeals Chamber stated that its Request to the Registrar contained in the Decision of 6 March 2020 did not seek information on Mladić's precise treatment, diagnostic readings, or prognosis, and therefore found that the Registrar's submissions in this regard satisfy the Request to the Registrar contained in the Decision of 6 March 2020;¹⁷

FINDING, therefore, that the request in the Submission of 30 March 2020 for clarification of the Decision of 6 March 2020 to ensure that "substantive information" is provided by the Registry on Mladić's "precise treatment" and "diagnostic readings" has already been disposed of in the Order of 31 March 2020;

RECALLING that, in the Order of 31 March 2020, the Appeals Chamber found that it is not for it to intervene in the provision of Mladić's medical documentation to his counsel;¹⁸

FINDING, therefore, that the request in the Submission of 30 March 2020 for the Appeals Chamber to instruct the Registry to establish a regime for transfer of Mladić's medical documentation to counsel has already been disposed of in the Order of 31 March 2020;

REITERATING that, according to the Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Mechanism or Otherwise Detained on the Authority of the Mechanism ("Detention Rules"), the management of the detention unit, including the provision of medical services to detainees and contact with the outside world, including counsel, is "[u]nder the authority of the Registrar";¹⁹

CONSIDERING that Mladić may use procedures provided under the Detention Rules with respect to any complaints related to the conditions of his detention, including the provision of medical services and medical documentation, as well as contact with counsel;²⁰

RECALLING that the Appeals Chamber only has jurisdiction to review the Registrar's or the President's decision under the Detention Rules if the issue in question is closely related to the fairness of the proceedings on appeal;²¹

¹⁷ Order of 31 March 2020, p. 3, *referring to* Registrar's Submission of a Medical Report Prepared by the Deputy Medical Officer of the United Nations Detention Unit, 19 March 2020 (confidential); Registrar's Submission of an Update Prepared by the Medical Officer of the United Nations Detention Unit in Relation to the Scheduling of Mr. Mladić's Surgery, 26 March 2020 (confidential).

¹⁸ Order of 31 March 2020, p. 3.

¹⁹ *See, e.g.* Rules 13(2), 46-54, 70-77, 93 of the Detention Rules. *See also* Order of 31 March 2020, p. 2.

²⁰ *See* Rules 92-94 of the Detention Rules. *See also* Order of 31 March 2020, p. 2; Decision on a Motion to Reconsider Decision on Renewed Motion for Contempt, 31 July 2018, p. 5; Decision on Renewed Motion for Contempt, 15 May 2018, p. 4.

CONSIDERING that Mladić did not invoke the procedures provided under the Detention Rules with respect to the issues his counsel presently raise;

CONSIDERING FURTHER that the Submission of 30 March 2020 does not request the Appeals Chamber to review any decision made under the Detention Rules and does not demonstrate that the issues raised therein are closely related to the fairness of the appeal proceedings in this case;

FINDING that, in these circumstances, it is not for the Appeals Chamber to intervene in relation to matters of Mladić's post-operative care or to make any orders to the Registry concerning Mladić's communication with counsel or disclosure of information about personnel who planned Mladić's surgery;

CONSIDERING that both the Submission of 30 March 2020 and its public redacted version, annexed to the Further Notice of 30 March 2020, as filed on that date, contained information about Mladić's presence outside the UNDU;²²

CONSIDERING that information pertaining to Mladić's presence outside the UNDU constitutes sensitive security information that is not public;²³

FINDING, therefore, that the Notice of 30 March 2020 and the Further Notice of 30 March 2020 fail to demonstrate that the Submission of 30 March 2020 should have been filed and distributed as public on that date or that the Registry erred in refusing to file publicly the Submission of 30 March 2020 and its public redacted version annexed to the Further Notice of 30 March 2020 on that date;

FINDING FURTHER that, therefore, the requests for sanctions in the Notice of 30 March 2020 and the Further Notice of 30 March 2020 have no merit;

RECALLING that all proceedings before the Mechanism shall be public unless exceptional reasons require keeping them confidential;²⁴

²¹ See Order of 31 March 2020, p. 3; *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Vladimir Lazarević's Request for Medical Examination, 18 September 2009 (confidential and *ex parte*), p. 3; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Hassan Ngeze's Motion for a Psychological Examination, 6 December 2005, p. 4. See also *cf. Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on a Motion for Review of the Registrar's Decision on Indigence, 24 June 2016, p. 5; *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Nebojša Pavković's Motion for Stay of Proceedings, 2 March 2010, para. 12.

²² Submission of 30 March 2020, paras. 1, 3, 4, 8-12; Further Notice of 30 March 2020, Annex, paras. 4, 8, 10-12.

²³ Order of 31 March 2020, p. 3; Order of 10 March 2020, p. 4.

²⁴ See Article 18(4) of the Statute of the Mechanism and Rules 92 and 131 of the Rules of Procedure and Evidence of the Mechanism. See also, *e.g.*, Order of 31 March 2020, p. 3, n. 17; Order of 10 March 2020, p. 3 and references cited therein.

CONSIDERING that, according to the Registrar's Submission of 2 April 2020, Mladić has returned to the UNDU and that therefore the Registry no longer has security concerns in relation to the Confidential Defence Filings being made public;

FINDING that, in these circumstances, it is appropriate to lift the confidential status of the Confidential Defence Filings, namely the Submission of 25 March 2020, the Submission of 30 March 2020, and the confidential annex of the Further Notice of 30 March 2020;

CONSIDERING that the submissions in the Notice of 30 March 2020 and the Further Notice of 30 March 2020 are almost identical;²⁵

CONSIDERING FURTHER that Mladić's counsel have repeatedly attempted to publicly file materials containing contemporaneous sensitive security information that the Appeals Chamber has determined should be redacted;²⁶

FINDING that filing repetitive submissions and attempting to publicly file materials containing contemporaneous sensitive security information that could reveal Mladić's presence outside the UNDU is contrary to the interests of justice, wastes valuable judicial resources, and may amount to an abuse of process;²⁷

FOR THE FOREGOING REASONS,

ORDERS the Registry to lift the confidential status of the Confidential Defence Filings, namely the Submission of 25 March 2020, the Submission of 30 March 2020, and the confidential annex of the Further Notice of 30 March 2020;

REJECTS the requests for sanctions made in the Notice of 30 March 2020 and the Further Notice of 30 March 2020; and

REMINDS Mladić's counsel to refrain from filing repetitive submissions and from including contemporaneous sensitive security information in public filings.

²⁵ Compare Notice of 30 March 2020, paras. 1-6 with Further Notice of 30 March 2020, paras. 1, 2, 4-7.

²⁶ See Submission of 25 March 2020; Submission of 30 March 2020.

²⁷ See Rule 80(D) of the Rules. Cf. Public Redacted Version of the "Decision on a Motion to Reconsider the Decision for Reconsideration and Certification to Appeal the Decision on a Request for Provisional Release", 16 July 2018, p. 2, n. 17 and references cited therein.

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

Judge Aminantta Lois Runeni N'gum issues a separate opinion.

Done this 3rd day of April 2020,
At The Hague,
The Netherlands



Judge Prisca Matimba Nyambe
Presiding Judge

[Seal of the Mechanism]



I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

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