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International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No. IT-09-92-T
Date: 14 March 2014
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr John Hocking

Decision of: 14 March 2014

PROSECUTOR

v.

RATKO MLADIĆ

CONFIDENTIAL

DECISION ON THE TRIAL SITTING SCHEDULE

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 6 December 2011, in accordance with an order of the Chamber dated 16 November 2011, the Registrar of the Tribunal filed a report by a medical expert Dr Sabri El Banna ("2011 Medical Report") which noted that Mr Ratko Mladić had suffered from several medical issues before his arrival and during his first period at the United Nations Detention Unit ("UNDU").¹ The 2011 Medical Report made a detailed assessment of Mr Mladić's general health and the impact of specific health problems on his physical and psychological state.² Dr El Banna considered reports from a panel of specialists who had examined Mr Mladić upon his arrival at the UNDU including, but not limited to, reports from neurologist Dr Mihaljev, psychiatrist Dr Nikolić, and a specialist in internal medicine Dr Marković.³ Dr El Banna concluded, *inter alia*, that Mr Mladić was deemed perfectly capable of being present during Tribunal activity involving him and that his state of mind was "vivacious and completely normal".⁴ On 20 July 2012, the Chamber, having been informed of Mr Mladić's medical condition, denied the Defence request to reduce the trial sitting schedule from five to four days.⁵ Following the Chamber's standing request to the Registry of 29 August 2012, the Chamber received, *inter alia*, reports from the Reporting Medical Officer ("RMO") on steps taken in each instance that Mr Mladić expressed a complaint about his medical condition while on the premises of the Tribunal's main building.⁶

2. On 15 January 2013, the Defence filed a motion ("First Motion") requesting an adjustment of the trial sitting schedule from five to four days per week on account of health concerns of Mr Mladić, and provided the Chamber with a medical expert report by psychology specialist Professor Bojana Dimitrijević and neuro-psychiatrist Professor Ratko Kovacević ("2012 Defence Report").⁷ The 2012 Defence Report cautioned that during trial Mr Mladić "can fall into a state of heightened emotional tension" accompanied by "a sharp rise in blood pressure which could lead to a Transient Ischemic Attack ("TIA"), *i.e.* an interruption of the flow of blood to the brain".⁸

3. On 13 March 2013, the Chamber denied the First Motion ("First Decision") on the grounds that there was no information before the Chamber indicating a direct link between court attendance

¹ Order for a Medical Examination of the Accused Pursuant to Rule 74 *bis*, 16 November 2011; Registrar's submission of Medical Report, 6 December 2011 (Confidential), p. 6. An English translation of this report was filed on 8 December 2011.

² *Ibid.*

³ 2011 Medical Report, p. 4.

⁴ 2011 Medical Report, p. 6.

⁵ T. 1245-1246.

⁶ Registrar's Submission of the Internal Memoranda, 15 March 2013 (Confidential).

⁷ Defence Motion Seeking Adjustment of the Trial Sitting Schedule Due to the Health Concerns of the Accused, 15 January 2013 (Confidential).

⁸ First Motion, Confidential Annex C, p. 9.

and a rise in Mr Mladić's blood pressure and that an assessment of the risk of Mr Mladić suffering from a TIA can only be made by an appropriately qualified medical specialist such as a cardiologist or arteriologist and was not within the realm of expertise of Profs Dimitrijević and Kovacević.⁹ The Chamber concluded that an independent medical update of Mr Mladić's overall physical condition or an order to change the trial sitting schedule was not necessary for the conduct of the trial.¹⁰ Following the First Decision, the Chamber was kept informed of Mr Mladić's medical condition by means of UNDU medical staff reports submitted regularly by the Registry.¹¹ As of 20 March 2013, the RMO pointed out in these reports that Mr Mladić had been showing increasing symptoms of fatigue and exhaustion and while his blood pressure remained under control the RMO recommended a reduction of the trial sitting schedule by one day per week in order to prevent exhaustion.¹²

4. On 16 April 2013, the Defence filed another motion ("Second Motion") repeating its request that the trial sitting schedule be reduced from five to four days per week, in light of the fact, *inter alia*, that such a reduction was recommended in the reports submitted by the Registry.¹³ On 4 June 2013, the UNDU Medical Officer ("MO") appeared in court and answered questions with regard to the medical reasoning behind the recommendation for a reduced sitting schedule; the MO affirmed that the risk of a TIA was an unlikely, worst-case scenario, and that the only real risk to Mr Mladić was burnout due to fatigue.¹⁴ Following this hearing, on 12 July 2013, the Chamber denied the Second Motion ("Second Decision").¹⁵

5. On 22 October 2013, the Appeals Chamber reversed the Second Decision ("Appeal Decision").¹⁶ The Appeals Chamber held that "had the Trial Chamber found the medical opinion provided insufficient 'so as to be dispositive of the matter', the Trial Chamber should have ordered an independent medical examination, as requested by the Prosecution".¹⁷ The Appeals Chamber found that the Chamber had erred by failing to attribute sufficient weight to the information contained in the relevant reports and submissions in support of a reduced sitting schedule, ordered

⁹ Decision on Defence Motion Seeking Adjustment of Modalities of Trial, 13 March 2013, paras 10-12.

¹⁰ *Ibid.*

¹¹ Registrar's Submissions of Medical Report, filed confidentially on 2, 8, 12 April 2013; 1, 31 May 2013; 3, 10, 14, 20, 27 June 2013; 11, 19, 25 July 2013; 9, 15, 22, 23, 29 August 2013; 5, 9, 10, 19, 27 September 2013; 4, 10, 18, 25, 31 October 2013; 7, 14, 22, 29 November 2013; 6, 13, 19 December 2013; 16, 23, 31 January 2014; 6, 13, 21, 26 February 2014; 6 March 2014.

¹² Registrar's Submission of Medical Report, 2 April 2013 (Confidential), Confidential Annex, p. 1.

¹³ Defence Second Motion Seeking Adjustment of the Trial Sitting Schedule Due to the Health Concerns of the Accused, 16 April 2013 (Confidential).

¹⁴ T. 12030, 12032-12035, 12037-12038, 12065.

¹⁵ Decision on Second Defence Motion Seeking Adjustment of the Trial Sitting Schedule Due to the Health Concerns of the Accused, 12 July 2013, paras 14-15, 17.

¹⁶ Decision on Mladić's Interlocutory Appeal Regarding Modification of Trial Sitting Schedule Due to Health Concerns, 22 October 2013.

¹⁷ Appeal Decision, para. 13.

the Chamber to adopt a four-day sitting schedule for the remainder of the Prosecution's case, and directed it to reassess the trial sitting schedule at the beginning of the Defence case.¹⁸ The Chamber, in compliance with the Appeal Decision, changed the sitting schedule from five days to four days for the remainder of the Prosecution's case.

6. On 15 November 2013, the Chamber issued an Order for Medical Examination of the Accused Pursuant to Rule 74 *bis* ("Order") in which it instructed the Registry, for the purposes of reviewing the trial sitting schedule in compliance with the Appeal Decision, to have medical examinations of Mr Mladić conducted and to have expert reports on his medical condition compiled.¹⁹

7. On 24 January 2014, the Registry confidentially submitted the medical reports in accordance with the Order ("Medical Reports").²⁰ The Medical Reports comprise findings by expert medical practitioners including cardiologist Dr Geert Hollanders, neurologist Dr Patrick Cras and general medical practitioner Dr Sabri El Banna.²¹ In light of the Medical Reports, the Chamber invited the parties to make written submissions on the future trial sitting schedule noting that the Defence case, if any, is tentatively scheduled to start on 13 May 2014.²² On 20 February 2014, the Prosecution and Defence filed confidentially their respective submissions on the future trial sitting schedule.²³

II. SUBMISSIONS OF THE PARTIES

8. The Prosecution submits, in light of the Medical Reports and the four UNDU medical staff reports filed immediately prior to 20 February 2014, that a five-day sitting schedule is appropriate based on the totality of the information before the Chamber, subject to reassessment of the trial sitting schedule following any change in circumstance in the health of Mr Mladić.²⁴

9. The Defence submits that of the Medical Reports, the findings of general medical practitioner Dr El Banna are most pertinent, and maintaining a four-day sitting schedule is

¹⁸ Appeal Decision, para. 16 and Disposition.

¹⁹ Order, paras 5-8 and Disposition.

²⁰ Deputy Registrar's Submission of Medical Reports, 24 January 2014 (Confidential).

²¹ Medical Reports, paras 1-5.

²² Invitation to Parties to Make Submissions in Relation to the Future Trial Sitting Schedule, 6 February 2014; T. 20224.

²³ Prosecution Submission Regarding the Future Trial Sitting Schedule, 20 February 2014 (Confidential) ("Prosecution Submission"); Defence Submissions in Relation to the Future Trial Sitting Schedule, 20 February 2014 (Confidential) ("Defence Submission").

²⁴ Prosecution Submission, paras 5-7.

necessary as it would lower the risk of a possible TIA.²⁵ The Defence requests, in the alternative, that should the Chamber be inclined to adopt a five-day sitting schedule then the cardiologist Dr Hollanders and neurologist Dr Cras should appear in court to answer questions from the parties to further clarify their findings.²⁶ The Defence argues that the consolidated findings of Dr Hollanders and Dr Cras fail to explicitly determine whether a four-day sitting schedule is preferable to five days and merely caution against undue delay to the trial.²⁷ The Defence asserts moreover that previous medical opinions, including those found in the 2012 Defence Report and UNDU medical staff reports, support the case for a four-day sitting schedule because four days would not cause significant delay and would increase the chance of Mr Mladić enduring the entire length of the trial.²⁸ The Defence identifies the absence in the Medical Reports, in its view, of a psychological examination of Mr Mladić to determine his risk of suffering a TIA and that references to TIA in the Medical Reports are either not examined or inadequately assessed.²⁹

III. APPLICABLE LAW

10. Article 20 (1) of the Statute of the Tribunal (“Statute”) provides that:

The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

11. Rule 54 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) provides that at the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

12. Rule 74 *bis* of the Rules provides:

A Trial Chamber may, *proprio motu* or at the request of a party, order a medical, psychiatric or psychological examination of the accused. In such a case, unless the Trial Chamber otherwise orders, the Registrar shall entrust this task to one or several experts whose names appear on a list previously drawn up by the Registry and approved by the Bureau.

IV. DISCUSSION

A. Preliminary Matters

²⁵ Defence Submission, paras 5-7.

²⁶ Defence Submission, paras 10, 19-20.

²⁷ Defence Submission, paras 8-9.

²⁸ Defence Submission, paras 9, 13-16.

²⁹ Defence Submission, paras 11-12, 17.

13. In making its determination to adopt a trial sitting schedule, the Chamber takes into consideration, *inter alia*, the following: (a) 2011 Medical Report; (b) 2012 Defence Report; (c) First and Second Motions and confidential annexes; (d) UNDU medical staff reports filed by the Registry;³⁰ (e) transcript of the hearing of the MO dated 4 June 2013;³¹ (f) First and Second Decisions; (g) Appeal Decision; (h) Medical Reports; and (i) Prosecution and Defence Submissions.

B. Determination of Trial Sitting Schedule

14. The Chamber recalls that for the purpose of reviewing the trial sitting schedule in accordance with the Appeal Decision, it considered it appropriate to instruct medical examinations of Mr Mladić to provide: (a) an overall report of his medical condition by the same general medical practitioner, Dr El Banna, who compiled the 2011 Medical Report; and (b) a specific report, by a cardiologist and a neurologist, assessing the most serious risk referred to by the Defence which is the possibility of a stroke triggered by a TIA.³² The Order provided that the specific report should focus on the risk, if any, to Mr Mladić's health arising from a five-day sitting schedule (9.30 a.m. to 2.15 p.m.) including three breaks of 20 minutes "with particular regard to the potential onset of a TIA".³³

15. The Chamber observes that contrary to the Defence assertions the reports of cardiologist Dr Hollanders and neurologist Dr Cras adequately address and provide reasoned determination of the risk of Mr Mladić suffering a TIA and/or a cardiovascular or cerebrovascular accident ("CVA").³⁴ The report of Dr Hollanders notes that Mr Mladić's risk of a TIA/CVA is comparable to that of other men his age although intermittent atrial fibrillation and arterial hypertension in his case are aggravating risk factors.³⁵ Blood pressure spikes triggered by stress factors, among other things, can elevate that risk of TIA/CVA significantly above that of normotensive persons.³⁶ Dr Cras's report notes that Mr Mladić's risk of a new stroke does not differ substantially from the risk of other men his age with an identical risk profile.³⁷ In that regard, in Mr Mladić's case, both experts agree that

³⁰ Registrar's Submissions of Medical Report, filed confidentially on 2, 8, 12 April 2013; 1, 31 May 2013; 3, 10, 14, 20, 27 June 2013; 11, 19, 25 July 2013; 9, 15, 22, 23, 29 August 2013; 5, 9, 10, 19, 27 September 2013; 4, 10, 18, 25, 31 October 2013; 7, 14, 22, 29 November 2013; 6, 13, 19 December 2013; 16, 23, 31 January 2014; 6, 13, 21, 26 February 2014; 6 March 2014.

³¹ T. 12017-12073.

³² Order, paras 5-7.

³³ Order, para. 7.

³⁴ Medical Reports, Confidential Annex D, pp. 2, 8-10; Confidential Annex E, pp. 1-2, 9-11; Confidential Annex F, pp. 12-13.

³⁵ Medical Reports, Confidential Annex D, p. 9.

³⁶ Medical Reports, Confidential Annex D, pp. 2, 8-9.

³⁷ Medical Reports, Confidential Annex E, pp 9-10.

the most important risk factor for stroke is age.³⁸ While emotional stress and/or anxiety may aggravate the risk of stroke it is not comparable to other aggravating risk factors in his case, such as diabetes, intermittent atrial fibrillation and systolic hypertension.³⁹ Accordingly, both experts conclude that delaying or protracting the course of the trial would be disadvantageous to Mr Mladić's health.⁴⁰

16. The Defence submission that a further psychological examination of Mr Mladić is necessary, mirroring the 2012 Defence Report, to ascertain a specific risk of TIA/CVA, runs contrary to the findings made in the Medical Reports.⁴¹ First, each of the experts had regard to and consulted the 2012 Defence Report, as well as the extensive prior medical history documenting Mr Mladić's psychological state, when making their determination.⁴² Second, in making their determinations, and following a clear request by the Chamber to indicate additional areas of medical expertise which require attention, Dr Hollanders and Dr Cras confirmed that no additional expert evidence is required in making a medical determination of the issues relating to Mr Mladić's health.⁴³ Furthermore, the Defence appears to conflate the risk of Mr Mladić suffering a TIA/CVA with him being subject to emotional stress and/or anxiety as a result of the court hearings.⁴⁴ The Chamber considers in this respect that emotional stress and/or anxiety would overall not be significantly reduced by a sitting schedule of four days but just be spread over a longer period of time with an unchanged intensity of exposure during the sitting days bearing in mind the effect of protracting the trial to Mr Mladić's health given his advancing age. That the rigours of court can induce emotional stress and/or anxiety in any person is not in dispute. The concern of the Chamber and the parties is the risk that Mr Mladić might suffer adverse health consequences as a result of such emotional stress and/or anxiety; and this is a risk now adequately assessed by the Medical Reports, the experts having considered the totality of the medical information available to, and necessary for, them in making their determination.

17. Dr El Banna's findings are an important element of the Medical Reports, in particular, for ascertaining the overall medical condition of Mr Mladić but any specific consideration of TIA/CVA are notably absent and the findings were made without access to the reports of Dr Hollanders and Dr Cras. Notwithstanding the ambiguity in his concluding paragraphs, Dr El Banna appears to express a preference for a four-day sitting schedule based on "the current presence of the noted

³⁸ Medical Reports, Confidential Annex F, pp. 12-13.

³⁹ Medical Reports, Confidential Annex F, pp. 12-13.

⁴⁰ Medical Reports, Confidential Annex D, p. 10; Confidential Annex E, p. 11; Confidential Annex F, pp. 12-13.

⁴¹ Defence Submission, paras 11-17.

⁴² Medical Reports, Confidential Annex D, pp. 4-5; Confidential Annex E, pp. 3-4; Confidential Annex F, pp. 12-13.

⁴³ Order, Disposition; Medical Reports, Confidential Annex D, pp. 10, 13. The Defence is entitled to file a request for further examinations of Mr Mladić it considers appropriate.

cardiac irregularities” and with the implicit caveat that examinations by a cardiologist and a neurologist are planned.⁴⁵ The Chamber infers from this that Dr El Banna’s recommendation for a four-day sitting schedule is subject to an objective examination of Mr Mladić by a specialist cardiologist and neurologist.⁴⁶ Such an examination could confirm an absence of cardiac irregularities which would support Mr Mladić’s claim that he felt better than a year ago.⁴⁷

18. Previous medical opinions considering a four-day sitting schedule must be weighed against the most current Medical Reports. The Prosecution’s assertion that the absence of a recommendation for a sitting schedule of four days in the four UNDU medical staff reports filed immediately prior to 20 February 2014 is determinative of this issue, is unpersuasive given that there are currently no hearings in the case.⁴⁸ In addition, the UNDU medical staff report of 26 February 2014 reiterated support for a four-day sitting schedule.⁴⁹ The basis for such a recommendation was that the MO wished to “keep the condition of Mr Mladić as good as possible.”⁵⁰ No specific medical risk to Mr Mladić’s health was identified, neither were the findings of Dr Hollanders and Dr Cras in the Medical Reports, recommending that the trial not be delayed, addressed in any way. The Chamber notes that the UNDU medical staff report of 6 March 2014 did not make a recommendation as to the sitting schedule.⁵¹ The Chamber, nevertheless, gives appropriate weight to the recommendations, where they appear, in all the UNDU medical staff reports and the reasoning provided therein in light of the findings in the Medical Reports. Similarly, the Defence assertion that a determination be made by heavily weighing the opinion of Dr El Banna, the 2012 Defence Report and the Appeal Decision over the views of Dr Hollanders and Dr Cras is unpersuasive.⁵² Judicial discretion is exercised by giving due weight to all relevant considerations in light of all the facts and the law. If anything, it would be reasonable for the Chamber to place more emphasis on expert medical opinion where the specific expert was opining on an area squarely falling within his or her field of expertise.

19. The Chamber reiterates that the findings of Dr Hollanders and Dr Cras were clear that while emotional stress and/or anxiety may aggravate the risk of stroke it is not comparable to other serious aggravating risk factors in Mr Mladić’s case, such as diabetes, intermittent atrial fibrillation

⁴⁴ Defence Submission, paras 13-17.

⁴⁵ Medical Reports, Confidential Annex B, p. 7.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Prosecution Submission, para. 6.

⁴⁹ Registrar's Submission of Medical Report, 26 February 2014 (Confidential), Confidential Annex, p. 1.

⁵⁰ *Ibid.*

⁵¹ Registrar's Submission of Medical Report, 6 March 2014 (Confidential), Confidential Annex, p. 1.

⁵² Defence Submission, paras 8-9, 11-17.

and systolic hypertension.⁵³ Delaying or protracting the course of the trial, therefore, would be disadvantageous to Mr Mladić's health given that the likelihood of any further delay increases the chances of stroke due to the presence of those serious aggravating risk factors as well as his increasing age.⁵⁴ In respect of factors which may cause Mr Mladić emotional stress and/or anxiety, such as the examination of witnesses at court hearings, contrary to the Defence submissions, whether the Chamber adopts a four or five-day trial sitting schedule is neither a decisive nor a determining factor to his risk of suffering a TIA/CVA.

20. Given the findings of the Medical Reports, the Chamber considers that a five-day trial sitting schedule from 9.30 a.m. to 2.15 p.m. including three breaks of 20 minutes is warranted for the Defence case, if any, subject to the continued close monitoring of Mr Mladić's health by the MO and regular appraisals of the trial sitting schedule in light of changes, if any, in the health of Mr Mladić. In pursuance of this regular appraisal, the Chamber will instruct the Registry to have medical examinations of Mr Mladić conducted at least every four months from the beginning of the Defence case, if any, preferably by Dr Hollanders and Dr Cras assessing the same risks and related questions as set out in paragraph 7 of the Order and to furnish the Chamber with their updated individual reports. The medical examinations would be timed to coincide, where possible, with the hearings for the Defence case, if any, so that Mr Mladić is assessed during a period in which the impact of the hearings on his health could be properly gauged. The Chamber will also instruct the Registry to continue to provide it with the regular UNDU medical staff reports. The Chamber, in addition, leaves open the possibility to ask further questions of the experts should changes occur in the health of Mr Mladić.

21. The Chamber considers that given the clarity of the findings of Dr Hollanders and Dr Cras, as set out above, further questions or clarification, as requested by the Defence, are at this stage neither necessary nor helpful.

V. DISPOSITION

22. For the foregoing reasons, pursuant to Article 20 of the Statute, Rule 54 and Rule 74 *bis* of the Rules, the Chamber

ORDERS a five-day sitting schedule for the Defence case if any;

⁵³ Medical Reports, Confidential Annex F, pp. 12-13.

⁵⁴ Medical Reports, Confidential Annex D, p. 10; Confidential Annex E, p. 11; Confidential Annex F, pp. 12-13.

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INSTRUCTS the Registry to arrange for the medical examination of Mr Mladić preferably by Dr Geert Hollanders and Dr Patrick Cras (“Experts”) on an ongoing basis at least every four months starting from the date of the filing of this decision and to give them access to this decision as well as the documents listed in paragraph 12 of this decision;⁵⁵

INSTRUCTS the Experts to submit their updated individual reports to the Registry and to clearly indicate in their reports should they come across any matter which is not within their expertise;

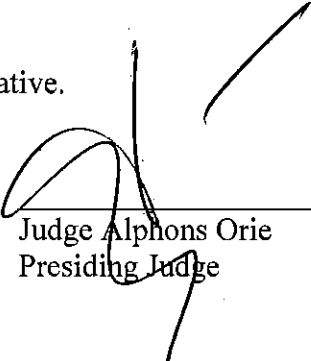
ORDERS the Registry to file the reports of the Experts confidentially as soon as they are submitted;

INVITES the parties and the Registry to indicate within seven (7) days of the filing of the present decision what, if any, portions thereof should remain confidential;

ORDERS the Registry, if no submissions are filed in a timely manner pursuant to the invitation above, to lift the confidentiality of the present decision in its entirety; and

INSTRUCTS the Registry to continue providing the Chamber with the UNDU medical staff reports.

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



Judge Alphons Orie
Presiding Judge

Dated this fourteenth day of March 2014
At The Hague
The Netherlands

[Seal of the Tribunal]

⁵⁵ The Chamber clarifies that the first such medical examination should be conducted no later than 27 June 2014.