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Dated 15 November 2013

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13 March 2013

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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: 13 March 2013
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 13 March 2013

PROSECUTOR

v.

RATKO MLADIĆ

CONFIDENTIAL

**DECISION ON DEFENCE MOTION SEEKING
ADJUSTEMENT OF MODALITIES OF TRIAL**

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 15 January 2013, the Defence filed a motion requesting, on account of health concerns of Mr. Mladić (“the Accused”), (1) an adjustment of the trial sitting schedule, and (2) reconsideration of the Chamber’s denial of verbal communication between the Accused and his defence team during court sessions (“Motion”).¹ Annexed to the Motion are the curriculum vitae of Medical Psychology Specialist Professor Bojana Dimitrijević and neuropsychiatrist Professor Ratko Kovacević, as well as their report entitled “Expert Findings and Opinion on the Mental Health and Processing Abilities of Ratko Mladić” (“Report”).²

2. Relying on the Report the Defence submits, in short, that court attendance causes the Accused “serious emotional tension” which could result in a Transient Ischemic Attack (“TIA”) which, in turn, could be fatal.³ To minimize the risk or manifestation of a TIA, the Defence submits that trial days should be limited to four hours in length for two sitting days in a row with Wednesdays as a non-sitting day, and that in the event of an “emotional crisis” or TIA, the Accused be given a day of rest to recover before the next sitting day.⁴ The Defence submits, further, that permitting verbal communication between the Accused and members of the Defence team during court sessions would (1) lessen the Accused’s anxiety and therefore the threat of his emotional state “escalating to the stage of a TIA or stroke;” and (2) allow the defence to monitor the Accused’s condition, so that preventive steps can be taken to relieve his stress and for him to receive urgent medical care “to avoid the potentially fatal consequences of a TIA”.⁵

3. On 29 January 2013, the Prosecution filed its response to the Motion, deferring to the Chamber on the requests set out by the Defence, subject to a number of observations.⁶ The Prosecution notes that the Report does not set out how emotional distress is connected to an increased risk of TIAs, or how a day off in the middle of the week would prevent this.⁷ In this respect, and noting that six months have elapsed since the last assessment and opinion of the Reporting Medical Officer (“RMO”) on the Accused’s health, the Prosecution proposes that an independent medical update of the Accused’s overall physical condition would be required for the

¹ Defence Motion Seeking Adjustment of the Trial Sitting Schedule Due to the Health Concerns of the Accused, 15 January 2013 (Confidential), paras 20, 27-30.

² Motion, Annex B (CVs), Annex C (Report).

³ Motion, para. 6.

⁴ Motion, paras. 20-22, 24, and p. 8. *See* Report, p. 9.

⁵ Motion, para. 27.

⁶ Prosecution Response to Defence Motion Seeking Adjustment of the Trial Sitting Schedule Due to the Health Concerns of the Accused, 29 January 2013 (Confidential)(“Response”), paras 1, 2, 5, and p. 3, Conclusion.

⁷ Response, para. 3.

Chamber to make a fully informed decision on the Motion.⁸ Further, the Prosecution submits that permitting limited verbal communication between the Accused and his Defence team during court sessions, as long as it is not disruptive to the proceedings, may facilitate the work of the Defence.⁹

II. APPLICABLE LAW

4. 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.

5. 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.

III. DISCUSSION

6. The Defence request for an adjustment of the trial sitting schedule and permission for verbal communication with the Accused during court hearings directly relates to the Chamber’s trial management duties under Article 20 (1) of the Statute and the Chamber’s discretion pursuant to Rule 54 of the Rules. The submissions put forth by the Defence concerning the health condition of the Accused are relevant to fulfilment of these duties, to the extent that they affect scheduling matters.

7. The Report sets out the results of a clinical examination and interviews with the Accused on 31 October, 1, and 2 November 2012 at the United Nations Detention Unit (“UNDU”), and contains findings on the Accused’s psychological status. Prof. Dimitrijević states, *inter alia*, that in the last year, “there have been oscillations in [the Accused’s] physical and mental health” and occasional “crises”, which take the form of “complete loss of consciousness accompanied by confusion, weakness, headaches and disorientation”.¹⁰ In assessing the Accused’s intellectual abilities, Prof. Dimitrijević concludes, *inter alia*, that in “the domain of emotional reactions, there are turbulent and sudden reactions of the ‘short circuit’ type with a lower tolerance to frustration and a tendency

⁸ Response, para. 4.

⁹ Response, para. 5 and p. 3, Conclusion.

¹⁰ Report, p. 4, para. 2.

to react ‘here and now’ accompanied by a lower ability to defer impulses and control them rationally”.¹¹

8. The findings by Prof. Dimitrijević are followed by the “Opinion” and the “Conclusions” of Prof. Kovacević, who states, in short, that the Accused’s attendance in court causes him emotional distress, accompanied by, *inter alia*, “a sharp rise in blood pressure” which could lead to a TIA, which, in turn, “could be the first phase of a new brain stroke”, “possibly result[ing] in death”.¹²

9. In assessing the information presented in the Report, the Chamber takes into consideration the results of the full medical evaluation of the Accused, which it ordered pursuant to Rule 74 *bis* in late 2011, filed confidentially on 6 December 2011 (“2011 Medical Report”).¹³ The 2011 Medical Report sets out in detail the physical and neurological ailments the Accused was found to be suffering from. With respect to the Accused’s arterial hypertension, the Chamber notes that the 2011 Medical Report stated that it was “medically speaking under control”.¹⁴

10. The Chamber was fully informed of the Accused’s medical condition when on 20 July 2012 it denied the Defence request to reduce the trial sitting schedule from five to four days.¹⁵ Following the Chamber’s standing order to the Registry of 29 August 2012, the Chamber received reports on, *inter alia*, steps taken in each instance that the Accused expressed a complaint about his medical condition while on the premises of the ICTY Main Building.¹⁶ Upon a review of these reports, the Chamber does not find support for the claim that court attendance has ever resulted in a “sharp rise” of the Accused’s blood pressure, as alleged in the Report. On not a single occasion did the measurements of the Accused’s blood pressure indicate that the values were not within an acceptable range, nor did the measurements ever result in a recommendation by the RMO that the Accused would not be able to attend a hearing. There is, moreover, no information before the Chamber that there is a direct link between court attendance and a rise of the Accused’s blood pressure.

¹¹ Report, p. 7, para. 5.

¹² Report, Opinion, para. 8.

¹³ On 10 November 2011, the Chamber received an update from the Medical Department of the UNDU, on the health status of the Accused and an accompanying Medical File, dated 9 November 2011. On 16 November 2011, the Chamber ordered a full medical examination of the Accused pursuant to Rule 74 *bis* (Order for a Medical Examination of the Accused Pursuant to Rule 74 *bis*, 16 November 2011). Subsequently, a report was submitted by the Registry to the Chamber (Registrar’s Submission of Medical Report, filed confidentially on 6 December 2011). An English translation of this report was filed on 8 December 2011.

¹⁴ 2011 Medical Report, p. 4.

¹⁵ T. 1245-1246.

¹⁶ Internal Memoranda submitted by the Registry to the Chamber confidentially, 31 August 2012; 4 September 2012; 19 September 2012; 3 October 2012; 9 October 2012; 21 November 2012; 3 December 2012; 5 December 2012.

11. With regard to the claim made in the Report that the Accused suffers occasional “crises” which result in “complete loss of consciousness”, the Chamber notes that there is no information before it, neither presented through the Report nor indeed submitted by the Registry, substantiating such a claim.¹⁷

12. The Chamber finds that the opinion set forth in the Report, namely, that attending court hearings causes the Accused emotional distress, which results in a “sharp rise in blood pressure”, which in turn heightens the risk of a TIA possibly leading to a stroke, and that, finally, a non-sitting day in the middle of the week would decrease such a risk, is founded on a series of hypothetical assertions, unsupported by any underlying empirical data. In the view of the Chamber, an assessment of the risk of the Accused suffering from a TIA can only be made by an appropriately qualified medical specialist such as a cardiologist or arteriologist, and does not lie within the realm of expertise of Profs. Dimitrijević and Kovacević. While the Report refers to findings by a cardiologist already included in the 2011 Medical Report, which recorded that the Accused suffers from, *inter alia*, arterial hypertension, the Chamber reiterates that this is not new information, and the Accused is receiving appropriate treatment for this ailment. The Chamber does not, therefore, find that the opinions set out in the report trigger a need for an independent medical update of the Accused’s present overall physical condition as proposed by the Prosecution. It also does not find that the Defence has demonstrated that an order to change the trial sitting schedule is necessary for the conduct of the trial.

13. Concerning the Defence request to permit verbal communication between the Accused and his defense team during court sessions, the Chamber recalls that the limitation of verbal communication was imposed as a result of the disruption of the proceedings due to the Accused’s interference with the testimony of a number of witnesses.¹⁸ The Accused had, moreover, been instructed by the Chamber on several occasions that his speech was too loud when consulting members of his defence team.¹⁹ Following several warnings, on 28 September 2012, the Chamber imposed a regime prohibiting the Accused from speaking in court, and disallowing consultation of the Accused with counsel in court, save for, if required, passing notes to counsel.²⁰ The Chamber

¹⁷ The Chamber notes, further, that the Defence in their submissions refers to only one occasion where the Accused allegedly “collapsed in court and lost consciousness” (Motion, para. 1). During the testimony of David Harland on 12 July 2012, the Defence brought to the attention of the Judges that the Accused was not feeling well. The hearing was adjourned and the Chamber requested the medical services to assist (T. 820). The ICTY Nurse subsequently conducted a medical assessment of the Accused, and reported that she found him conscious and orientated to time and place. Internal Memorandum submitted by the ICTY Nurse, dated 12 July 2012. There is no information before the Chamber substantiating the claim that the Accused lost consciousness on this occasion.

¹⁸ T. 3226-3227.

¹⁹ See e.g. T. 367, T. 938, T. 1249, T. 1828-1829, T. 2702, T. 3028, T. 3102, T. 3207.

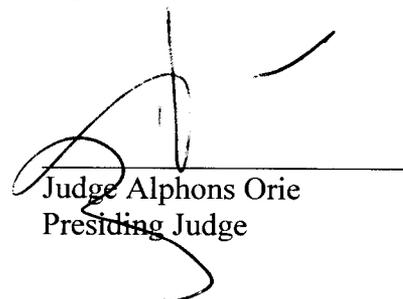
²⁰ T. 3226.

warned that any violation would result in the Accused's removal from the courtroom.²¹ Since this regime was imposed, however, the Chamber has condoned instances of verbal communication between the Accused and members of his defence team where this was done briefly and with lowered voices, and hence, without disrupting the court proceedings.²² The Chamber sees no reason to discontinue this practice in instances that the Accused wishes to give instruction on matters related to the case, or where the Accused requires a break, provided that such communication in no way interferes with court proceedings.

IV. DISPOSITION

14. For the foregoing reasons, pursuant to Rule 54 of the Rules and Article 20 of the Statute, the Chamber **DENIES** the Motion in part, declaring **MOOT** the request for the Chamber to reconsider the denial of verbal communication between the Accused and his defence team, and **ORDERS** the Registry, for the sake of transparency of the Chamber's reasoning and completeness of the record, to file confidentially the Internal Memoranda submitted to the Chamber in accordance with the Chamber's standing request on 29 August 2012 for reports on steps taken in regard to any health complaint made by the Accused while on ICTY Main Building premises, as identified in footnote 16 of this decision.

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



Judge Alphons Orie
Presiding Judge

Dated this thirteenth day of March 2013
At The Hague
The Netherlands

[Seal of the Tribunal]

²¹ T. 3226.

²² See e.g. T. 3884-3885, T. 7510, T. 7574, T. 8127, T. 8139, T. 8326-8327, T. 9017, T. 9060.