

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No.: MICT-13-56-A

Date: 8 June 2018

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Carmel Agius
Judge Liu Daqun
Judge Prisca Matimba Nyambe
Judge Seymour Panton

Registrar: Mr. Olufemi Elias

Decision of: 8 June 2018

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC (REDACTED)

**PUBLIC REDACTED VERSION OF THE “DECISION ON A MOTION FOR
RECONSIDERATION AND CERTIFICATION TO APPEAL DECISION
ON A REQUEST FOR PROVISIONAL RELEASE” FILED
ON 22 MAY 2018**

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig
Ms. Barbara Goy
Ms. Katrina Gustafson

Counsel for Mr. Ratko Mladić:

Mr. Branko Lukić
Mr. Dragan Ivetić

THE APPEALS CHAMBER of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively);¹

NOTING that Ratko Mladić (“Mladić”) and the Office of the Prosecutor (“Prosecution”) have appealed² the judgement issued in this case by Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia, on 22 November 2017;³

RECALLING the “Decision on a Motion for Provisional Release on Humanitarian Grounds”, issued confidentially on 12 April 2018 (“Impugned Decision”), wherein the Appeals Chamber dismissed Mladić’s motion for provisional release, filed on 8 February 2018,⁴ in its entirety on the basis that, “while medical reports reflect that Mladić [REDACTED], his current state does not amount to an acute crisis or a life threatening medical condition for which appropriate medical treatment is unavailable in the Netherlands”;⁵

RECALLING that the Appeals Chamber reached this conclusion after careful consideration of numerous documents, including: (i) the medical reports of [REDACTED], on which Mladić relied in his Motion for Provisional Release;⁶ (ii) submissions from the Registrar filed on 21 February 2018⁷ and 20 March 2018,⁸ respectively; (iii) the medical reports of [REDACTED];⁹ and (iv) Mladić’s responses, filed on 5 March 2018 and 3 April 2018, to the Registrar’s submissions and to the reports of [REDACTED];¹⁰

¹ Order Assigning Judges to a Case Before the Appeals Chamber, 19 December 2017, p. 1.

² Notice of Appeal of Ratko Mladić, 22 March 2018 (public with public and confidential annexes); Prosecution’s Notice of Appeal, 22 March 2018.

³ *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Judgement, 22 November 2017 (public with confidential annex) (“Trial Judgement”).

⁴ Notice of Re-Filing of Public Redacted Version of Defence Urgent Motion for Provisional Release on Humanitarian Grounds, 8 February 2018 (public with public redacted Annex A), Confidential Annex A (Defence Urgent Motion for Provisional Release on Humanitarian Grounds) (“Motion for Provisional Release”).

⁵ Impugned Decision, paras. 16, 18. *See also* Impugned Decision, paras. 11-15.

⁶ Motion for Provisional Release, paras. 26-35, 37-48, 61, Annexes 3 (public), 4 (confidential), 5 (confidential), 6(2) (confidential), 8 (public), 9 (confidential), 10 (confidential), 11(1) (public).

⁷ Registrar’s Submission in Relation to Defence Motions, 21 February 2018 (confidential with confidential annexes; public redacted version filed on 8 March 2018).

⁸ Registrar’s Submission of Independent Medical Experts’ Reports and Further Submission in Relation to Defence Motions and “Response to ‘Registrar’s Submission in Relation to Defence Motions’”, 20 March 2018 (confidential with confidential annexes; public redacted version filed on 10 April 2018) (“Registrar’s Submission of 20 March 2018”).

⁹ Registrar’s Submission of 20 March 2018, paras. 1, 9-12, Annexes 1, 2.

¹⁰ Response to “Registrar’s Submission in Relation to Defence Motions”, 5 March 2018 (confidential with confidential annexes; public redacted version filed on 9 March 2018); Response to “Registrar’s Submission of Independent Medical Experts’ Reports and Further Submission in Relation to Defence Motions and ‘Response to Registrar’s Submission in Relation to Defence Motions’”, 3 April 2018 (confidential with confidential annexes; public redacted version filed on 9 April 2018) (“Response to Registrar’s Submission of 20 March 2018”).

BEING SEISED OF a confidential motion, filed on 20 April 2018, wherein Mladić requests the Appeals Chamber to reconsider the Impugned Decision or, in the alternative, to certify the appeal of the Impugned Decision before a different panel of judges of the Appeals Chamber;¹¹

NOTING the confidential response, filed on 2 May 2018, wherein the Prosecution submits that the Motion does not justify a reconsideration of the Impugned Decision,¹² and that there is no legal basis for a certification to appeal a decision of the Appeals Chamber;¹³

NOTING the confidential reply, filed on 7 May 2018, wherein Mladić, *inter alia*, submits that the Prosecution has failed to respond to the arguments in the Motion, reiterates that there is a basis for granting certification to appeal, and, with respect to reconsideration, states that recently [REDACTED] and that this new information justifies his request for reconsideration of the Impugned Decision;¹⁴

RECALLING that the Appeals Chamber treats its pre-appeal and interlocutory decisions as binding in ongoing proceedings as to all issues decided therein, and that, in the interests of justice, this principle forecloses re-litigation of such issues;¹⁵

OBSERVING that the only exception to this principle is where the Appeals Chamber may reconsider its prior decision;¹⁶

CONSIDERING, therefore, that there is no legal basis for appealing an order or a decision of the Appeals Chamber;

¹¹ Motion to Reconsider Decision on a Motion for Provisional Release on Humanitarian Grounds or in Alternative Motion for Certification to Appeal, 20 April 2018 (confidential) (“Motion”), paras. 2-4, 7, 10-19, p. 9. Mladić submits that certification to appeal is provided for pursuant to Rules 80 and 131 of the Rules of Procedure and Evidence. *See* Motion, paras. 3, 8-11.

¹² Prosecution Response to Motion to Reconsider Decision on a Motion for Provisional Release on Humanitarian Grounds or in Alternative Motion for Certification to Appeal, 2 May 2018 (confidential) (“Response”), paras. 1-5. Given that the Motion was distributed on 23 April 2018, the time-limit to file the Response was calculated from that date. The Response is therefore validly filed. *See* Practice Direction on Filings Made Before the Mechanism for International Criminal Tribunals, MICT/7/Rev.2, 24 August 2016, Article 11(3); Decision on a Motion to Vacate the Trial Judgement and to Stay Proceedings, 30 April 2018 (confidential), n. 7.

¹³ Response, para. 1.

¹⁴ Defence Reply to Prosecution Response to Motion to Reconsider Decision on a Motion for Provisional Release on Humanitarian Grounds or in Alternative Motion for Certification to Appeal, 7 May 2018 (confidential) (“Reply”), paras. 5-11, 13, 18-25, Annexes A and B (confidential).

¹⁵ *See The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Judgement, 14 December 2015 (“*Nyiramasuhuko et al.* Appeal Judgement”), para. 127; *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-A, Decision on Naletilić’s Amended Second Rule 115 Motion and Third Rule 115 Motion to Present Additional Evidence, 7 July 2005 (“*Naletilić and Martinović* Decision”), para. 20; *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005 (“*Kajelijeli* Appeal Judgement”), para. 202.

¹⁶ *See Nyiramasuhuko et al.* Appeal Judgement, para. 127; *Naletilić and Martinović* Decision, para. 20; *Kajelijeli* Appeal Judgement, para. 203. In a tribunal such as the Mechanism with only one tier of appellate review, the exception providing for reconsideration of appeal decisions is important to give the Appeals Chamber a meaningful opportunity to

FINDING, therefore, Mladić's request for certification to appeal the Impugned Decision to be without merit;

RECALLING that a party requesting reconsideration of a decision must satisfy the chamber of the existence of a clear error of reasoning in the impugned decision, or of particular circumstances justifying reconsideration in order to avoid injustice, such as any new facts;¹⁷

NOTING Mladić's submissions that reconsideration is justified given, *inter alia*, the existence of "new information", as well as the Appeals Chamber's failure to provide a reasoned opinion "*vis-à-vis* medically substantiated arguments" or to address any of his arguments, particularly those advanced in the Response to Registrar's Submission of 20 March 2018, and that "[s]uch a position is untenable, erroneous and even amounts to bias";¹⁸

RECALLING that, in rejecting the Motion for Provisional Release, the Appeals Chamber explicitly considered, *inter alia*: (i) submissions based on the medical reports of [REDACTED], as well as the argument that his health has deteriorated while in custody as a result of "medical negligence/malpractice" by staff at the United Nations Detention Unit ("UNDU");¹⁹ (ii) [REDACTED];²⁰ (iii) [REDACTED];²¹ and (iv) his submissions in the Response to Registrar's Submission of 20 March 2018;²²

RECALLING FURTHER the Appeals Chamber's consideration that the Motion for Provisional Release and the medical reports of [REDACTED], in and of themselves, do not demonstrate an acute crisis or life threatening medical condition justifying provisional release on humanitarian grounds;²³

correct any mistakes it may have made. *See Naletilić and Martinović* Decision, para. 20; *Kajelijeli* Appeal Judgement, para. 203.

¹⁷ Decision on Ratko Mladić's Motions for Reconsideration, 16 March 2018, p. 3; *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on a Motion to Reclassify Filings, 3 October 2017, p. 5, nn. 20, 21 and references cited therein.

¹⁸ Motion, paras. 1, 12-19. In this regard, Mladić explicitly challenges paragraphs 11 to 15 of the Impugned Decision. *See* Motion, paras. 7, 13-15, 17. *See also* Reply, paras. 12-17, 21-24.

¹⁹ *See* Impugned Decision, paras. 7, 9, nn. 19, 20.

²⁰ *See* Impugned Decision, para. 12.

²¹ *See* Impugned Decision, para. 15, nn. 48-51.

²² *See* Impugned Decision, para. 7.

²³ *See* Impugned Decision, paras. 7, 11-13, 15, 16, nn. 17-20, 33-35, 37, 38, 48.

CONSIDERING that the duty to provide a reasoned opinion does not require the articulation of every step of reasoning,²⁴ and that the Appeals Chamber has an inherent discretion to select submissions which merit a detailed discussion in writing;²⁵

CONSIDERING that Mladić's disagreement with conclusions in the Impugned Decision does not amount to a clear error of reasoning or circumstances justifying reconsideration in order to avoid injustice;

CONSIDERING FURTHER that Mladić's arguments regarding new information, [REDACTED],²⁶ are unsubstantiated by submissions in the Reply, and even if substantiated, do not demonstrate the existence of special circumstances to justify granting provisional release;

CONSIDERING ALSO that Mladić provides no basis for his allegation of bias on the part of the Appeals Chamber;²⁷

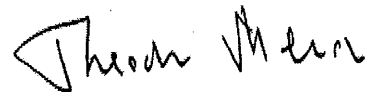
FINDING, therefore, that Mladić has failed to justify his request for reconsideration of the Impugned Decision;

FOR THE FOREGOING REASONS,

HEREBY DISMISSES the Motion in its entirety.

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

Done this 8th day of June 2018,
At The Hague,
The Netherlands



Judge Theodor Meron
Presiding Judge

[Seal of the Mechanism]

²⁴ Cf., e.g., *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, 30 January 2015, Judgement, para. 972 and references cited therein.

²⁵ See, e.g., *Prosecutor v. Vojislav Šešelj*, Case No. MICT-16-99-A, Judgement, 11 April 2018, para. 18 and references cited therein.

²⁶ See Reply, paras. 21-24, Annexes A and B (confidential). The Appeals Chamber further notes that should Mladić not be satisfied with the conditions of his detention, including the provision of medical services and documents at the UNDU, he is entitled to make a complaint in accordance with established administrative procedures. See Rules 81-83 of the 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; United Nations Detention Unit Complaints Procedure for Detainees, IT/96/Rev.1, 14 December 2016; Decision on a Motion to Strike Registrar's Submission of Medical Report of 15 February 2018 (confidential), 3 May 2018, pp. 3, 4.

²⁷ See Motion, para. 12.



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