

**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-09-92-T  
Date: 13 November 2017  
Original: English

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**THE PRESIDENT OF THE TRIBUNAL**

**Before: Judge Carmel Agius, President**

**Registrar: Mr. John Hocking**

**Decision of: 13 November 2017**

**PROSECUTOR**

**v.**

**RATKO MLADIĆ**

**PUBLIC**

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**DECISION ON THREE DEFENCE MOTIONS**

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**The Office of the Prosecutor:**

Mr. Peter McCloskey

**Counsel for the Accused:**

Mr. Branko Lukić

Mr. Dragan Ivetić

1. I, Carmel Agius, President 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 (“President” and “Tribunal”, respectively), am seised of the “Urgent Motion to Compel Registrar and United Nations Detention Unit to Provide Medical Records”, filed by Ratko Mladić (“Mladić”) on 27 September 2017 (“Defence First Motion”), as well as the “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 (Dr. Paulus Falke- Ranking UN Medical Officer)” filed by Mladić on 6 November 2017 (“Defence Second Motion”), and the “Motion for a Binding Order To Be Issued Against CMSS and the Registry to Enjoin Them From Further Obstruction with Defence Public Filings”) filed by Mladić on 9 November 2017 (“Defence Third Motion”).

## I. PROCEDURAL HISTORY

2. On 27 September 2017, Mladić filed the Defence First Motion. Mladić requests a binding order to compel staff members of the United Nations Detention Unit (“UNDU”) to deliver all medical records of Mladić to his Defence Counsel pursuant to Rule 34 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal<sup>1</sup> and paragraph 2 of the Guidelines for Detainees or Their Defence Counsel on Obtaining Medical Information from the Medical Service of the UNDU<sup>2</sup> (“First Request”), or that they will be held in contempt pursuant to Rule 77(A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”).<sup>3</sup> In the alternative, Mladić asks that the President waive the immunity of the ICTY “to allow the filing of a medical malpractice claim [...] in another forum”.<sup>4</sup> Mladić submits that he filed this motion simultaneously before the President, Trial Chamber I of the Tribunal (“Trial Chamber”), and the Registrar due to “the various restructuring of the ICTY/MICT [International Residual Mechanism for Criminal Tribunals] and the lack of transparency to the Defence of whom UNDU’s [Commanding Officer] or Medical Officer [r]eport to”.<sup>5</sup>

3. On 2 October 2017, the Registrar filed the “Registrar’s Submission in Relation to Defence Motion on the Provision of Medical Records” (“Registry First Submission”), whereby the Registrar

<sup>1</sup> Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal, IT/38/Rev. 10, 15 November 2016 (“Rules of Detention”).

<sup>2</sup> Guidelines for Detainees or Their Defence Counsel on Obtaining Medical Information from the Medical Service of the United Nations Detention Unit, 24 January 2011 (“Medical Guidelines”).

<sup>3</sup> Defence First Motion, paras. 12, 19, p. 9. See Defence First Motion, para. 12. Mladić filed a public redacted version of the Defence First Motion on 28 September 2017.

<sup>4</sup> Defence First Motion, para. 19. See Defence First Motion, para. 12. Mladić filed a public redacted version of the Defence First Motion on 28 September 2017.

informed me and the Trial Chamber that Mladić has been provided with all requested medical records.<sup>6</sup>

4. On 9 October 2017, Mladić filed an “Additional Submission in Support of Urgent Motion to Compel Registrar and United Nations Detention Unit to Provide Medical Records” (“Defence First Additional Submission”), responding to the Registry First Submission. Mladić reiterates his request for relief from the Defence First Motion and suggests that the Registrar’s role in the Registry First Submission should also be considered in assessing whether an order for contempt would be appropriate.<sup>7</sup>

5. On 20 October 2017, the Trial Chamber rendered its “Decision on Urgent Defence Motion to Compel Registrar and United Nations Detention Unit to Provide Medical Records” (“20 October 2017 Decision”), whereby it dismissed the Defence First Motion to the extent it is before the Trial Chamber. It decided, *inter alia*, that it is not the competent authority to address Mladić’s primary request for issuance of a binding order to UNDU staff.<sup>8</sup> It also considered Mladić’s claim, that there is a lack of transparency to whom UNDU staff report, to be unsubstantiated.<sup>9</sup>

6. On the same day, 20 October 2017, Mladić filed a “Second Additional Submission in Support of Urgent Motion to Compel Registrar and United Nations Detention Unit to Provide Medical Records” (“Defence Second Additional Submission”), whereby he amended his relief sought. In addition to the relief requested in the Defence First Motion and the Defence First Additional Submission, he seeks a binding order to compel the UNDU staff, within one business day of the filing of the Defence Second Additional Submission, to schedule and authorise a two-day medical visit requested pursuant to Rule 31 of the Rules of Detention. He requests that this visit take place in the last seven calendar days of October or no later than three weeks before the pronouncement of the trial judgement in his case (“Second Request”).<sup>10</sup>

7. On 23 October 2017, the Trial Chamber rendered its “Decision on Second Additional Submission in Support of Urgent Defence Motion to Compel Registrar and United Nations

<sup>5</sup> Defence First Motion, para. 11.

<sup>6</sup> Registry First Submission, para. 2.

<sup>7</sup> Defence First Additional Submission, p. 10.

<sup>8</sup> 20 October 2017 Decision, p. 2. I note that Mladić did not file a request pursuant to Rule 73(C) of the Rules for certification to appeal the 20 October 2017 Decision.

<sup>9</sup> 20 October 2017 Decision, p. 1. The Trial Chamber noted, *inter alia*, that: (i) UNDU staff is part of the Tribunal’s Registry, headed by the Registrar; and (ii) it is settled jurisprudence that administrative decisions by the Registrar may be judicially reviewed by the President (20 October 2017 Decision, p. 1).

<sup>10</sup> Defence Second Additional Submission, para. 7, p. 5. On 20 October 2017, Mladić also filed a “Corrigendum to Second Additional Submission in Support of Urgent Motion to Compel Registrar and United Nations Detention Unit to



Detention Unit to Provide Medical Records” (“23 October 2017 Decision”), whereby it dismissed the Second Additional Submission to the extent it was before the Trial Chamber. It considered that the reasons for dismissing the Defence First Motion applied equally to the Defence Second Additional Submission.<sup>11</sup>

8. On 30 October 2017, Mladić filed a “Third Additional Submission in Support of Urgent Motion to Compel Registrar and United Nations Detention Unit to Provide Medical Records; and Motion to Vacate Judgement” (“Defence Third Additional Submission”), whereby he further amended his relief sought. In particular, Mladić requests an order to vacate the current date set for the delivery of the Trial Judgement and a stay of proceedings “until the physical/medical/mental fitness of [Mladić] can be properly ascertained”.<sup>12</sup> He further “repeats” his request to the President “to waive the immunity of the ICTY to allow an independent, inquiry by a relevant court authority including as to medical malpractice concerns and civil or criminal liability of impugned UNDU/ICTY Staff” (“Third Request”).<sup>13</sup>

9. On 3 November 2017, Mladić filed a “Supplement to Third Additional Submission in Support of Urgent Motion to Compel Registrar and United Nations Detention Unit to Provide Medical Records; and Motion to Vacate Judgement” (“Defence Third Additional Submission Supplement”), providing the English translation of a document annexed to the Defence Third Additional Submission and submitting further arguments in support of the relief requested.<sup>14</sup>

10. Also on 3 November 2017, the Registry filed a “Second Registry Submission in Relation to Defence Motion on the Provision of Medical Records” (“Registry Second Submission”), responding to Mladić’s submissions. The Registry annexed an additional medical report concerning Mladić’s health prepared by the UNDU Medical Officer.<sup>15</sup>

11. On 6 November 2017, Mladić filed the Defence Second Motion, whereby he requests: (i) an order against the UNDU Medical Officer to refrain from “further interference” with Mladić’s rights to obtain his medical documentation and a visit of external doctors pursuant to Rule 31 of the Rules

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Provide Medical Records”, whereby Mladić corrects a date in paragraph 5 of the Defence Second Additional Submission.

<sup>11</sup> 23 October 2017 Decision, p. 1. I note that Mladić did not file a request pursuant to Rule 73(C) of the Rules for certification to appeal the 23 October 2017 Decision.

<sup>12</sup> Defence Third Additional Submission, para. 5, p. 9. On 2 November 2017, the Office of the Prosecutor of the Tribunal (“Prosecution”) filed a response concerning the request to vacate the scheduled date for the pronouncement of judgement before the Trial Chamber.

<sup>13</sup> Defence Third Additional Submission, para. 24.

<sup>14</sup> Defence Third Additional Submission Supplement, paras 3-10, Annexes. On 6 November 2017, Mladić filed what appears to be a similar English translation of the document annexed to the Defence Third Additional Submission.

<sup>15</sup> Second Registry Submission, Annex A (confidential).



of Detention (“Rule 31 Medical Visit”);<sup>16</sup> (ii) a finding of contempt against the UNDU Medical Officer or that a hearing be scheduled prior to the pronouncement of the trial judgement to address this matter;<sup>17</sup> and (iii) an order to vacate the currently scheduled date for pronouncement of the trial judgement as well as a stay of proceedings.<sup>18</sup>

12. On 9 November 2017, Mladić filed a “Response to ‘Second Registry Submission in Relation to Defence Motion on the Provision of Medical Records’” (“Defence Second Motion Additional Submission”), reiterating the relief requested in the Defence First Motion and the Defence Second Motion.<sup>19</sup> Also on 9 November 2017, Mladić filed the Defence Third Motion, asking for a binding order enjoining the Registry from “further interference in the rights of the accused to publicly file motions”.<sup>20</sup> Additionally on 9 November 2017, the Registrar filed the “Third Registry Submission in Relation to Defence Motion on the Provision of Medical Records” (“Registry Third Submission”), offering to meet with Mladić’s Counsel.<sup>21</sup>

13. On 10 November 2017, the Trial Chamber rendered its “Decision on Urgent Defence Motions” (“10 November 2017 Decision”), dismissing the Defence First Motion, Defence Second Motion, and Defence Third Motion. The Trial Chamber considered in particular that the Defence First Motion is based in part on the opinion of a medical practitioner who has not personally examined Mladić, and that recent reports from independent medical experts and UNDU medical staff, who have monitored Mladić’s health over an extensive period of time, show that Mladić’s health has remained stable.<sup>22</sup>

## II. SUBMISSIONS

### 1) Defence First Motion

14. Mladić submits that Registry and UNDU staff failed to comply with their duty to provide Mladić with all requested medical records, in violation of the two-week deadline foreseen in the Medical Guidelines.<sup>23</sup> According to Mladić, he requested the UNDU to provide him with all medical records of his treatment, including at the relevant external hospital, for the first time in January 2017,<sup>24</sup> and although he received the following month four bound volumes with part of the

<sup>16</sup> Defence Second Motion, para. 14, p. 7.

<sup>17</sup> Defence Second Motion, paras 12, 13, p. 7.

<sup>18</sup> Defence Second Motion, p. 7. On 9 November 2017, the Prosecution filed a response before the Trial Chamber.

<sup>19</sup> Defence Second Motion Additional Submission, p. 7

<sup>20</sup> Defence Third Motion, pp 5-6.

<sup>21</sup> Registry Third Submission, paras 2-5.

<sup>22</sup> 10 November 2017 Decision, pp 2-3.

<sup>23</sup> Defence First Motion, paras 12, 15, 20.

<sup>24</sup> Defence First Motion, paras 2, 20.

medical files, including material from the treating hospital, they did not include the raw imagery or data concerning certain diagnostic tests.<sup>25</sup> He further claims that, despite making five requests and waiting nine months, he has received only part of the remaining records<sup>26</sup> Mladić alleges that Registry and UNDU staff have delayed the delivery of these documents multiple times with implausible and inappropriate justifications,<sup>27</sup> that he has exhausted all good-faith efforts to obtain the relevant records,<sup>28</sup> and that he urgently needs the material sought due to an anticipated visit of external doctors pursuant to Rule 31 of the Rules of Detention.<sup>29</sup> He claims that the gravity of the situation, the need for transparency, potential conflicts of interest, and the clear violations of his rights, are reasons why the President should waive the immunity of the ICTY.<sup>30</sup>

## 2) Registry First Submission

15. The Registrar submits that a detainee's medical file contains all medical records in the custody of the Medical Service of the UNDU.<sup>31</sup> He submits that, in February 2017, following a request from Mladić on 24 January 2017, the Registry provided Mladić with two copies of his entire medical file in four binders, at which time Mladić raised no concerns.<sup>32</sup> Further, in May 2017, following a request for further information received since February 2017, the UNDU Medical Service agreed to provide Mladić with updated records as they were included in his medical file.<sup>33</sup>

16. The Registrar also submits that diagnostic imagery and other material on which external specialists' reports are based are held at the facilities where the tests were conducted, and that detainees need to make a special request, through the Commanding Officer, to the Medical Service to obtain such documents.<sup>34</sup> According to the Registrar, Mladić requested such imagery for the first time on 28 August 2017 and was provided with the obtained imagery on 26 September 2017, two days before Mladić filed the Defence First Motion.<sup>35</sup> As there was some misunderstanding as to the process to obtain such documents, the UNDU Medical Services proactively consulted with Mladić and, with his agreement, contacted all institutions where he had been treated to obtain the imagery and data of any diagnostic tests undertaken.<sup>36</sup> Finally, the Registrar submits that, out of an

<sup>25</sup> Defence First Motion, paras 2, 16.

<sup>26</sup> Defence First Motion, paras 1-9, 14, 20.

<sup>27</sup> Defence First Motion, paras 13-14, 20.

<sup>28</sup> Defence First Motion, paras 1, 13, 17.

<sup>29</sup> Defence First Motion, paras 11, 13, 18. Mladić also alleges that UNDU staff prevented him from giving his latest medical records to his wife during a visit although, just a week before, medical documents had been provided to his son during a visit (Defence First Motion, para. 10).

<sup>30</sup> Defence First Motion, para. 19.

<sup>31</sup> Registry First Submission, para. 4.

<sup>32</sup> Registry First Submission, paras 6, 10-11.

<sup>33</sup> Registry First Submission, paras 7, 12-13.

<sup>34</sup> Registry First Submission, paras 4-5.

<sup>35</sup> Registry First Submission, paras 8, 14, 19. See also Registry First Submission, para 2.

<sup>36</sup> Registry First Submission, paras 15-17. See also Registry First Submission, para. 18.



abundance of caution, the UNDU Medical Service is following up with all institutions where Mladić was treated to obtain any additional data which may still be in their custody.<sup>37</sup>

### 3) Defence First Additional Submission

17. Mladić claims that he filed the Defence First Motion before the Registrar to request him to “compel staff within his domain to comply with their duties”, and that as the motion was filed before the Registrar, it was inappropriate for the Registrar to subsequently file a submission on the matter.<sup>38</sup> Mladić also claims that the Registry First Submission misrepresented certain facts,<sup>39</sup> and repeats that he first requested the imagery in January 2017.<sup>40</sup> He further alleges that the Registry’s claim, that Mladić received copies of all imagery and diagnostic tests from external care providers on 26 September 2017, is “materially untrue”, noting that Counsel only received them from Mladić on 4 October 2017 and that some of the information is still lacking.<sup>41</sup> In this regard, Mladić identifies at least 30 instances of records, imagery or data which he claims have not yet been provided to him,<sup>42</sup> and alleges that UNDU staff have actively attempted to frustrate his requests to access these records.<sup>43</sup>

### 4) Defence Second Additional Submission

18. Mladić adds that before the Defence First Motion was filed, he sought a medical visit pursuant to Rule 31 of the Rules of Detention, but that the Commanding Officer informed him that the Rule 31 Medical Visit could not be scheduled on the requested dates.<sup>44</sup> Mladić claims that he was not treated equally with other detainees and that he is subject to unreasonable and unexplained delays which increase the risk to his health.<sup>45</sup> He asks that his proposed dates be granted or otherwise that a finding of contempt of the Tribunal be made.<sup>46</sup>

### 5) Defence Third Additional Submission

19. Mladić reiterates his prior submissions, adds that there have been no developments concerning his requests for medical records and for a Rule 31 Medical Visit on the dates he

<sup>37</sup> Registry First Submission, para. 20. The Registrar adds that, when refusing Mladić to give documents directly to his wife, UNDU staff acted in accordance with the relevant prison regulations, requiring that detainees must pass any items to the Commanding Officer prior to a visit (Registry First Submission, para. 21).

<sup>38</sup> Defence First Additional Submission, paras 2-3.

<sup>39</sup> Defence First Additional Submission, para. 3.

<sup>40</sup> Defence First Additional Submission, paras 5-6.

<sup>41</sup> Defence First Additional Submission, paras 7, 11-15.

<sup>42</sup> Defence First Additional Submissions, para. 14-15, Annexes B1, B2 (confidential).

<sup>43</sup> Defence First Additional Submission, paras 16-17. See also Defence First Additional Submission, paras 10-11.

<sup>44</sup> Defence Second Additional Submission, paras 4-5.

<sup>45</sup> Defence Second Additional Submission, paras 6, 8.

<sup>46</sup> Defence Second Additional Submissions, para. 7, p. 5.



proposed,<sup>47</sup> and observes that neither the President nor the Registrar have yet ruled on the First Defence Motion and the Trial Chamber ruled twice that it lacks jurisdiction.<sup>48</sup> He amends the First Defence Motion again to now seek a Rule 31 Medical Visit on a new set of dates, as well as a stay of proceedings and an order to vacate the scheduled pronouncement of judgement in his case.<sup>49</sup>

#### 6) Defence Third Additional Submission Supplement

20. Mladić files an English translation of a document annexed to the Defence Third Additional Submission,<sup>50</sup> and submits in relation to a MRI scan that a different procedure should have been used and that the scan demonstrates actual brain damage, thereby further supporting the granting of all relief requested in his various submissions to date.<sup>51</sup>

#### 7) Registry Second Submission

21. The Registry submits that it has granted Mladić's request for a Rule 31 Medical Visit with three sets of alternative dates, and invites his Counsel to liaise with the UNDU management as to whether earlier dates could be accommodated.<sup>52</sup> The Registry also reiterates that Mladić has been receiving two copies of each new record created for inclusion in his medical file, and that on 26 September 2017 he was provided with copies of the imagery of diagnostic testing performed by external specialists, after the Registry had obtained the same from external medical facilities.<sup>53</sup> Furthermore, the Registry submits that, out of an abundance of caution it requested any additional data that might still be in the custody of the external medical facilities, that all such data has now been received, and that Mladić will be provided with copies of all additional documents as soon as they are processed.<sup>54</sup>

#### 8) Defence Second Motion

22. Mladić contends that a hearing is required because a decision remains pending on the Defence First Motion although it was labelled "urgent".<sup>55</sup> In addition, he states that the UNDU Commanding Officer has approved his request for a Rule 31 Medical Visit,<sup>56</sup> but on a date after the scheduled pronouncement of judgement in his case rather than before. He also notes that two other

<sup>47</sup> Defence Third Additional Submission, paras 2-3, 7-8, 13. See also Defence Third Additional Submissions, paras 9-12, 14-17

<sup>48</sup> Defence Third Additional Submission, paras 1, 6.

<sup>49</sup> Defence Third Additional Submission, paras 13, 18-22.

<sup>50</sup> Defence Third Additional Submission Supplement, para. 3, Annexes.

<sup>51</sup> Defence Third Additional Submission Supplement, paras 4-10.

<sup>52</sup> Registry Second Submission, paras 4, 6.

<sup>53</sup> Registry Second Submission, paras 2-3.

<sup>54</sup> Registry Second Submission, paras 3, 5.

<sup>55</sup> Defence Second Motion, para. 2.

detainees at the UNDU, who filed their request for a Rule 31 Medical Visit after Mladić, will receive such a visit before the judgement in his case.<sup>57</sup> Mladić adds that he advised his Counsel that the UNDU Medical Officer told him that no external doctors would ever come to see him because Mladić receives adequate care at the UNDU.<sup>58</sup> Mladić submits that such behavior raises doubts about previous medical reports, may constitute a deliberate and intentional obstruction of the “legitimate process and order of the UNDU Commander approving a Rule 31 visit”, threatens to bring the integrity of the Tribunal into disrepute, and sheds new light on the previous delays and difficulties in obtaining medical records and imagery.<sup>59</sup> He therefore requests a hearing to examine the Medical Officer for possible contempt.<sup>60</sup>

### 9) Defence Second Motion Additional Submission

23. Mladić responds to the Registry Second Submission, claims that it demonstrates that the Registry First Submission contained false information because further medical information was obtained from external facilities, and submits that he has received no additional medical records since 26 September 2017.<sup>61</sup> Mladić reiterates that the proposed dates for the Rule 31 Medical Visit fall after the scheduled pronouncement of the judgement, rather than before, which is different than the situation for two other detainees in the UNDU, and that his defence has already liaised with the Registry concerning this matter.<sup>62</sup>

### 10) Defence Third Motion

24. Mladić submits that the Registry removed the Defence Second Motion from the Tribunal’s website for a short time due to concerns about the public identification of the Medical Officer, and that this was an attempt to obstruct justice, was contrary to the consistent practice of multiple organs of the Tribunal, and raises concerns given the Registry’s role in “ongoing events”.<sup>63</sup>

<sup>56</sup> Defence Second Motion, para. 3.

<sup>57</sup> Defence Second Motion, paras 3, 5.

<sup>58</sup> Defence Second Motion, para. 6.

<sup>59</sup> Defence Second Motion, paras 7-8, 11-12.

<sup>60</sup> Defence Second Motion, paras 6-13.

<sup>61</sup> Defence Third Additional Submission Supplement, paras 5-6.

<sup>62</sup> Defence Third Additional Submission Supplement, paras 8-9. See also Defence Third Additional Submission Supplement paras 10-11.

<sup>63</sup> Defence Third Motion, paras 2-5, 7. On 10 November 2017, the Prosecution filed a response before the Trial Chamber.

### 11) Registry Third Submission

25. The Registrar submits that the UNDU has advised that Mladić has received copies of all his medical records, including those received from external institutions.<sup>64</sup> He also recalls that Mladić's request for a Rule 31 Medical Visit has been granted and that consideration can be given to accommodating the visit earlier than the three sets of dates already proposed, but notes that Mladić's Counsel have not replied to the Registry's invitation to liaise with the UNDU in this regard.<sup>65</sup> The Registrar further submits that an earlier visit will require Mladić's Counsel to discuss with Registry the arrangements and any other relevant factors.<sup>66</sup> Finally, the Registrar states that he is ready to meet with Counsel, as soon as the following morning, and indicates that he is awaiting a response from Counsel to this invitation at their earliest convenience.<sup>67</sup>

### III. STANDARD OF REVIEW

26. The following standard has been set for the review of administrative decisions made by the Registrar:

A judicial review of [...] an administrative decision is not a rehearing. Nor is it an appeal, or in any way similar to the review which a Chamber may undertake of its own judgment in accordance with Rule 119 of the Rules of Procedure and Evidence. A judicial review of an administrative decision made by the Registrar [...] is concerned initially with the propriety of the procedure by which [the] Registrar reached the particular decision and the manner in which he reached it.<sup>68</sup>

27. Accordingly, an administrative decision may be quashed if the Registrar:

- (a) failed to comply with [...] legal requirements [...], or
- (b) failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision, or
- (c) took into account irrelevant material or failed to take into account relevant material, or
- (d) reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached (the "unreasonableness" test).<sup>69</sup>

<sup>64</sup> Registry Third Submission, para. 2.

<sup>65</sup> Registry Third Submission, para. 3.

<sup>66</sup> Registry Third Submission, para. 3.

<sup>67</sup> Registry Third Submission, paras 3-5.

<sup>68</sup> *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003 ("*Kvočka et al.* Decision"), para. 13. *See also Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-A, Decision on Slobodan Praljak's Defence Request for Judicial Review of Decision on Additional Funds, 16 August 2017 ("*Prlić et al.* Decision"), para. 16; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Request for Review of Decision on Defence Team Funding, 31 January 2012 ("*Karadžić* Decision"), para. 6.

<sup>69</sup> *Prlić et al.* Decision, para. 17; *Karadžić* Decision, para. 6; *Kvočka et al.* Decision, para. 13.



28. Unless unreasonableness has been established, “there can be no interference with the margin of appreciation of the facts or merits of that case to which the maker of such an administrative decision is entitled”.<sup>70</sup> It is for the party challenging the administrative decision to demonstrate both that: (i) an error of the nature enumerated above has occurred; and (ii) such an error has significantly affected the administrative decision to his or her detriment.<sup>71</sup>

#### IV. DISCUSSION

##### 1) Filing Simultaneously Before Several Authorities

29. At the outset, I observe that Mladić has filed his numerous submissions before several authorities of the Tribunal at the same time, *i.e.* before the President, the Trial Chamber, and the Registrar.<sup>72</sup> I also note that Mladić has had recourse to this practice in the past,<sup>73</sup> which has consistently been deemed to be both incorrect and inappropriate.<sup>74</sup> In the present matter, it should be obvious, to any diligent Counsel acting in the best interests of the client, before whom the respective requests ought to be filed. Such simultaneous filings are not only inefficient, they are also improper and may be considered an abuse of process, particularly when submitted on the scale recently seen in this case.<sup>75</sup> I therefore advise Counsel that I am unwilling to tolerate such behaviour in the future, and remind Counsel of their obligations to act with professionalism, competence, and diligence pursuant to the Code of Professional Conduct for Counsel Appearing Before the International Tribunal.<sup>76</sup>

<sup>70</sup> *Prlić et al.* Decision, para. 18; *Karadžić* Decision, para. 7; *Kvočka et al.* Decision, para. 13.

<sup>71</sup> *Karadžić* Decision, para. 7; *Kvočka et al.* Decision, para. 14.

<sup>72</sup> See Defence First Motion; Defence First Additional Submission; Defence Second Additional Submission; Defence Third Additional Submission; Defence Third Additional Submission Supplement; Defence Second Motion; Defence Second Motion Additional Submission; Defence Third Motion.

<sup>73</sup> See Defence Request to Enlarge Time Until Seven Days After the President's Potential Decision on the Second Ground of Disqualification, 27 September 2016 (filed by Mladić before the President of the Tribunal and the Trial Chamber); Defence Motion for Stay of Proceedings for Systemic Bias, 20 July 2016 (filed by Mladić before the President of the Tribunal, the Trial Chamber, and the President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”)); Defence Motion Seeking to Disqualify the Honourable Judge Alphons Orié and the Honourable Judge Christoph Flügge Under This Trials Chamber's Enunciated Standard for Judicial Bias, 20 July 2016 (filed by Mladić before the President of the Tribunal, the Trial Chamber, and the President of the Mechanism).

<sup>74</sup> See, *e.g.*, Decision on Defence Request to Enlarge Time Until Seven Days After the President's Potential Decision on the Second Ground for Disqualification, 22 February 2017, p. 2, fn. 1; Decision on Defence Motion for Stay of Proceedings for Systemic Bias, 14 September 2016, p. 3; Decision on Defence Motion Seeking to Disqualify the Honourable Judge Alphons Orié and the Honourable Judge Christophe Flügge, 26 August 2016, p. 2.

<sup>75</sup> In this respect I observe that Mladić has between 27 September and 9 November 2017 filed an exceptional number of submissions and interrelated motions simultaneously before the President, the Trial Chamber and the Registrar. In relation to the Defence First Motion, Mladić made four additional substantive submissions (Defence First Additional Submission; Defence Second Additional Submission; Defence Third Additional Submission; Defence Third Additional Submission Supplement). He also filed two further motions, which he identifies as being interrelated with the Defence First Motion (Defence Second Motion; Defence Third Motion), as well as the Defence Second Motion Additional Submission.

<sup>76</sup> Code of Professional Conduct for Counsel Appearing Before the International Tribunal, IT/125 Rev. 3, 22 July 2009, Arts. 3, 10-11, 20.

## 2) Conduct of Trial Proceedings

30. Turning to Mladić's requests to vacate the Trial Chamber's scheduled pronouncement of its judgement and for a stay of proceedings, I recall that decisions relating to the scheduling of trial proceedings and to the possible suspension of trial proceedings are matters that fall squarely within the discretion of trial chambers in the first instance.<sup>77</sup> Accordingly, in my capacity as President of the Tribunal, I am not the competent authority to adjudicate these requests, including the Defence Second Motion, and dismiss them insofar as Mladić filed them before me.

## 3) Challenge to Temporary Registry Decision

31. As for the Defence Third Motion, which concerns a temporary decision of the Registry not to make available the Second Defence Motion on the Tribunal's website, I note that Mladić fails to explain why he filed this motion before me as President, nor can I discern any reason why he would have considered this to have been appropriate. I therefore dismiss the Defence Third Motion as improperly filed before me.

## 4) Remaining Requests

32. With respect to Mladić's other contentions, he has likewise not identified why they are before me as President. I recall that detention-related complaints, including for an alleged breach of the Rules of Detention and any regulations adopted thereunder, are to be addressed to the Commanding Officer; that if a detainee is not satisfied with a decision taken by the Commanding Officer, he may make a complaint to the Registrar; and that if he is not satisfied with the decision taken by the Registrar, he may make a complaint to the President.<sup>78</sup>

33. Mladić has neither made a complaint pursuant to this procedure nor explained why he did not follow this well-established procedure. To the extent Mladić suggests that he disregarded this procedure because of an alleged "lack of transparency to the Defence of whom UNDU's [Commanding Officer] or Medical Officer [r]eport to",<sup>79</sup> I consider his explanation in this regard to be obviously incorrect, ill-founded and ill-advised.<sup>80</sup> Further, as a consequence of filing the same submission before both the Registrar and myself, it is not clear whether Mladić is actually seeking the judicial review of any administrative decision taken by the Registrar. He also does not identify

<sup>77</sup> See, e.g., Decision on Defence Motion for Stay of Proceedings for Systemic Bias, 14 September 2016, p. 3; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.5, Decision on Interlocutory Appeal Against the 27 March 2015 Trial Chamber Decision on Modality for Prosecution Re-Opening, 22 May 2015, para. 6.

<sup>78</sup> United Nations Detention Unit Complaints Procedure for Detainees, IT/96/Rev.1, 14 December 2016 ("Complaints Procedure"), Regulations 1(A), 2(A)-(C), 3(A). See Rules of Detention, Rules 80-83.

<sup>79</sup> Defence First Motion, para. 11.

<sup>80</sup> See also 20 October 2017 Decision, p. 1.



with any specificity the matters for which he would request my review as President, or the bases on which I could review these matters. I therefore consider that I could dismiss all of Mladić's requests for these reasons alone, and hereby caution Counsel that I would also be minded to dismiss any future submissions that suffer from similar defects.

34. Nevertheless, exceptionally, taking into account that the Registrar has also filed substantive submissions before me concerning these matters, and in the interests of expediency and judicial economy, I have considered the multiple submissions, and observe that it appears that the matters in dispute are: (i) the alleged failure of the Registry to provide Mladić's medical record in its entirety, in particular certain imagery and medical data from external medical facilities; and (ii) the postponement of a Rule 31 Medical Visit.

**a) Copies of Medical File (First Request)**

35. Mladić does not clearly identify the basis upon which he challenges any administrative decision of the Registry pertaining to the provision of his medical file, but from the Defence First Motion it appears that he alleges the Registry failed to comply with legal requirements, namely the Medical Guidelines.<sup>81</sup> With respect to the Medical Guidelines, the Registry First Submission confirms that they govern the provision of medical information from the UNDU Medical Service.<sup>82</sup>

36. The Medical Guidelines provide in relevant parts that: (i) "[u]pon request to the Commanding Officer ("CO"), a detainee has the right to obtain a copy of his medical file, either in its entirety or in relevant part," which "includes any specialist reports, including the personal details of the specialists in question";<sup>83</sup> (ii) "[c]opies shall be provided within two weeks of receipt of all necessary documentation" and "[t]he detainee is entitled to receive a maximum of two copies of each document";<sup>84</sup> (iii) "cop[ies] of the medical file will be provided directly to the detainee", which he is free to share with his Counsel or the detainee "may consent in writing to the Medical Service to send a copy directly to Counsel";<sup>85</sup> and (iv) "[s]hould a detainee wish to obtain additional information or clarification regarding his medical file, especially regarding specialist reports, he must address his questions to the [Medical Officer] via the [Commanding Officer]" and "shall refrain from contacting the specialists directly".<sup>86</sup>

<sup>81</sup> Defence First Motion, paras 15-17, 20.

<sup>82</sup> Registry First Submission, para. 3.

<sup>83</sup> Medical Guidelines, para. 7.

<sup>84</sup> Medical Guidelines, para. 8.

<sup>85</sup> Medical Guidelines, para. 9.

<sup>86</sup> Medical Guidelines, para. 10.



37. I wish to emphasise the crucial importance of a detainee's right to obtain medical information and that such information must be provided in a timely fashion. I observe in this regard that, following a request made on 24 January 2017, Mladić received in February 2017 four binders, which according to the Registrar constitute all documents that are part of Mladić's official medical file in the UNDU Medical Service.<sup>87</sup> Mladić confirms that, on 21 February 2017, he provided his Counsel with four bound volumes and does not claim that these files were provided to him in an untimely manner.<sup>88</sup>

38. Mladić submits, however, that the four binders did not contain his entire medical record and that certain raw imagery or data concerning diagnostic tests were missing.<sup>89</sup> The Registrar responds that Mladić was provided with the entirety of his official medical file as held by the UNDU Medical Service, and explains that certain imagery and other original data are retained by external medical facilities and not by the UNDU Medical Service, and therefore do not form part of Mladić's official file.<sup>90</sup> I find the Registrar's explanation convincing and consider that, contrary to Mladić's submissions, the fact that he had not received certain imagery or diagnostic tests does not demonstrate that the Registry failed to provide Mladić with his medical file in its entirety, in compliance with the Medical Guidelines. Furthermore, I note that the Registry appears to have explained this difference to Mladić's Counsel on several occasions.<sup>91</sup>

39. Mladić further argues that he specifically requested specialist information, retained by medical facilities external to the UNDU, in January 2017 and again in May 2017.<sup>92</sup> The Registrar submits that the first request for the imagery of diagnostic testing performed by external specialists was made only on 28 August 2017.<sup>93</sup> I observe that, while Mladić *consented* in January and May 2017 to the release of all medical information held by the Medical Service and by an external medical provider, including specialist reports, his *requests* submitted at that time were for two copies of his complete medical file only.<sup>94</sup> Notably, in identifying the basis of these requests, he specified paragraph 7 of the Medical Guidelines,<sup>95</sup> which pertains only to the copy of the UNDU's medical file including any specialist reports contained therein. Mladić made no direct reference to

<sup>87</sup> Registry First Submission, paras 6, 10. See also Defence First Motion, para. 2.

<sup>88</sup> See Defence First Motion, para. 2; Defence First Additional Submission, para. 6.

<sup>89</sup> Defence First Motion, paras 2, 16.

<sup>90</sup> See Registry First Submission, paras 4-6, 15.

<sup>91</sup> See Defence First Motion, Annex E; Registry First Submission, paras 15, 17.

<sup>92</sup> Defence First Motion, paras 2-4, Annexes A-B; Defence First Additional Submission, para. 5.

<sup>93</sup> Registry First Submission, paras 8, 14.

<sup>94</sup> Defence First Motion, Annex A-B.

<sup>95</sup> Defence First Motion, Annex A-B.

paragraph 10 of the Medical Guidelines, which concerns a request to the Medical Officer to make efforts to obtain external, additional information not already contained in the medical file.<sup>96</sup>

40. In light of the above, I consider that Mladić has failed to demonstrate that the Registry did not comply with the legal requirements, as set out in the Medical Guidelines, with regard to Mladić's requests for his medical file in January and May 2017.

41. Turning to Mladić's request of 28 August 2017, I observe that it appears to be ambiguous as to whether he was seeking information contained in the UNDU's medical file, or instead seeking to obtain external reports or information.<sup>97</sup> Indeed, the UNDU Acting Commanding Officer responded on 8 September 2017 to explain that the medical file includes "reports of the specialists' assessments of diagnostic radiology tests such as x-rays, MRIs, CT-scans etc", but that if Mladić wished to request radiology imagery held by an external facility, this could be done following a specific request in line with paragraph 10 of the Medical Guidelines.<sup>98</sup> The Registrar submits that, in an effort to resolve the matter, the Registry proactively consulted Mladić and, with his agreement, "reached out to all institutions in which Mr. Mladić had received medical treatment since his arrival at the UNDU in order to obtain the imagery and data of any diagnostic tests that he had taken to date".<sup>99</sup> Information or material from external facilities appears to have been subsequently obtained by the Medical Service, provided to Mladić on 26 September 2017, and received by his Counsel on 4 October 2017.<sup>100</sup> Mladić fails to demonstrate that the Registry did not comply with the Medical Guidelines in requesting, obtaining, and providing this additional information from outside sources.

42. In addition to these communications with the external medical providers, the Medical Service followed up with all providers in late September 2017 to assess whether any further information could be identified.<sup>101</sup> This follow-up communication resulted in the external medical providers identifying and providing further information ("Further Additional Documents"), all of which was reported to have been received by the Medical Service by 3 November 2017.<sup>102</sup> The Registry indicated in its filing of 3 November 2017 that these Further Additional Documents would be provided to Mladić "as soon as they are processed".<sup>103</sup> However, Mladić claimed on

<sup>96</sup> Paragraph 10 of the Medical Guidelines foresees that a detainee may obtain "additional information or clarification regarding his medical file, especially regarding specialist reports", through the Medical Officer.

<sup>97</sup> See Defence First Motion, Annex D.

<sup>98</sup> Defence First Motion, Annex E.

<sup>99</sup> Registry First Submission, para. 17. See Registry First Submission, para. 16.

<sup>100</sup> See Registry First Submission, para. 19; Defence First Additional Submission, para. 7; Registry Second Submission, para. 3.

<sup>101</sup> Registry First Submission, para. 20; Registry Second Submission, para. 3.

<sup>102</sup> Registry Second Submission, para. 5.

<sup>103</sup> Registry Second Submission, para. 5.



9 November 2017 that his Counsel had not yet received any additional records<sup>104</sup> and it is not entirely clear from the Registrar's submission of the same date whether Mladić has yet received copies of these Further Additional Documents.<sup>105</sup> I therefore direct the Registrar to confirm whether the Further Additional Documents have been provided to Mladić or to his Counsel, and if they have not been so provided, to expeditiously provide Mladić with the Further Additional Documents.

43. In light of the above, I find that Mladić fails to demonstrate any non-compliance by the Registrar with the relevant legal requirements, any procedural unfairness, or an otherwise unreasonable decision of the Registrar or the staff under his purview. He has therefore failed to establish any error on the part of the Registrar. Nevertheless, and in light of the importance of ensuring detainee access to medical information, I direct the Registrar to ensure that the Registry continues to take all appropriate steps to expeditiously request, obtain, and provide Mladić with, any additional documentation that he may request or identify ahead of the Rule 31 Medical Visit.

**b) Rule 31 Medical Visit (Second Request)**

44. I note that in relation to the Second Request, the Registry submits that: (i) Mladić's request for a Rule 31 Medical Visit has been granted;<sup>106</sup> (ii) three sets of alternative dates for the visit have been proposed to him;<sup>107</sup> (iii) the Registrar has invited Mladić to liaise with the UNDU management to see if the Rule 31 Medical Visit can be accommodated earlier than the dates currently proposed;<sup>108</sup> and (iv) the Registrar is ready to meet with Counsel and is awaiting a response from Counsel to this invitation.<sup>109</sup>

45. Mladić agrees that the Rule 31 Medical Visit has been approved,<sup>110</sup> but contends that this visit should take place before, rather than after, the scheduled pronouncement of judgement.<sup>111</sup>

46. I consider that this matter has been raised prematurely before me and therefore decline to examine the Second Request and relevant submissions in the Defence Second Motion at this stage. I note with concern, however, the Registrar's submission that Counsel for Mladić have not yet taken up – or responded to – the Registrar's invitation of 3 November 2017, reiterated on 9 November 2017, to meet and discuss arrangements for an earlier medical visit.<sup>112</sup> I therefore urge

<sup>104</sup> Defence Second Motion Additional Submission, para. 6.

<sup>105</sup> Registry Third Submission, para. 2, referring to Registry Second Submission, paras 2-3, 5.

<sup>106</sup> Registry Second Submission, para. 4.

<sup>107</sup> Registry Second Submission, para. 4.

<sup>108</sup> Registry Second Submission, para. 6.

<sup>109</sup> Registry Third Submission, paras 3-5.

<sup>110</sup> Defence Second Motion Additional Submissions, para. 8.

<sup>111</sup> Defence Second Motion Additional Submissions, para. 8.

<sup>112</sup> Registry Third Submission, paras 3-5.



Mladić's Counsel and the Registry to cooperate and communicate with each other in order to schedule a Rule 31 Medical Visit as soon as possible.

**5) Immunities (Third Request)**

47. In light of the above, I consider any request to lift immunities of the ICTY or its staff to be without cause and note that, in any event, "lifting the immunity" of the ICTY or its staff members does not fall under the competence of the President of the Tribunal.<sup>113</sup>

**V. DISPOSITION**

48. For the foregoing reasons, I hereby:

**DISMISS** the Defence Second Motion and Defence Third Motion in their entirety;

**DISMISS** the Defence First Motion insofar as it was inappropriately or prematurely filed before me;

**DENY** the Defence First Motion in all other respects;

**DIRECT** the Registrar to confirm whether the Further Additional Documents have been provided to Mladić or to his Counsel, and if they have not been so provided, to expeditiously provide Mladić with the Further Additional Documents; and

**DIRECT** the Registrar to ensure that the Registry continues to take all appropriate steps to expeditiously request, obtain, and provide Mladić with, any additional documentation that he may request or identify ahead of the requested Rule 31 Medical Visit.

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



Judge Carmel Agius  
President

Dated this thirteenth day of November 2017,  
At The Hague,  
The Netherlands.

**[Seal of the Tribunal]**

<sup>113</sup> See, e.g., Charter of the United Nations, Art. 105; Statute of the Tribunal, Art. 30.