

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

**PUBLIC REDACTED VERSION OF “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” ORIGINALLY FILED 6 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**

PUBLIC REDACTED VERSION OF “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” ORIGINALLY FILED 6 MARCH 2020

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

1. On 28 February 2020 the Defence of General Ratko Mladic, in full compliance with its professional and ethical obligations, filed both a confidential and public-redacted version of its *Urgent Defence Motion to Stay Appeal Oral Arguments Hearing in Order to Permit Competency Review of Appellant and Hearing on Same*.
2. The basis of the same was medical information about Mr. Mladic recently disclosed by the Registry as to his cognitive impairment, impending surgery, a potential new (previously not reported) stroke, and other issues relevant to General Mladic’s fitness to participate in hearings.
3. After the public-redacted version of the above motion was removed by the Registry the Defence also filed on 2 March 2020 a Public “*Notice by the Defence as to Registry*

Arbitrary Actions Refusing to File Public-Redacted Filing,” objecting to the removal of a Public filing.

4. On 2 March 2020, the Registrar made a confidential filing entitled “*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.”*” [hereinafter “Registry Submission”]
5. On 5 March 2020, the Prosecution made a confidential filing entitled “*Prosecution Response to Urgent Defence Motion to Stay Appeal Oral Arguments Hearing in Order to Permit Competency Review of Appellant and Hearing on Same.*” [hereinafter “Prosecution Submission”]
6. The instant filing shall act as a consolidated Reply to the Registry Submission and to the Prosecution Submission insofar as they relate to the same Motion, and for sake of efficiency to assist the Chamber in rendering a timely ruling.
7. We note the Registry submission has not contradicted nor questioned the validity of any of the medical findings and information contained in the confidential and public-redacted motions. Thus, in our view, the grounds specified in our original motion for a stay of the proceedings and for medical examination¹ and separate hearing to determine the medical condition and competency of Mr. Mladic has been confirmed and justified.
8. The Registry Submission further gives no update as to the low hemoglobin count of 6.2 which was reported in the motions. We again note² have just received on 4 March 2020 the newest medical records made available to Mr. Mladic by the UNDU Medical staff, dating from January to 26 February 2020. We give notice that the Dutch language portions have been sent for translation to a professional translation agency. Thus, while

¹ By a multidisciplinary medical team of experts by each of the parties.

² As in para. 8 of our Defence Submission Pursuant To “Order on Notice by The Defence as To Registry Arbitrary Actions Refusing to File Public-Redacted Filing, filed 6 March 2020.

we reserve the right to supplement upon receipt of the full translations, we can definitely observe (and have confirmed with a medical specialist) that these records demonstrate a drop in hemoglobin of Mr. Mladic from 7.8 (still low) to 6.2 from 16 January 2020 to 6 February 2020. That 6.2 value remains the same for the remainder of the provided February records (last reading 14 February 2020, although the document/report is dated 26 February 2020. Also, one of the January documents mentions “milde chronische anemia” in Dutch, which is understood to mean he had chronic anaemia before the sudden drop from 7.8 to 6.2. We note the acceptable or “safe” hemoglobin levels will vary among different sources, and that the World Health Organization defines the lower limit of normal blood hemoglobin concentration as 13.0 in white males; and the Mayo Clinic CCL defines it as 13.5.³ The Dutch documents giving the 6.2 readings seem to indicate either 8.0 or 10.5 as the boundaries.⁴ Under either of the above, Mr. Mladic’s reading is well below the same and with the recent drop in February 2020 without any documented improvement means that his condition has worsened and his risk of morbidity (ie. death) from surgery is significantly increased and the cognitive concerns expressed in the literature cited in the footnotes of the Motion as to the correlation of low haemoglobin with cognitive impairment remain a factor to be considered.

9. The Registry Submission takes issue with the public disclosure of the public redacted motion. The Defence refers to its filing of today’s date regarding the consent of Mr. Mladic, and the Royal Dutch Medical Association guidelines as to the same.⁵

10. Turning now to the Prosecution Submission. It seems our colleagues on the prosecution have mis-read our Motion or are pre-emptively responding to a motion that has not yet been filed. The Urgent Motion filed by the Prosecution does not make conclusive submissions that the Appeals Hearing should be temporarily stayed due to “**serious newly reported health situation** raising strong indicia of deterioration of life

³ [https://www.mayoclinicproceedings.org/article/S0025-6196\(11\)61338-4/fulltext](https://www.mayoclinicproceedings.org/article/S0025-6196(11)61338-4/fulltext)

⁴ The Dutch Haematology Association on the other hand, lists the range of 8.5-11.0 as normal - <https://hematologienederland.nl/patientinfo/diagnose-en-behandeling/normaalwaarden/>

⁵ Defence Submission Pursuant To “Order on Notice by The Defence as To Registry Arbitrary Actions Refusing to File Public-Redacted Filing, filed 6 March 2020.

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.”⁶ Additionally our Urgent Motion has identified deficiencies in medical information which prevents a complete picture of Mr. Mladic’s health and fitness.⁷ Our Urgent Motion presents a filing raising serious concerns about the inability to determine his cognitive decline due to the manner of MRI scanning.⁸ Our Urgent Motion also raised the low hemoglobin count of the blood tests on Mr. Mladic and the possible correlation of the same to cognitive impairment.⁹ We now know the hemoglobin dropped from 7.8 to 6.2 from January to February and is not improving.¹⁰ It also raised [REDACTED] the surgery which is made even more serious by the hemoglobin values, and even life-threatening.

11. The Defence Urgent Motion was very clear it only had time to informally consult with medical experts and did not have all the medical documents necessary to assess the full health state and fitness of the Appellant, and that in light of the overall circumstances set forth in recent developments it was the legal obligation to report of these indications of recent decline from the Registrar’s own medical professionals as they provide sufficient indicia obliging that a multidisciplinary team of experts be employed by each party to assess the medical and cognitive fitness/capacity of Mr. Mladic, present their findings to the Chamber and then have a determination if he is fit or unfit. The Defence has a role in ensuring that the Appellant is receiving adequate and appropriate medical care while detained in the UNDU.¹¹ And this is certainly the case when indicia are

⁶ Motion, para. 4

⁷ Motion, para. 7-9.

⁸ Motion, para. 12, Annex C.

⁹ Motion, para. 8, fn. 13-14.

¹⁰ Defence Submission Pursuant To “Order on Notice by The Defence as To Registry Arbitrary Actions Refusing to File Public-Redacted Filing, filed 6 March 2020, para. 8.

¹¹ Prosecutor v Hadzic, No. IT-04-75-T, Decision on Urgent Motion for Daily Detailed Medical Monitoring and Reporting of Mr. Hadzic’s Health Condition (10 April 2015) at para. 18

raised as to the potential incapacity or cognitive impairment of the Appellant before the Appeals Hearings where he and they will be called upon to act and make submissions.

12. The Prosecution Submission seems to have jumped the gun and wishes to make submissions that should be reserved for the fitness/capacity hearing, and should be made after medical professionals (not prosecution lawyers) testify as to the fitness and capacity of Mr. Mladic.

WHEREFORE, the Defense of Ratko Mladić respectfully requests from Appeals Chamber to Reject both the Registry and Prosecution Submissions and Grant *Urgent Defence Motion to Stay Appeal Oral Arguments Hearing in Order to Permit Competency Review of Appellant and Hearing on Same*, and order that this filing be made public.

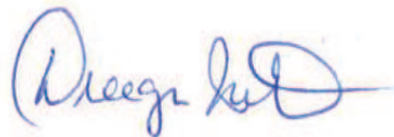
Word count: 1359

RESPECTFULLY SUBMITTED BY:



Branko Lukić

Lead Counsel for Ratko Mladić



Dragan Ivetić

Co-Counsel for Ratko Mladić

Dated This 6th of March 2020
Belgrade, Serbia &
The Hague, Netherlands



I - FILING INFORMATION / INFORMATIONS GÉNÉRALES

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Case Name/ Affaire :	Prosecutor v Mladić	Case Number/ Affaire n° :	MICT-13-56-A
Date Created/ Daté du :	10-Mar- 2020	Date transmitted/ Transmis le :	10 Mar-2020
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