

**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: 17 November 2017  
Original: English

**THE PRESIDENT OF THE TRIBUNAL**

**Before: Judge Carmel Agius, President**

**Registrar: Mr. John Hocking**

**Decision of: 17 November 2017**

**PROSECUTOR**

**v.**

**RATKO MLADIĆ**

**PUBLIC**

**DECISION ON DEFENCE MOTION FOR AN ORDER TO  
PROVIDE ACCESS TO CONFIDENTIAL AND *EX PARTE*  
MEDICAL OPINIONS**

**The Office of the Prosecutor:**

Mr. Peter McCloskey

**Counsel for the Accused:**

Mr. Branko Lukić

Mr. Dragan Ivetić

**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);

**BEING SEISED** of the “Urgent Motion [for] a Binding Order Against Dr. Falke and the Registry to Provide Access to Confidential and Ex-Parte Medical Opinions”, filed by Ratko Mladić (“Mladić”) on 16 November 2017 (“Defence Motion”);

**RECALLING** the “Interim Order to Registrar on Urgent Defence Motion for a Binding Order Against Dr. Falke and the Registry to Provide Access to Confidential and *Ex Parte* Medical Opinions”, which I filed on 16 November 2017;

**CONSIDERING** the “Registry Submission in Relation to Defence Motion on Access to Medical Opinions”, filed confidentially and *ex parte*, and provided only to me as President and to Mladić and his Counsel, by the Registry of the Tribunal (“Registry”) on 16 November 2017 (“Registry Submission of 16 November 2017”);

**NOTING** the “Prosecution Response to Defence Urgent Motion for a Binding Order Against Dr. Falke and the Registry to Provide Access to Confidential and Ex-Parte Medical Opinions”, filed by the Office of the Prosecutor of the Tribunal on 16 November 2017;

**CONSIDERING** that the Defence Motion clearly seeks access to a letter written by the Medical Officer and Deputy Medical Officer at the United Nations Detention Unit (“UNDU”) (“MO/DMO Letter”) insofar as it relates to Mladić;<sup>1</sup>

**CONSIDERING FURTHER** that the Defence Motion also appears to seek access to other material provided by two independent medical experts who have been monitoring Mladić’s health in recent years (“Independent Medical Experts”) concerning the views expressed in the MO/DMO Letter insofar as they relate to Mladić;<sup>2</sup>

**RECALLING** in this regard that the Registry filed the MO/DMO Letter and the response from one of the Independent Medical Experts, in a confidential and *ex parte* annex provided only to me as President, attached to the “Fourth Registry Submission in Relation to Defence Motion on the Provision of Medical Records”, filed publicly by the Registry on 13 November 2017 (“Registry Submission of 13 November 2017”);<sup>3</sup>

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<sup>1</sup> See Defence Motion, paras 3, 6-8.

<sup>2</sup> See Defence Motion, paras 3, 5-8. See also Registry Submission of 13 November 2017, para. 7.

<sup>3</sup> See Registry Submission of 13 November 2017, paras 4-8.

**RECALLING** that the Registry filed the response from the other Independent Medical Expert, also in a confidential and *ex parte* annex provided only to me as President, attached to the “Addendum to Fourth Registry Submission in Relation to Defence Motion on the Provision of Medical Records” filed publicly by the Registry on 14 November 2017 (“Registry Submission of 14 November 2017”);<sup>4</sup>

**CONSIDERING** that the Registry Submission of 16 November 2017 attaches a redacted version of the strictly confidential MO/DMO Letter,<sup>5</sup> submits that this letter is not a medical record,<sup>6</sup> and explains that this letter has been redacted insofar as it relates to other detainees and the operations at the UNDU;<sup>7</sup>

**CONSIDERING**, therefore, that the Defence Motion is moot with respect to its request for an order to require disclosure of the MO/DMO Letter insofar as it relates to Mladić;

**CONSIDERING**, however, that the Registry Submission of 16 November 2017 makes no mention of the material provided by the Independent Medical Experts;

**CONSIDERING** that the Registry Submission of 13 November 2017 and the Registry Submission of 14 November 2017 provide no indication of why the material from the Independent Medical Experts was filed confidentially and *ex parte* only to me as President, or why it could not be shared with Mladić in some form;<sup>8</sup>

**CONSIDERING** that Mladić is entitled to receive the material from the Independent Medical Experts concerning the views expressed in the MO/DMO Letter insofar as they relate to Mladić;

**FOR THE FOREGOING REASONS,**

**HEREBY GRANT** the Defence Motion in part;

**ORDER** the Registrar to provide Mladić with the material from the Independent Medical Experts, in redacted form if necessary to remove information not pertaining to the views expressed in the MO/DMO Letter insofar as they relate to Mladić, by the end of today, 17 November 2017; and

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<sup>4</sup> See Registry Submission of 14 November 2017, para. 2.

<sup>5</sup> Registry Submission of 16 November 2017, paras 2, 4, Annex.

<sup>6</sup> Registry Submission of 16 November 2017, para. 3.

**DISMISS** the Defence Motion in all other respects.

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



Judge Carmel Agius  
President

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

[Seal of the Tribunal]

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<sup>7</sup> Registry Submission of 16 November 2017, para. 3.

<sup>8</sup> See Registry Submission of 13 November 2017, para. 8; Registry Submission of 14 November 2017, para. 2.