

UNITED
NATIONS



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 10 March 2020

Original: English

BEFORE 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

Date: 10 March 2020

THE PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC-REDACTED

**FURTHER REDACTED “URGENT DEFENCE MOTION TO STAY APPEAL
ORAL ARGUMENTS HEARING IN ORDER TO PERMIT COMPETENCY
REVIEW OF APPELLANT AND HEARING ON SAME” ORIGINALLY FILED
28 FEBRUARY 2020 [PURSUANT TO FURTHER ORDER OF 10 MARCH 2020]**

The Office of the Prosecutor:

Ms. Laurel Baig
Ms. Barbara Goy

Counsel for the Accused:

Mr. Branko Lukić
Mr. Dragan Ivetić

THE MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS**PROSECUTOR****v.****RATKO MLADIĆ****PUBLIC-REDACTED**

FURTHER REDACTED “URGENT DEFENCE MOTION TO STAY APPEAL ORAL ARGUMENTS HEARING IN ORDER TO PERMIT COMPETENCY REVIEW OF APPELLANT AND HEARING ON SAME” ORIGINALLY FILED 28 FEBRUARY 2020 [PURSUANT TO FURTHER ORDER OF 10 MARCH 2020]

The Appellant/Movant, Ratko Mladić, by and through his counsel of record, files this Motion and in support thereof states:

I. Introduction

1. On 16 December 2019, the Appeals Chamber ordered that the hearing of the appeals shall take place on 17 and 18 March 2020, respectively.¹
2. On 21 February 2020 Registrar has filed 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.² Also on Wednesday, 5 February 2020, Defence Counsel received from the client during an UNDU visit, limited medical

¹ Scheduling order for the hearing in the appeals, 16 December 2019, Case no.: MICT-13-56-A.

² 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 with Confidential Annexes* (hereinafter: “Registrar submission”).

documentation (covering December 2019 and January 2020) that per the UNDU Commander had been provided to Mr. Mladic “earlier this week.”³ Both sets of documents raise previously unconfirmed (on the part of the Mechanism) medical issues relating to existing cognitive impairments and diminished function and/or other issues pertaining to Mr. Mladic’s capacity.

3. It is undisputed that for a long period of time, the Appellant is facing severe and multiple medical problems which at minimum require immediate and urgent attention of the Appeals Chamber including the opportunity for the parties to raise their position to the same. Due to the generalized and incomplete nature of the concerns just recently disclosed, it is apparent that a more detailed, multi-disciplinary medical team review of Appellant is required to assess his capacity, prior to participation in the Appeals Hearing.

4. The Defence respectfully asks the Appeals Chamber to **urgently intervene** due to this **serious newly reported health situation** raising strong indicia of deterioration of life threatening conditions affecting the Appellant along with his a new need to adequately assess both medically (by way of appointment and review by medical experts) and legally (by way of a hearing), his **fitness to participate in legal proceedings and participate in appeal hearings or to knowingly waive his presence**, due to the cognitive decline and fatigue reported. These issues undisputedly have significant impact on the integrity and fairness and expeditious nature of further proceedings, and due to the recent nature of the same, will unfortunately require a re-scheduling of the appeals hearing for a future date certain upon final medical review and judicial deliberation on this matter.

II. Arguments and Submissions

5. The Registry submission, inter alia, contains report from UNDU’s reporting medical officer, stating that the Appellant “attended a local hospital for outpatient assessment of an [REDACTED]”. Further, upon colonoscopy performed, it confirms need of an operation of the high probability of (around 95% - 98% accuracy) for removal of

³ Per Email of UNDU Commanding Officer of 5 February 2020, to Defence Counsel.

[REDACTED] in order not to develop into malignant tumor.⁴ The operation is expected to be scheduled “in approximately [REDACTED] allowing for adequate preparations” with concession of the “relative frailty” of the Appellant.⁵ This same report confirms an iron-deficiency anemic state with a value of his hemoglobin of 6.2, which is low, and has both implications for his physical and mental fitness.⁶ This medical situation and schedule is [REDACTED] to scheduled appeals hearing and considering medical history of the Appellant’s ailments, [REDACTED]. Indeed, the same Register submission (at annex B of same)⁷ has the Chief Medical Officer again indicating due to the anemia and frailty of the Appellant’s medical state, he will not be able to complete the medical procedure (surgery) for his current condition for [REDACTED]. This time period and assessment of the UNDU Chief Medical Officer is in line with private informal consultations by the Defence with medical specialists who indicate it is necessary for the hemoglobin and other co-morbidity factors to stabilize otherwise the surgery itself could have a high risk of death.

6. Besides aforementioned broad and general information of the health situation of the Appellant, Registrar submission has not included nor mentioned any updated information on other significant current frailties of the Appellant which appears to be of crucial importance for the integrity of appeals proceeding (such as the manner of treatment for the iron-deficiency anemia). In this urgent Motion, Defence will address to the Appeals Chamber only the most significant ones (as much remains unknown and must be medically explored). We note we have informally consulted with medical specialists who have verified our concerns and the need for a medical evaluation of Mr. Mladic for purpose of his capacity. Doctors have even recommended that the current limited information is indicative of a need for 24/7 hospital care at a qualified medical institution, henceforth.

7. Included in the limited medical documents obtained by Defence Counsel is a report dated 10 December 2019 in the Dutch language, **which was not previously provided to the**

⁴ Confidential Registrar submission, attached as Confidential Annex A, (Annex A para. 2).

⁵ Confidential Registrar submission, Confidential Annex A, (Annex A, para. 6).

⁶ Confidential Registrar submission, Confidential Annex A, (Annex A, para. 3).

⁷ Confidential Registrar submission, Confidential Annex A, (Annex B, para. 3).

Appeals Chamber, inter alia, by Professor Dr. [REDACTED],⁸ on “*impaired cognitive taxability*” of the Appellant. Reasons for this visit and report was reported as “*impaired memory and mobility problems/falling*”.⁹ The Registrar filing of 17 January 2020¹⁰ demonstrates that the Registrar was made aware of this report of Dr. [REDACTED], but only gives some general details and failed to disclose the report itself.

8. Report from Dr. [REDACTED] also concede problems with cognitive examination due to use of interpreter. Such report was delivered to Defence only on 5 February 2020,¹¹ containing confirmation of *impaired cognitive taxability which has never been conceded before by any source coming from the UNDU*. In this respect, it is worth noting that in his report, Dr. [REDACTED] noted “*no cognitive abnormalities*” (?) which directly contradicts the above diagnosis of Drs. [REDACTED], et al. the , while at the same time conceding that Mr. Mladic sleeps “*up to 15 hours per day*” and complains of dizziness.¹² Also, lower hemoglobin (ie. iron-deficiency anemia) is associated with poorer cognitive performance and smaller brain volume in older adults¹³ and has recently (2019) been the subject of a Dutch study (“Rotterdam Study”) confirming its correlation with the progression of dementia and AD.¹⁴

9. Dr. [REDACTED]’s report also (for the first time known to the Defence), reports that Appellant has been diagnosed as having suffered an ICVA (ie. ischaemic cerebral vascular Accident – a stroke to the brain) as recently as 2018 (after the Trial Judgment), which previously was unreported and must be investigated/explored.

10. Previous information, along with overburdened history of medical problems of the Appellant at minimum demonstrates a confirmation of high probability of absence of Appellant’s fitness to participate in further proceedings or to waive his absence.

⁸ But also mentioning a Dr. [REDACTED] (clinical neuro-psychologist) participating in same.

⁹ See original and certified translation of UNDU update on health condition of Mr. Ratko Mladić, 15 January 2020, attached hereto as Confidential Annex B.

¹⁰ Confidential, Registrar’s Submission of Medical Report, 15 January 2020, (Annex, para.5).

¹¹ Which the Defence immediately sought translation of.

¹² Confidential, Registrar’s Submission of independent Medical Expert’s Report, 24 January 2020, (Annex A, pg. 1).

¹³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4292910/>

¹⁴ <https://n.neurology.org/content/neurology/93/9/e917.full.pdf>

11. It is also pertinent to note that the newly disclosed report of Dr. [REDACTED] states that Appellant suffers from **sequelae of a left hemispheric stroke, involving the motor cortex, internal capsule and thalamus, based on findings of central facial palsy, dysarthria, sensory disturbances, dyspraxia and dysmetria**. Distal peripheral neuropathy, most prominent in the lower limbs.¹⁵ Dr. [REDACTED] continues to assess Mr. Mladic's risk to develop a new TIA or stroke as mainly influenced by his age, hypertension, diabetes and possible re-occurrence of heart rhythm disturbances like atrial fibrillation. His 5-year stroke risk is essentially unchanged from previous estimates **and remains high**.

12. Prior to the recent Registry submissions, in order to verify previous limited information from MRI protocols performed for dementia and whether they are in compliance with the world standards, Nuclear Medicine and MRI-PET specialist, MD and PhD Dr. Milan Lekic was privately consulted by the Appellant's Defence. His report from 27 January 2019, confirms previous concerns and those set forth in this instant Motion, upon recently conceded "*impaired cognitive taxability*" and from this medical specialist position has established "*that the whole process of the diagnostic evaluation and consequently medical treatment of General Ratko Mladic has been seriously compromised*".¹⁶ Both Dr. Lekic and other medical doctors consulted after the recently disclosed reports recommend follow-up MRI (specifically MRI-PET with same slice sequences previously used so as to allow comparison) and examination as essential to assess the progression of cognitive decline already evidenced in Appellant.

13. The Defence has previously raised its concerns as to the Appellant's serious health ailments, and upon further examination of this new medical information, pursuant to informal and preliminary consultations with medical specialists, this diagnosis alone is sufficient to raise a serious concern of Appellants overall health state and his fitness/capacity to stand trial or to knowingly waive his presence, not to mention other health impairments

¹⁵ Confidential, Registrar's Submission of independent Medical Expert's Report, 24 January 2020, (Annex A, pg. 3). [emphasis added]

¹⁶ See, hereto attached Confidential Annex C, Lekic report, p. 9

and reasonable endangerment from the stress in view of the forthcoming operation [REDACTED]. Informal medical consultations undertaken by the Defence in light of the recently disclosed Registry medical documentation have warned that any increase in stress given the frail and declined state of Appellant could have life-threatening consequences, in line with Dr. [REDACTED]'s assessment of the risk of a new TIA, stroke of CVA, including possibility of death.

14. It is professional duty of Counsel, and all involved in these legal proceedings to address and pursue this issue before the only competent authority, to respectfully ask for parties to be allowed to utilize own external medical experts and to request hearing and deliberation on this matter from the Appeals Chamber.

III. Conclusion

Thus, the Defense of Ratko Mladić respectfully requests from Appeals Chamber:

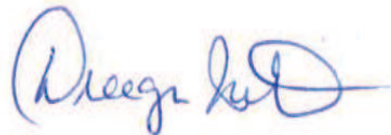
- i) to order the Registry to permit the parties to each arrange their own multidisciplinary medical team examinations of the Appellant at a hospital setting with appropriate medical equipment available for same and in a facility equipped for the same;
- ii) to stay the Appeal Oral Argument proceedings and schedule a hearing before the Appeal Chamber after completion of the aforesaid medical examinations and submission of reports to establish the Appellant's ability, capacity and fitness to stand trial or alternatively his capacity to knowingly to waive his presence, and/or the benefits/necessity of 24/7 hospitalization of the Appellant;
- iii) to re-schedule the Appeal Oral Argument hearing to a fixed date of [REDACTED] after Appellant's operation and upon final medical deliberation and Decision on this matter (ie. a determination on the capacity and fitness issues).

Word count: 1848

RESPECTFULLY SUBMITTED BY:



Branko Lukić
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