

UNITED
NATIONS



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: 19 April 2016
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision: 19 April 2016

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON REQUEST FOR RECONSIDERATION OF DECISION
CONTINUING PROHIBITION OF SOCIAL CONTACTS DURING
PROVISIONAL RELEASE**

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 (“Chamber” and “Tribunal”, respectively);

RECALLING that on 24 March 2016, the Chamber confidentially issued its “Decision on Remand on the Continuation of Proceedings” (“Decision”),¹ in which it, *inter alia*, ordered that “the terms and conditions of provisional release, as previously set out, remain in effect”;²

RECALLING that the Chamber has ordered that during his provisional release, Hadžić shall have no contact whatsoever with individuals listed as witnesses in this case;³

BEING SEISED OF the “Request for Reconsideration or, in the alternative, Leave to Appeal Decision Continuing Prohibition of Social Contacts During Provisional Release”, filed by the Defence on 31 March 2016 (“Motion”), in which the Defence requests that the Chamber reconsider, or in the alternative grant leave to appeal, the Decision “insofar as it continues, without variation, the existing terms of provisional release” prohibiting contact between Hadžić and Defence witnesses DGH-009, DGH-010, DGH-011, DGH-016, DGH-045, and DGH-099;⁴

NOTING the Defence submission that the “Decision does not expressly address why the Trial Chamber maintained these restrictions in respect of the six individuals” and that “[t]he absence of express reasoning [...] may reflect an expectation that the Defence would bring another motion on the issue, in which case a standard lower than reconsideration should apply for modification of the *status quo*”;⁵

NOTING the Defence submissions that (a) Hadžić’s health condition renders him “unfit to manipulate the potential testimony of witnesses”;⁶ (b) there is no practical prospect that the trial in these proceedings will resume;⁷ (c) interference with Hadžić’s “fundamental right to contacts with whomever he wishes” is only justified when it is “necessary and proportionate in respect of a compelling purpose”;⁸ (d) “[t]he measures are no longer necessary in light of the practical

¹ See also Public Redacted Version of 24 March 2016 Decision on Remand on the Continuation of Proceedings, 5 April 2016.

² Decision, para. 31, *internal citations omitted*.

³ Decision on Motion to Modify Terms of Provisional Release, 15 December 2015 (“15 December 2015 Decision”), pp. 4, 5; Decision on Urgent Request for Reconsideration of Decision on Motion to Modify Terms of Provisional Release (confidential), 24 August 2015, p. 2; Decision on Motion to Modify Terms of Provisional Release (confidential), 16 July 2015, para. 9; Decision on Urgent Motion for Provisional Release Filed on 28 April 2015, 21 May 2015, para. 36(5)(f).

⁴ Motion, paras 1, 10, 15-16, 17.

⁵ Motion, para. 10.

⁶ Motion, para. 11.

⁷ Motion, para. 12.

⁸ Motion, para. 13, *citing* European Convention on Human Rights, Art. 11. See also Motion, para. 9.

elimination of any chance that trial could resume, and no longer proportionate in light of Mr. Hadžić's deteriorating condition";⁹ and (e) not allowing the requested social contact at this time "will mean that [Hadžić] will not be able to see these individuals before his death";¹⁰

NOTING the "Prosecution Response to Request for Reconsideration, or in the alternative, Leave to Appeal Decision Continuing Prohibition of Social Contacts During Provisional Release", filed confidentially on 14 April 2016 ("Response"), in which it opposes the Motion,¹¹ asserting that (a) the Chamber has already denied Hadžić's requests for social contact with the enumerated witnesses and Hadžić "fails to show any compelling reason for the Chamber to reconsider its position";¹² (b) the non-contact order is a standard condition of provisional release;¹³ (c) proceedings in this case have not been terminated and, therefore, the prohibition is necessary to "preserve the integrity of the proceedings, prevent interference with the administration of justice, and, in particular, to protect the interests of the victims";¹⁴ and (d) the alternative request for certification is procedurally improper and fails to meet the requirements of Rule 73(B) of the Rules;¹⁵

RECALLING that on 15 December 2015, the Chamber denied, *without prejudice*, a Defence request to modify the conditions of provisional release to permit Hadžić to have social contact with the same six witnesses listed in the Motion¹⁶ and that, therefore, the Chamber left open the possibility for the Defence to request this modification without the need to seek reconsideration;

CONSIDERING, therefore, that reconsideration is not the legal standard to be applied to the Defence's underlying request to modify the conditions of provisional release to permit Hadžić to have social contact with DGH-009, DGH-010, DGH-011, DGH-016, DGH-045, and DGH-099;

CONSIDERING that, based on the most recent medical reports which indicate that Hadžić's medical condition is deteriorating,¹⁷ the Chamber, Judge Antoine Kesia-Mbe Mindua dissenting,

⁹ Motion, para. 13.

¹⁰ Motion, para. 1.

¹¹ Response, para. 1.

¹² Response, para. 2.

¹³ Response, para. 2.

¹⁴ Response, para. 2.

¹⁵ Response, para. 3.

¹⁶ 15 December 2015 Decision, p. 4.

¹⁷ Deputy Registrar's Submission of Medical Report (confidential), 18 March 2016, confidential Annex; Registrar's Submission of Medical Report (confidential), 3 March 2016, confidential Annex; Deputy Registrar's Submission of Medical Reports (confidential), 22 February 2016, confidential Annexes; Deputy Registrar's Submission of Medical Report (confidential), 5 February 2016, confidential Annex; Deputy Registrar's Submission of Medical Report (confidential), 22 January 2016, confidential Annex. *See also* Decision, para. 29.

has declared that Hadžić is currently unfit to stand trial and ordered the present proceedings stayed indefinitely,¹⁸ and that this decision has not been appealed;

CONSIDERING that under the present circumstances, prohibiting social contact by Hadžić with the six enumerated witnesses is not necessary in order to safeguard the integrity of the proceedings and the administration of justice;

CONSIDERING, therefore, that it is in the interest of justice to modify the conditions of provisional release so as to no longer prevent Hadžić from having social contact with DGH-009, DGH-010, DGH-011, DGH-016, DGH-045, and DGH-099;

PURSUANT to Rules 54 and 65 of the Rules, hereby:

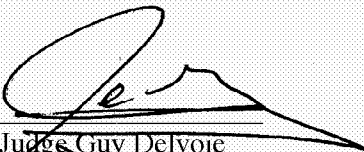
GRANTS the Motion and **ORDERS** that the conditions of provisional release as previously set out shall be modified so as to allow Hadžić to have social contact with witnesses DGH-009, DGH-010, DGH-011, DGH-016, DGH-045, and DGH-099;

ORDERS that all other terms and conditions of provisional release, as previously set out,¹⁹ remain in effect; and

EMPHASIZES that Hadžić shall not discuss his case with anyone—including DGH-009, DGH-010, DGH-011, DGH-016, DGH-045, and DGH-099—other than his counsel.

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

Done this nineteenth day of April 2016,
At The Hague,
The Netherlands.



Judge Guy Delvoire
Presiding

[Seal of the Tribunal]

¹⁸ Decision, para. 31.

¹⁹ Consolidated Decision on the Continuation of Proceedings, 26 October 2015, para. 69(f); Decision on Fourth Request for Modification of Mr. Hadžić's Address While on Provisional Release (confidential), 8 October 2015; Decision on Request for Minor Modification to Terms of Provisional Release (confidential), 18 August 2015; Decision on Urgent Motion for Provisional Release Filed on 28 April 2015, 21 May 2015, paras 35-36.