



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: 20 October 2017
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 20 October 2017

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON URGENT DEFENCE MOTION TO COMPEL
REGISTRAR AND UNITED NATIONS DETENTION UNIT TO
PROVIDE MEDICAL RECORDS**

Office of the Prosecutor
Mr Peter McCloskey

Counsel for Ratko Mladić
Mr Branko Lukić
Mr Dragan Ivetić

TRIAL CHAMBER I 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”);

NOTING the Defence’s urgent motion to compel the Registrar and United Nations Detention Unit (“UNDU”) staff to provide medical records of the Accused, filed on 27 September 2017 (“Motion”), wherein it requests issuance of (i) a binding order to compel UNDU staff to provide all medical records, or (ii) a decision to hold UNDU staff in contempt of court;¹

NOTING the Registrar’s submission filed on 2 October 2017, that the Accused has been provided with all requested medical records;²

NOTING the Defence’s additional submission filed on 9 October 2017 challenging representations made by the Registrar (“Additional Submission”);³

NOTING that the Defence filed the Motion and the Additional Submission before the President, the Chamber, and the Registrar “given the various restructuring of the ICTY/MICT and the lack of transparency to the Defence of whom UNDU’s [Commanding Officer] or Medical Officer report to”;⁴

NOTING that the UNDU staff is part of the Tribunal’s Registry, headed by the Registrar;⁵

NOTING that it is settled Tribunal jurisprudence that administrative decisions by the Registrar may be judicially reviewed by the President of the Tribunal;⁶

CONSIDERING that the provision of an accused’s medical documents falls within the purview of administrative decisions to be taken by the Registrar;

CONSIDERING that the Defence’s claim that there is a lack of transparency in respect of whom UNDU staff report to is unsubstantiated;

FOR THE FOREGOING REASONS

¹ Urgent Motion to Compel Registrar and United Nations Detention Unit to Provide Medical Records, 27 September 2017 (Confidential), paras 12, 18, 20.

² Registrar’s Submission in Relation to Defence Motion on the Provision of Medical Records, 2 October 2017, paras 2, 6-20.

³ Additional Submission in Support of Urgent Motion to Compel Registrar and United Nations Detention Unit to Provide Medical Records, paras 5-16.

⁴ Motion, para. 11.

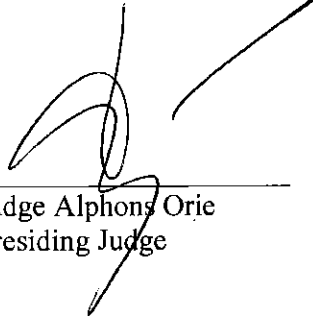
⁵ Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or otherwise Detained on the Authority of the Tribunal, Rev. 10, 15 November 2016, Preamble, Rule 2.

⁶ See *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Decision on Request for Review of Decision on Defence Team Funding, 31 January 2012, paras 6-7 and references cited therein. To the extent that assuming jurisdiction *proprio motu* under the Chamber’s inherent power to ensure that proceedings are fair would be considered, the Chamber notes that such action is only permissible once all available remedies have been exhausted, see *Prosecutor v. Šešelj*, Case No. IT-03-67-T

DECIDES that it is not the competent authority to address the Defence's primary request for issuance of a binding order to UNDU staff and, as a result, that it is premature to consider the secondary request regarding initiating contempt proceedings; and

DISMISSES the Motion to the extent it is before the Chamber.

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



Judge Alphons Orie
Presiding Judge

Dated this twentieth day of October 2017
At The Hague
The Netherlands

[Seal of the Tribunal]

(Appeals Chamber), Decision on the Registry Submission Pursuant to Rule 33(B) Following the President's Decision of 17 December 2008, 9 April 2009, paras 20-21.