



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: 10 November 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: 10 November 2017

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

DECISION ON URGENT DEFENCE MOTIONS

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 and “Tribunal”, respectively);

BEING SEISED of the Defence’s (i) third submission in support of its urgent motion on the provision of the Accused’s medical records and its motion to vacate the date of delivery of the trial judgment and enter a stay of proceedings, filed on 30 October 2017 and supplemented on 3 November 2017 (“First Motion”);¹ (ii) urgent motion requesting a hearing to decide on pending matters and an order of contempt against a UNDU Medical Officer, or, in the alternative, *inter alia*, a hearing for him to show cause as to why he should not be held in contempt of court, filed on 6 November 2017 (“Second Motion”);² and (iii) motion for a binding order to be issued against the Registry of the Tribunal and to enjoin it from further obstruction with regard to Defence public filings (“Third Motion” and the three Defence motions and the Supplement collectively referred to as “Urgent Defence Motions”).³

NOTING the Prosecution’s response to the First Motion, filed on 2 November 2017;⁴

NOTING the Registrar’s submission in relation to the First Motion filed before the President of the Tribunal on 3 November 2017 (“Registrar’s Submission”);⁵

NOTING the Prosecution’s response to the Second Motion, filed on 9 November 2017;⁶

NOTING the Defence’s response to the Registrar’s Submission, filed on 9 November 2017;⁷

¹ Third Additional Submission in Support of Urgent Motion to Compel Registrar and United Nations Detention Unit to Compel Registrar and United Nations Detention Unit to Provide Medical Records; and Motion to Vacate Judgment, 30 October 2017 (Public with Confidential Annexes A and B); Supplement to Third Additional Submission in Support of Urgent Motion to Compel Registrar and United Nations Detention Unit to Compel Registrar and United Nations Detention Unit to Provide Medical Records; and Motion to Vacate Judgment, 3 November 2017 (Public with Confidential Annexes A and B) (“Supplement”).

² Urgent Motion for a Hearing to Decide on Pending Urgent Filings and for Issuance of an Order of Contempt or Hearing upon Issuance of a Rule to Show Cause Against UNDU Medical Officer ([...]), 6 November 2017.

³ Motion for a Binding Order to be Issued Against CMSS and the Registry to Enjoin them from Further Obstruction with Defence Public Filings, 9 November 2017 (Public with Confidential Annexes A and B).

⁴ Prosecution Response to Defence Motion to Vacate Judgement Date, 2 November 2017 (Public with Confidential Annex A).

⁵ Second Registry Submission in Relation to Defence Motion on the Provision of Medical Records, 3 November 2017 (Public with Confidential Annex).

⁶ Prosecution Response to Defence Urgent Motion for a Hearing to Decide on Pending Urgent Filings and for Issuance of an Order of Contempt or Hearing Upon Issuance of a Rule to Show Cause Against UNDU Medical Officer, 9 November 2017.

⁷ Response to “Second Registry Submission in Relation to Defence Motion on the Provision of Medical Records”, 9 November 2017. The Chamber notes that the relief sought in this filing is generally repetitive and subject to the same limitations in respect of the Chamber’s competence as some of the relief sought in the First Motion and the Second Motion.

NOTING the Registrar's submission in response to the Defence's filing of 9 November 2017, filed also on 9 November 2017;⁸

NOTING the Prosecution's response to the Third Motion, filed on 10 November 2017;⁹

NOTING the Chamber's decision of 20 October 2017 in which it dismissed the Defence's original motion on the provision of the Accused's medical records on jurisdictional grounds;¹⁰

NOTING the Chamber's decision of 23 October 2017 in which it dismissed the Defence's second submission in support of its original motion on jurisdictional grounds;¹¹

NOTING that the Defence also in its First Motion and Third Motion makes requests which do not fall within the Chamber's competence;

NOTING that in relation to its request to vacate the date for the trial judgment, the Defence submits that according to a Serbian doctor engaged by the Defence to review the Accused's MRI results, the Accused's health has deteriorated;¹²

NOTING that Article 4 (2) of the Transitional Arrangements attached to the United Nations Security Council resolution which established the Mechanism for International Criminal Tribunals ("Mechanism") states that "[t]he Mechanism shall have competence to conduct, and complete, all proceedings for contempt of court and false testimony for which the indictment is confirmed on or after the commencement date of the respective branch of the Mechanism";

CONSIDERING that with regard to the First Motion, the Defence submission in relation to the deterioration of the Accused's health is based on the opinion of a medical practitioner who has not personally examined the Accused;

CONSIDERING that recent reports, including a report submitted after the Defence's concerns had been voiced, from independent medical experts and the UNDU medical staff who have monitored

⁸ Third Registry Submission in Relation to Defence Motion on the Provision of Medical Records, 9 November 2017.

⁹ Prosecution Response to Defence Motion for a Binding Order to be Issued Against CMSS and the Registry to Enjoin them from Further Objection with Defence Public Filings, 10 November 2017.

¹⁰ Decision on Urgent Defence Motion to Compel Registrar and United Nations Detention Unit to Provide Medical Records, 20 October 2017.

¹¹ Decision on Second Additional Submission in Support of Urgent Defence Motion to Compel Registrar and United Nations Detention Unit to Provide Medical Records, 23 October 2017.

¹² First Motion, para. 21; Supplement, paras 6-7, 9.

the health of the Accused over an extensive period of time, show that the Accused's health has remained stable;¹³

FINDING that the Defence has failed to demonstrate that the Accused's health warrants cancellation of the scheduled delivery of the trial judgment and the issuance of a stay of proceedings;

FINDING under the present circumstances that the Mechanism is the appropriate forum to determine whether there are reasons to believe that individuals may have committed contempt of court;

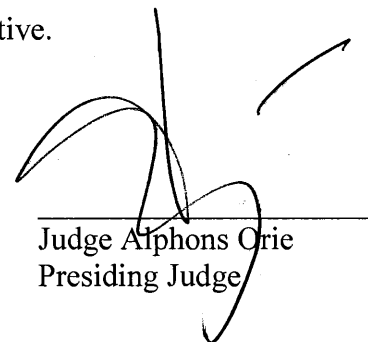
CONSIDERING that the basis for the Defence's request in the Second Motion for a hearing is *inter alia* 'to decide on pending matters';

FINDING that following this decision there is nothing pending before the Chamber in relation to matters covered in the Urgent Defence Motions;

FOR THE FOREGOING REASONS

DISMISSES the Urgent Defence Motions.

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



Judge Alphons Orie
Presiding Judge

Dated this tenth day of November 2017
At The Hague
The Netherlands

[Seal of the Tribunal]

¹³ See e.g., Deputy Registrar's Submission of Independent Expert's Medical Report, 10 October 2017 (Confidential); Deputy Registrar's Submission of Medical Report, 12 October 2017 (Confidential); Annex to Registrar's Submission, 3 November 2017 (Confidential).