

**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-04-75-T
Date: 11 February 2015
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Decision: 11 February 2015

PROSECUTOR

v.

GORAN HADŽIĆ

CONFIDENTIAL

DECISION ON URGENT REQUEST FOR INTERIM PROVISIONAL RELEASE

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for Goran Hadžić:

Mr. Zoran Živanović

Mr. Christopher Gosnell

TRIAL CHAMBER II 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 “Urgent Request for Interim Provisional Release Until 22 February 2015” filed confidentially with a confidential annex on 10 February 2015 (“Motion for Interim Provisional Release”);

BEING FURTHER SEISED OF the “Urgent Request for Provisional Release”, filed confidentially with confidential and confidential and *ex parte* annexes by the Defence on 22 January 2015 (“Motion for Provisional Release”);¹

NOTING that on 16 January 2015, at the request of the Prosecution and pursuant to Rule 74 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Rules”), the Chamber ordered the Registry to appoint an independent neurologist and an independent neuro-oncologist (“Experts”) to examine Hadžić and to, no later than 13 February 2015, submit detailed written reports providing answers to questions related to Hadžić’s ability to attend and participate in trial proceedings;²

NOTING that in the same decision, the Chamber invited the Reporting Medical Officer of the United Nations Detention Unit (“RMO” and “UNDU”, respectively) in consultation with the multi-disciplinary team of doctors treating Hadžić, to prepare a medical report addressing the same questions;³

NOTING that on 26 January 2015, the Deputy Registrar notified the Chamber that she had appointed two medical experts pursuant to the Decision of 16 January 2015;⁴

NOTING that on 27 January 2015 the Chamber issued the “Interim Order in Relation to the Urgent Request for Provisional Release” in which it ordered the RMO in consultation with Hadžić’s treating physicians and the Experts to provide answers to certain enumerated questions relevant to the Motion for Provisional Release and asked the Registry to provide submissions on, *inter alia*, the conditions of Hadžić’s detention at the UNDU (“Interim Order”);

¹ See also Supplemental Submission in Support of Urgent Request for Provisional Release (confidential), 22 January 2015; Corrigendum to Urgent Request for Provisional Release (confidential), 26 January 2015; Supplemental Submissions in Relation to Urgent Request for Provisional Release (confidential), 2 February 2015; Second Supplemental Submissions in Relation to Urgent Request for Provisional Release (confidential) 2 February 2015.

² Decision on Prosecution Request for a Medical Examination of the Accused Pursuant to Rules 54 and 74 *bis* (confidential), 16 January 2015 (“Decision of 16 January 2015”), pp. 4-5.

³ Decision of 16 January 2015, p. 5.

⁴ Deputy Registrar’s Notification of Appointment of Medical Experts (confidential), 26 January 2015, p. 2.

NOTING that on 29 January 2015, the Deputy Registrar indicated that the earliest dates the Experts could examine Hadžić were 5 February 2015 and 11 February 2015, respectively;⁵

NOTING that also on 29 January 2015, the RMO provided a Medical Report answering the questions set out in the Interim Order and that on 30 January 2015 the Medical Officer also filed a Medical Report addressing Hadžić's current condition and fitness to attend trial proceedings (together "Medical Reports");⁶

NOTING that on 3 February 2015, in light of the date of the Experts' examinations and Experts' reports and the benefit of receiving fully informed, streamlined submissions from the parties, the Chamber allowed the Prosecution to file its response to the Motion for Provisional Release no later than 16 February 2015;⁷

NOTING that, also on 3 February 2015, citing Hadžić's health, the Chamber cancelled hearings in this case until 23 February 2015;⁸

NOTING that in the Motion for Interim Provisional Release the Defence submits that Hadžić is unable to get proper and uninterrupted rest at the UNDU; that continued detention causes him substantial discomfort and likely has a negative effect on his health; and therefore there is an urgency which justifies his immediate provisional release until 22 February 2015;⁹

NOTING that the Prosecution indicates that, unless otherwise directed by the Chamber, it does not intend to file a response to the Motion for Interim Provisional Release;¹⁰

NOTING that in the Registry Submission of 29 January 2015, Deputy Registrar has provided the Chamber with details regarding the conditions of Hadžić's detention and has reported that the management of the UNDU has undertaken measures aimed at facilitating Hadžić's ability to rest;¹¹

RECALLING that the Chamber would benefit from having the Experts' reports as well as fully informed submissions from the parties before it makes its determination on the Motion for Provisional Release;

⁵ Deputy Registrar's Submission Regarding Interim Order in Relation to the Urgent Request for Provisional Release (confidential), 29 January 2015 ("Registry Submission of 29 January 2015"), para. 15.

⁶ Deputy Registrar's Submission of Medical Report (confidential), 29 January 2015, confidential Annex; Deputy Registrar's Submission of Medical Report (confidential), 30 January 2015, confidential Annex.

⁷ Email from the Chamber to the Parties and Registry, 3 February 2015.

⁸ Email from the Chamber to the Parties and Registry, 3 February 2015.

⁹ Motion for Interim Provisional Release, paras 2, 13, 15-17, 27.

¹⁰ Email from the Prosecution to the Chamber and the Defence, 10 February 2015.

¹¹ Registry Submission of 29 January 2015, para. 5.

CONSIDERING that the Chamber will issue its decision on the Motion for Provisional Release as soon as practicable;

CONSIDERING that in the Motion for Interim Provisional Release, the Defence raises no new issues which have not already been placed on the record;

CONSIDERING that nothing in the Medical Reports suggests that Hadžić's recuperation requires his immediate provisional release;

FINDING therefore that the Defence has failed to demonstrate an urgency which necessitates a decision on interim provisional release;


PURSUANT to Rules 54 and 65 of the Rules hereby:

DENIES the Motion for Interim Provisional Release;

REMAINS SEISED of the Motion for Provisional Release.

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

Done this eleventh day of February 2015,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]