

**UNITED
NATIONS**

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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-04-75-T
Date: 16 January 2015
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Decision: 16 January 2015

PROSECUTOR

v.

GORAN HADŽIĆ

CONFIDENTIAL

**DECISION ON PROSECUTION REQUEST FOR A MEDICAL EXAMINATION
OF THE ACCUSED PURSUANT TO RULES 54 AND 74 *BIS***

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for Goran Hadžić:

Mr. Zoran Živanović

Mr. Christopher Gosnell

TRIAL CHAMBER II of the 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 (“Trial Chamber” and “Tribunal”, respectively);

BEING SEISED OF the “Prosecution’s Request for a Medical Examination of the Accused Pursuant to Rules 54 and 74 *bis*”, filed confidentially on 17 December 2014 (“Motion”);

NOTING the “Response to Prosecution Request for a Medical Examination of the Accused”, filed confidentially by the Defence on 31 December 2014 (“Response”);

NOTING the “Deputy Registrar’s Submission Regarding Prosecution Request for a Medical Examination of the Accused”, filed confidentially on 5 January 2015 (“Deputy Registrar’s Submission”);

NOTING the “Prosecution’s Consolidated Request for Leave to Reply and Reply to Defence Response and Deputy Registrar’s Submission Regarding Prosecution’s Request for a Medical Examination of the Accused Pursuant to Rules 54 and 74 *bis*”, filed confidentially on 7 January 2015 (“Reply”);

NOTING that hearings have been suspended since 20 October 2014 as a result of Hadžić’s inability to attend due to his health;¹

NOTING that Hadžić has not waived his right to be present at trial;²

NOTING that the Deputy Registrar has filed a series of medical reports prepared by the Reporting Medical Officer of the United Nations Detention Unit (“RMO” and “UNDU”, respectively) to update the Trial Chamber and the parties on developments related to Hadžić’s medical situation;³

¹ Email from the Trial Chamber to the Parties and the Registry, 17 October 2014.

² Email from the Defence to the Prosecution and the Trial Chamber, 21 October 2014; Notice in Compliance with Trial Chamber Order, 12 December 2014 (confidential), para. 2.

³ “Update Health condition of Mr. Goran Hadžić”, dated 26 November 2014, appended to the Deputy Registrar’s Submission of a Medical Report, 26 November 2014 (confidential) (“26 November Medical Report”); “Update Health condition of Mr. Goran Hadžić”, dated 3 December 2014, appended to the Deputy Registrar’s Submission of Medical Report, 5 December 2014 (confidential) (“3 December Medical Report”); “Update Health condition of Mr. Goran Hadžić”, dated 10 December 2014, appended to the Deputy Registrar’s Submission of Medical Report, 11 December 2014 (confidential) (“10 December Medical Report”); “Update Health condition of Mr. Goran Hadžić”, dated 17 December 2014, appended to the Deputy Registrar’s Submission of Medical Report, 18 December 2014 (confidential) (“17 December Medical Report”); “Update Health condition of Mr. Goran Hadžić”, dated 7 January 2015, appended to the Deputy Registrar’s Submission of Medical Report, 8 January 2015 (confidential) (“7 January Medical Report”); “Update Health condition of Mr. Goran Hadžić”, dated 14 January 2015, appended to the Deputy Registrar’s Submission of Medical Report, 15 January 2015 (confidential) (“14 January Medical Report”).

NOTING that Hadžić has been diagnosed with a glioblastoma multiforme brain tumour and that the RMO states that “[w]hilst each case is individual, the prognosis for this type of tumour is poor, with a median survival rate of 12 months”;⁴

NOTING that Hadžić has begun a 16 week treatment plan (“Treatment Plan”) comprised of: (i) six weeks of daily radiotherapy and chemotherapy treatments which will continue until the end of January (“Combined Therapy”); (ii) four weeks of recuperation in February; and (iii) six weeks of chemotherapy;⁵

NOTING that Hadžić’s Combined Therapy began the week of 15 December 2014 and that he has been following his treatment as planned;⁶

NOTING that the RMO states that Hadžić “will be unable to attend the Court at least until the beginning of February 2015” at which point “his ability to attend the Court and to participate in the trial” will be reassessed;⁷

NOTING that, in the Motion, the Prosecution requests that the Trial Chamber order the Registry to appoint two experts, Hadžić’s treating neurosurgeon and an independent expert, to examine the Accused and to provide detailed medical reports;⁸

NOTING that the Prosecution submits that expert medical evaluations of Hadžić’s health condition and ability to be present are necessary in order for the Trial Chamber and the parties to assess to what extent and under what conditions trial proceedings may continue;⁹

NOTING that the Prosecution submits that in the reports the experts should address: (a) Hadžić’s current health condition; (b) Hadžić’s ability to attend full-time trial proceedings in the near or medium-term future, considering the nature and frequency of his treatment plan; (c) Hadžić’s ability to attend trial in the near or medium-term future, on the basis of a modified trial schedule, considering the nature and frequency of his treatment plan; (d) whether Hadžić’s health condition and wish to be present at trial may be accommodated by other means, in particular through the use

⁴ 26 November Medical Report, p. 1.

⁵ 26 November Medical Report, p. 1.

⁶ 17 December Medical Report; 7 January Medical Report; 14 January Medical Report.

⁷ 26 November Medical Report, p. 2. *See also* 3 December Medical Report; 10 December Medical Report; 17 December Medical Report; 7 January Medical Report; 14 January Medical Report.

⁸ Motion, paras 1, 13.

⁹ Motion, para. 11; Reply, para. 3.

of a video-conference link, with the means to immediately communicate with Counsel, set up in the UNDU; and (e) other matters deemed appropriate by the Trial Chamber;¹⁰

NOTING that the Defence submits that no additional examinations are warranted or justified as the RMO already performs the role that the Prosecution seeks to have performed by outside experts;¹¹

NOTING that the Defence submits that the Prosecution has failed to show that the RMO and the Medical Officer (“MO”), who have relied on “an expert team of specialists in offering very detailed descriptions of [...] Hadžić’s current condition, his treatment plan, and his life expectancy”, have not properly assessed and reported Hadžić’s ability to attend trial;¹²

NOTING the Deputy Registrar’s request not to appoint Hadžić’s treating neurosurgeon, who is part of the team that has provided the current prognosis, as an expert under Rule 74 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”) in order to maintain clarity, and in accordance with common practice that such experts be independent from the treating team;¹³

NOTING that according to the Deputy Registrar, the MO advises that any additional medical examination be deferred at least until the end of January, when Hadžić’s Combined Therapy is expected to end;¹⁴

NOTING that, in the Reply, the Prosecution submits that it is not seeking to supplement or usurp the RMO’s role in providing the Trial Chamber with regular reports on the state of Hadžić’s health and the progress of the Treatment Plan; rather, it is seeking the appointment of two experts to address the discrete issues enumerated in the Motion before the beginning of February;¹⁵

NOTING that, in response to the Deputy Registrar’s concern regarding the appointment of Hadžić’s treating neurosurgeon, the Prosecution amends its request to that of two independent non-treating experts;¹⁶

NOTING that the Prosecution agrees with deferring any medical examinations to be carried out by the independent experts until the end of January, but suggests that, to facilitate the submission of

¹⁰ Motion, para. 13.

¹¹ Response, paras 1, 8.

¹² Response, para. 9.

¹³ Deputy Registrar’s Submission, para. 5.

¹⁴ Deputy Registrar’s Submission, para. 4.

¹⁵ Reply, para. 10.

¹⁶ Reply, para. 11.

reports by the beginning of February, the independent experts can be appointed and can familiarise themselves with Hadžić's medical records before that time;¹⁷

CONSIDERING that, pursuant to Article 20(1) of the Statute of the Tribunal, "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;"

CONSIDERING that, pursuant to Rule 74 *bis* of the Rules, "[a] Trial Chamber may, *proprio motu* or at the request of a party, order a medical, psychiatric or psychological examination of the accused";

FINDING that it is in the interest of the fair and expeditious administration of justice for the Trial Chamber to receive, as soon as practicable, expert information on Hadžić's capacity to attend and participate in trial proceedings;

FOR THE FOREGOING REASONS, the Trial Chamber, pursuant to Rules 33(B), 54, 74 *bis*, and 126 *bis* of the Rules hereby:

GRANTS the Prosecution leave to file the Reply;

GRANTS the Motion, in part;

A. **ORDERS** the Registry to appoint an independent neurologist and an independent neuro-oncologist ("Experts") who will each examine Hadžić and submit, no later than 13 February 2015, detailed written reports providing answers to the following questions:

1. What is Hadžić's current state of health?
2. Will Hadžić have the capacity to physically attend and participate in trial proceedings for a period of four months either during or after the Treatment Plan:
 - (a) five days per week, sitting three 90-minute sessions with two 30 minute breaks, for a total of approximately five hours of hearings per day?
 - (b) four days per week, sitting three 90-minute sessions with two 30 minute breaks, for a total of approximately five hours of hearings per day?

¹⁷ Reply, para. 11.

(c) or, if neither (a) nor (b) are possible, with a schedule modified to accommodate his capacity? Please detail any modifications you may recommend, which may include but are not limited to: sitting fewer days per week, sitting fewer hours per day, taking additional or longer breaks, or not sitting on consecutive days;

3. Would physically attending and participating in trial proceedings be detrimental to Hadžić's health or the Treatment Plan?

4. If Hadžić is incapable of physically attending proceedings at the Tribunal, would he have the capacity to participate via video-conference link set up in the UNDU? Please detail his capacity to participate via video-conference link:

(a) on an ad hoc basis, to be used in conjunction with the options set out in (2)(a)-(c) above;

(b) as an alternative to the options set out in (2)(a)-(c) above;

B. **ORDERS** the Experts not to disclose this information to any third party;

C. **INSTRUCTS** the Registry to make available to the Experts, without undue delay, Hadžić's medical records as necessary to prepare the written report;


D. **INVITES** the RMO to prepare a medical report, in consultation with the multi-disciplinary team of doctors treating Hadžić, answering the questions enumerated in (A)(2) through (A)(4) above; and

E. **ORDERS** the Registry to submit the report prepared by the RMO, if any, as soon as practicable.

DENIES the Motion in all other respects.

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

Done this sixteenth day of January 2015,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]