

IT-09-92-T  
D82533 - D82527  
17 September 2014

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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 September 2014  
Original: English

**IN TRIAL CHAMBER I**

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

**Registrar:** Mr John Hocking

**Decision of:** 17 September 2014

**PROSECUTOR**

v.

**RATKO MLADIĆ**

***CONFIDENTIAL***

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**REASONS FOR DECISION ON THE FUTURE TRIAL SITTING  
SCHEDULE**

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**Office of the Prosecutor**

Mr Peter McCloskey  
Ms Camille Bibles

**Counsel for Ratko Mladić**

Mr Branko Lukić  
Mr Miodrag Stojanović

## I. PROCEDURAL HISTORY AND SUBMISSIONS OF THE PARTIES

1. On 14 March 2014, the Chamber issued a decision ("March Decision") ordering a five-day sitting schedule for the Defence case and instructing the Registry to arrange for the medical examination of the Accused, preferably by Dr Geert Hollanders and Dr Patrick Cras ("Experts") on an ongoing basis at least every four months.<sup>1</sup>
2. On 13 June 2014, the Defence requested the Chamber to permanently adopt a four-day sitting schedule with Wednesday designated as a day of rest for the Accused ("Request").<sup>2</sup> According to the Defence, the Accused referred to his fatigue and ill effects on his health and it submits that his health state does not allow him to sit five consecutive days of trial.<sup>3</sup> The Prosecution initially opposed the Request, submitting that a shortened week should only be adopted if medically necessary but could not identify a medical basis at the time.<sup>4</sup>
3. On 9 and 24 July 2014, the Registry filed reports prepared by the Experts ("Expert Reports").<sup>5</sup> On 24 July 2014, the Chamber, by means of informal communication, invited submissions from the parties in relation to the Request.
4. On 5 August 2014, the Prosecution filed its response not opposing the Request in light of the Expert Reports and additionally requesting that regular follow-up examinations be carried out by the Experts.<sup>6</sup> The Prosecution further emphasized that the Chamber could reassess the need to only sit four days, should any change arise in the health of the Accused.<sup>7</sup>
5. On 7 August 2014, the Defence filed renewed submissions requesting that trial days be confined to four hours per day and that one non-sitting day follows each two consecutive sitting days, and that the Accused be granted at least one day of rest in the event that he suffers an "emotional crisis" or a Transient Ischemic Attack ("TIA").<sup>8</sup> On 25 August 2014, the Chamber

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<sup>1</sup> Decision on the Trial Sitting Schedule, 14 March 2014, para. 22. For a detailed procedural history, see paras 1-7 of the March Decision.

<sup>2</sup> T. 22668-22670, 22674-22675.

<sup>3</sup> T. 22668, 22670.

<sup>4</sup> T. 22670-22674.

<sup>5</sup> Deputy Registrar's Submission of Medical Report, 9 July 2014 (Confidential) ("Cras Report"); Registrar's Submission of Medical Report, 24 July 2014 (Confidential) ("Hollanders Report").

<sup>6</sup> Prosecution Submission regarding the Future Trial Sitting Schedule, 5 August 2014 (Confidential) ("Prosecution Submission"), paras 1, 6-7.

<sup>7</sup> Prosecution Submission, para. 7.

<sup>8</sup> Defense Renewed Submissions in Relation to the Future Trial Sitting Schedule, 7 August 2014 (Confidential) ("Defence Submission"), para. 31.

granted the Request in part, ordering a four-day sitting schedule and provisionally designating Friday as the non-sitting day, and dismissed all other requests.<sup>9</sup>

6. With regard to a four-day week with Wednesdays designated as the days of rest, the Defence relied on the medical expert report by psychologist Bojana Dimitrijević and neuro-psychiatrist Ratko Kovačević (“Dimitrijević/Kovačević Report”), the UNDU Medical staff, as well as two out of the three experts submitting their recommendations in medical reports, filed by the Registry on 24 January 2014.<sup>10</sup> According to the Defence, the recommendations in the Dimitrijević/Kovačević Report previously demonstrated that the Accused bears the risk of a TIA, which could be lowered by a four-day schedule with Wednesdays designated as non-sitting days.<sup>11</sup> The Defence further drew on the assessment of Dr El Banna, who concluded in his report that the “current health of the patient presents risks of a transient ischemic attack in case of significant irritation and/or stress and we therefore agree with other medical recommendations to shorten the hours of appearance before the Tribunal, the consensus being four days instead of two. We believe that if this rhythm is followed, as recommended by my colleagues, it could lower the risk of a TIA”.<sup>12</sup> Dr El Banna was further relied on as to a correlation between the Accused’s psychological state and his increased risk of a TIA.<sup>13</sup> As to the Expert Reports, the Defence relied particularly on Dr Hollanders’ report.<sup>14</sup> In addition, the Defence interprets Dr. Cras’ report as not conclusively recommending against a four-day regime.<sup>15</sup>

## II. APPLICABLE LAW

7. Article 20 (1) of the Statute of the Tribunal (“Statute”) provides that:

The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

8. Rule 54 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) provides that:

At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

9. Rule 74 *bis* of the Rules provides that:

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<sup>9</sup> T. 24701-24702. For the week starting on 15 September 2014, the Chamber ordered that Monday shall be the day off in that week.

<sup>10</sup> Defence Submission, paras 17, 19-21, 27; Deputy Registrar’s Submission of Medical Reports, 24 January 2014 (Confidential).

<sup>11</sup> T. 22668-22669; Defence Submission, paras 20-21.

<sup>12</sup> T. 22669; Defence Submission, paras 22-23.

<sup>13</sup> T. 22669; Defence Submission, para. 24.

A Trial Chamber may, *proprio motu* or at the request of a party, order a medical, psychiatric or psychological examination of the accused. In such a case, unless the Trial Chamber otherwise orders, the Registrar shall entrust this task to one or several experts whose names appear on a list previously drawn up by the Registry and approved by the Bureau.

### III. DISCUSSION

#### A. Necessity of a four-day-schedule

10. The Chamber notes that the Defence relied predominantly on old medical reports. However, the Chamber has predominantly considered reports on recent medical examinations as only they provide a current picture of the Accused's health state.

11. Dr Cras, a neurologist, examined the Accused last on 12 June 2014.<sup>16</sup> He concluded that the Accused bears a high risk of suffering a new stroke due to his age, the presence of diabetes, hypertension, and having suffered a previous stroke.<sup>17</sup> He further assumed that appearing in Court causes stress for the Accused that might double or even triple such risk.<sup>18</sup>

12. Dr Hollanders, a cardiologist, examined the Accused last on 30 May 2014.<sup>19</sup> He concluded that the Accused remains at a heightened risk of a TIA and/or a cardiovascular or cerebrovascular accident ("CVA").<sup>20</sup> On the basis of the International Risk Score Table, the risk of the Accused to suffer a new CVA in the next ten years is at 7.5 per cent.<sup>21</sup> In addition to other advice, he concluded that tackling the problem of stress, which is now mainly caused by the five-day sitting schedule, would have a favourable effect on this risk.<sup>22</sup>

13. On the basis of the Expert Reports, the Chamber found that the Accused bears a heightened risk of suffering a stroke and that his attendance in Court is among the elements that contribute to this risk. The crucial question remained however, whether a four-day schedule with a corresponding protraction of the overall length of trial would result in an overall reduction of stress compared with a five-day sitting regime.

14. Dr Cras stated that the risk of developing a new stroke would only be reduced, if a four-day schedule implied a substantial reduction of stress the Accused is exposed to.<sup>23</sup> However, it would be

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<sup>14</sup> Defence Submission, paras 25-26.

<sup>15</sup> Cras Report, para. 28.

<sup>16</sup> Cras Report, pp. 1, 3-4.

<sup>17</sup> Cras Report, p. 4.

<sup>18</sup> *Ibid.*

<sup>19</sup> Hollanders Report, p. 1.

<sup>20</sup> Hollanders Report, p. 4.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> Cras Report, p. 5.

difficult to assess whether this would be the case.<sup>24</sup> He further stated that a delay or protraction of the length of the trial would be disadvantageous to the Accused but that it was difficult to ascertain how the different factors interact to increase the risk of a new stroke.<sup>25</sup> Dr Cras did not come to a conclusion as to whether, in the present circumstances, a four-day schedule would reduce the stress the Accused is exposed to.

15. Dr Hollanders specifically advised that a four-day sitting schedule, which would delay the length of the trial for at least six months, would be preferable to the five-day sitting regime in place.<sup>26</sup> While he did not articulate reasons for his advice, the Chamber inferred that the level of stress encountered by the Accused during a four-day sitting regime, despite a prolonged trial, would be less than during a five-day sitting regime.

16. As a result of Hollanders' report, the Chamber finds there is a sufficient medical basis to justify a grant of the Accused's request to move to a four-day schedule.

#### **B. The specific non-sitting day**

17. The reports before the Chamber do not provide for any medical reason suggesting that Wednesdays should be the non-sitting days. On occasion, the UNDU medical reports indicated such a preference, however, no medical basis was provided for this.<sup>27</sup> The Chamber noted that the Dimitrijević/Kovačević Report recommended a break after two consecutive sitting days.<sup>28</sup> The Chamber, again, could not identify a medical basis for such a recommendation. This Chamber deems it preferable to sit consecutive days in order to avoid interruptions in the presentation of evidence which would also result in a longer uninterrupted rest for the Accused.<sup>29</sup> Furthermore, the Chamber would like to minimize the number of witnesses who may have to extend their stay in The Hague. Therefore, the Chamber provisionally ordered Fridays to be designed the non-sitting day, and announced that it would seek the views of the Experts on this specific question.<sup>30</sup>

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<sup>24</sup> Cras Report, p. 4.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Registrar's Submission of Medical Report, 2 April 2013 (Confidential), para. 3.

<sup>28</sup> Dimitrijević/Kovačević Report, p. 9.

<sup>29</sup> As for other Chambers' consecutive sitting schedules, see e.g. *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-T, Decision on the Application of Rule 73 *ter* (E) and on Defence Motion to Modify the Trial Schedule during the Testimony of Mr. Hadžić, 24 June 2014, para. 9; *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Third Decision Amending Modalities for Trial, Annex B, 17 September 2010, para. 1; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Accused's Second Submission on Trial Schedule, 27 May 2010 (Confidential), para. 11.

<sup>30</sup> T. 24702.

**C. Additional requests**

18. With regard to the additional Defence requests, the Chamber noted that the Defence did not provide a medical basis for its request that trial days be confined to four hours per day and dismissed the request accordingly. The Chamber also dismissed the Defence request for automatic days of rest in the event that the Accused suffers an "emotional crisis" or a TIA. It did not deem it appropriate to grant any automatic day(s) of rest but decided that it would consider such events on a case-by-case basis. In the March Decision, the Chamber ordered the medical examination of the Accused on an ongoing basis at least every four months. Therefore, the Chamber also dismisses the Prosecution's request for regular follow-up examinations as moot.

**IV. DISPOSITION**

19. For the foregoing reasons, pursuant to Article 20 of the Statute and Rule 54 of the Rules, the Chamber

**GRANTED** the Request **IN PART**;

**ORDERED** the adoption of a four-day per week sitting schedule;

**DISMISSED** the additional requests by the Defence;

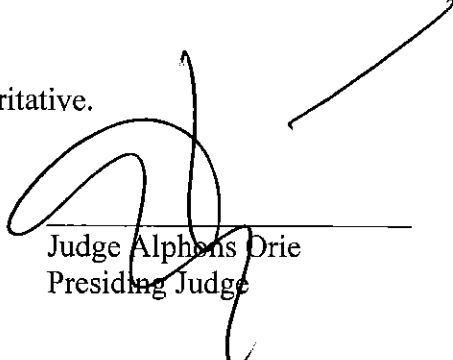
**DISMISSES** the additional request by the Prosecution as moot;

**INSTRUCTS** the Registry to convey to the Experts the following question so that their answers can be included in their next medical reports: "The Chamber, for trial management reasons, prefers to sit four consecutive days and has therefore provisionally designated Fridays (and exceptionally one Monday) as the non-sitting days. Do sound medical reasons exist, and if so what are they, in favour of interrupting proceedings twice a week, i.e. on Wednesdays and Saturdays/Sundays, or would, from a medical point of view, sitting four consecutive days a week be equally acceptable?";

**INVITES** the parties and the Registry to indicate within seven (7) days of the filing of the present decision what, if any, portions thereof should remain confidential; and

**ORDERS** the Registry, if no submissions are filed in a timely manner pursuant to the invitation above, to lift the confidentiality of the present decision in its entirety.

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



Judge Alphons Orie  
Presiding Judge

Dated this Seventeenth day of September 2014  
At The Hague  
The Netherlands

[Seal of the Tribunal]