



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: 12 July 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: 12 July 2013

PROSECUTOR

v.

RATKO MLADIĆ

CONFIDENTIAL

**DECISION ON SECOND DEFENCE MOTION SEEKING
ADJUSTMENT OF THE TRIAL SITTING SCHEDULE DUE TO
THE HEALTH CONCERNS OF THE ACCUSED**

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 16 April 2013, the Defence filed a motion ("Motion") requesting the following due to health concerns of Ratko Mladić ("the Accused"): 1) that trial days last no longer than four hours in total; 2) that the trial sitting schedule be reduced from five days per week to two four-hour days separated by a day of rest; and 3) if the Accused suffers from an emotional crisis or Transient Ischemic Attack ("TIA"), that he be given one day of rest to recover before attending trial again.¹ As support for its requests, the Defence incorporates the arguments made in its previous motion for an adjustment of the trial schedule including a report by medical personnel from Serbia recommending a reduction in the sitting schedule based on the emotional and physical capacities of the Accused.² The Defence notes that, subsequent to the Chamber's decision of 13 March 2013 denying its previous request for reducing the trial sitting schedule, the United Nations Detention Unit ("UNDU") medical staff joined the recommendation of the medical personnel from Serbia that the trial schedule be reduced to four days per week, with Wednesday being a non-sitting day, for reasons related to the Accused's health.³

2. The Defence submits that the Accused has repeatedly felt unwell and expressed health concerns during the trial proceedings, that on several occasions breaks were required for health-related reasons including an incident where the Accused collapsed in court, and that the Defence has continually raised the issue of the Accused's fatigue caused by the current trial sitting schedule.⁴ The Defence also submits that an incident on 18 February 2013 which led to the Accused's exclusion from that day's proceedings was triggered by the Accused's diminished medical condition.⁵ The Defence submits that trial sitting schedules can be reduced to accommodate health concerns of an accused and that making a reduction in the current sitting schedule would reduce the risk of a serious incident that would require medical treatment or prevent the Accused from attending trial.⁶ The Defence further submits that the health of the Accused is of great importance and that maintaining a trial sitting schedule that jeopardizes his health is neither in the

¹ Defence Second Motion Seeking Adjustment of the Trial Sitting Schedule Due to the Health Concerns of the Accused, 16 April 2013 (Confidential), paras 2, 27.

² Motion, paras 3, 10-14, 20-21. *See* Motion, para 2; Defence Motion Seeking Adjustment of the Trial Sitting Schedule Due to the Health Concerns of the Accused, Annexes A-C, 15 January 2013 (Confidential) ("First Defence Motion"). *See also* Decision on Defence Motion Seeking Adjustment of Modalities of Trial, 13 March 2013 (Confidential) ("First Decision") wherein the Chamber denied the First Defence Motion.

³ Motion, paras 6-7, 15-17, 19, 22 *See* Registrar's Submission of Medical Report, 2 April 2013 (Confidential); Registrar's Submission of Medical Report, 8 April 2013 (Confidential); Registrar's Submission of Medical Report, 12 April 2013 (Confidential).

⁴ Motion, para 9

⁵ *Ibid*, para 5

⁶ *Ibid*, paras 18, 23.

interests of justice nor humane.⁷ The Defence avers that reducing the sitting schedule as requested would not prejudice the Prosecution.⁸

3. On 26 April 2013, the Prosecution filed its response ("Response"), taking no position with regard to the Defence's request to reduce the trial sitting schedule, and not objecting to the Defence request for an adjournment in the event of a medical emergency.⁹ The Prosecution submits that a connection between the Accused's emotional disposition or behaviour in court and TIAs has not been established and that, because of the absence of objective criteria supporting the recommendation of the UNDU Reporting Medical Officer ("RMO"), the Chamber should conduct a hearing in which the RMO could provide more details about the basis for his recommendation.¹⁰ The Prosecution submits that the Chamber should also explore with the RMO, and other medical staff if necessary, alternative approaches which address the health concerns of the Accused such as allowing the Accused to use the UNDU's remote courtroom facility one day per week, or sitting five days per week, but for shorter periods.¹¹ The Prosecution also indicates a willingness to coordinate its witness schedule with the Defence so that if the Accused were to use the remote courtroom facility, he could still be physically present in court for particular witnesses.¹²

4. On 7 May 2013, the Deputy Registrar filed a submission ("Registry's First Submission") with regard to the trial schedule in which she emphasized the RMO's previous recommendation for a four-day sitting schedule and noted the RMO's observation that a previous reduction in the sitting schedule had positive effects on the Accused's well-being.¹³ The Deputy Registrar further submitted that for reasons of thoroughness and judicial economy, the RMO should be allowed to provide any requested medical information in writing rather than appear in court.¹⁴ Lastly, the Deputy Registrar submitted that the RMO would need to obtain the Accused's consent for the release of confidential medical information.¹⁵

5. On 10 May 2013, in response to the Registry's First Submission, the Prosecution filed further submissions ("Prosecution Submissions") in which it argued that it would be more efficient for the RMO to answer questions orally rather than in writing, and that the Accused's consent would not be required for the release of relevant medical information because he had implicitly

⁷ Ibid, para 24

⁸ Ibid, paras 25-26

⁹ Prosecution Response to Defence Second Motion Seeking Adjustment of the Trial Sitting Schedule Due to the Health Concerns of the Accused, 26 April 2013 (Confidential), paras 1, 8.

¹⁰ Response, paras 2, 5, 9

¹¹ Ibid, paras 5, 9

¹² Ibid, para. 6.

¹³ Deputy Registrar's Submission Regarding Trial Sitting Schedule, 7 May 2013 (Confidential), para. 4.

¹⁴ Registry's First Submission, paras 5-11.

¹⁵ Ibid, paras 8-9

waived his right to medical confidentiality by submitting a request to the Chamber based on his medical condition.¹⁶ The Prosecution further submitted that the disclosure of medical information to the trial participants must be distinguished from disclosure to the public and, although the medical condition of an accused becomes a matter of public interest when it impedes the conduct of a trial, it would not oppose any reasonable application for specific medical information to be kept confidential.¹⁷ The Prosecution requested that the Chamber clarify the standard to be applied with regard to the Accused's consent, invite the Registry to verify that the Chamber has all the information covered by that standard, and ensure that the Accused is adequately informed of that standard.¹⁸

6. On 16 May 2013, the Deputy Registrar filed additional submissions ("Registry's Second Submission"), responding to the Prosecution Submissions and clarifying her position with regard to the method by which the RMO could provide information to the Chamber.¹⁹ She suggested that, should the Chamber decide to receive such information orally, the parties and Chamber transmit their anticipated questions to the UNDU medical service in advance of the hearing.²⁰ The Deputy Registrar further submitted that the Medical Officer ("MO") would exceptionally make himself available for such a hearing instead of the RMO, since the MO possesses a more complete overview of the Accused's health condition.²¹ She also noted that the Accused had given his general consent for the MO to discuss the health of the Accused in relation to the request for a reduction in the sitting schedule, but submitted that if the questioning of the MO were to lead to an area of discussion not covered by previous consents, the Accused's consent would again be required.²²

7. On 24 May 2013, the Chamber invited the MO to appear in court on 4 June 2013 to answer questions by the Parties and Chamber relating to the basis of the RMO's recommendation to reduce the trial sitting schedule.²³ The Chamber, having noted the Registry's assertion that the Accused had already provided his consent for the MO to discuss confidential medical information, declared this particular issue of the Accused's consent to be moot.²⁴

¹⁶ Prosecution Observations on the Deputy Registrar's Submission Regarding Trial Sitting Schedule, 10 May 2013 (Confidential), paras 3-8, 11.

¹⁷ Prosecution Submissions, paras 8-10

¹⁸ *Ibid*, para 11.

¹⁹ Deputy Registrar's Submission Regarding Prosecution Observations on the Deputy Registrar's Submissions Regarding Trial Sitting Schedule, 16 May 2013 (Confidential).

²⁰ *Ibid*, paras 4-5.

²¹ Registry's Second Submission, para. 6.

²² *Ibid*, paras 6-7

²³ Invitation to Medical Officer, 24 May 2013.

²⁴ *Ibid*, para 3 The Chamber therefore declines to rule on the Prosecution's request to clarify whether or to what extent an accused must consent to the release of confidential medical information.

8. On 4 June 2013, the MO appeared in court and answered questions by the Prosecution and the Chamber with regard to the medical reasoning behind the recommendation for a reduced sitting schedule.²⁵ The MO reported, *inter alia*, that the Accused was in stable condition with a reasonably good heart condition for his age.²⁶ The MO further reported that, although the Accused's blood pressure fluctuates under stress, he recuperates well during rest periods.²⁷ The MO noted that based on clinical observations, he concluded that the Accused had shown some signs of weight loss, a small increase of residual stroke symptoms like slower and slurred speech and reduced muscle strength, and a reduction of concentration and increased fatigue, particularly after a day attending trial.²⁸ However, the MO noted that it was difficult to differentiate the potential causes of such symptoms and that peaks in blood pressure did not necessarily mean an increased risk for the type of stroke the Accused had suffered from in the past.²⁹ The MO stated that he and a treating neurologist did not agree with the conclusions of the medical personnel from Serbia with regard to the risk of a bleeding stroke, and instead believed that such a stroke was a worst-case scenario, which the MO considered unlikely to happen.³⁰

9. The MO noted that while he disagreed with particular conclusions of the medical personnel from Serbia, he and his medical team were nonetheless recommending a reduction in the trial schedule to reduce the risk of adverse medical conditions, such as a complete breakdown or burnout due to extreme fatigue.³¹ The MO noted that the Accused's health had improved during weeks in which the Chamber sat only three or four days.³² The MO further noted that although he had considered the medical consequences of the trial being extended by several months as a result sitting fewer days per week, he did not know what those consequences might be and a cost-benefit analysis in this respect was very difficult to make.³³ The MO added that he could not determine conclusively whether sitting for longer periods four days per week would be more beneficial to the Accused's health than sitting for shorter periods five days per week, and he could not exclude the possibility of the Accused participating in the trial from the UNDU's remote courtroom facility as a viable alternative to a reduction in the sitting schedule.³⁴ The Defence submitted that the use of the remote courtroom facility should not be considered by the Chamber because it would decrease the

²⁵ T. 12017-12073

²⁶ T. 12018-12019, 12035-12040, 12065.

²⁷ *Ibid.*

²⁸ T. 12019, 12025, 12040-12049, 12055-12058.

²⁹ T. 12024, 12030

³⁰ T. 12030, 12037-12038, 12065.

³¹ T. 12032-12035

³² T. 12065-12066

³³ T. 12050

³⁴ T. 12067

Defence's ability to consult with the Accused.³⁵ The Chamber concluded the oral hearing, inviting the parties to make any further submissions in writing by 7 June 2013.³⁶

10. On 7 June 2013, the Prosecution filed an addendum to its Response ("Prosecution Addendum"), submitting that a medical report filed by the RMO on 29 May 2013 and the information provided by the MO at the 4 June 2013 hearing contain concrete, objectively measurable indicators of the Accused's fatigue and, therefore, it is medically advisable to grant the Motion, reducing the sitting schedule to four days a week beginning the week of 24 June 2013 until the start of the summer recess on 26 July 2013.³⁷ The Prosecution submits in this regard that a reduction of the sitting schedule by one day a week for five weeks would constitute a minimal delay in the proceedings while likely reducing the Accused's fatigue, thereby ensuring his full participation in the trial.³⁸ The Prosecution submits that at this stage it is not possible to make an informed determination as to whether a reduced sitting schedule will be medically necessary after the summer recess.³⁹ For this reason, the Prosecution submits that should the Defence believe that a four-day week continues to be medically necessary after the summer recess, it should submit a new application based on a current assessment of the Accused's medical condition at that time.⁴⁰

11. On 27 June 2013, the Registrar filed a medical report by the RMO which included additional information about the weight measurements of the Accused as requested by the Chamber during the hearing of 4 June 2013.⁴¹ In this report, the RMO stated, *inter alia*, that the Accused's weight has remained stable over the last 12 months.⁴² On 1 July 2013, also in response to a request by the Chamber during the 4 June 2013 hearing, the Registrar filed a medical report by the MO concerning the Accused's physiotherapy treatments.⁴³ In this report, the MO described, *inter alia*, the conclusion of the physiotherapist that the Accused's general physical condition had improved 25% from his arrival at the UNDU.⁴⁴

II. APPLICABLE LAW

12. Article 20 (1) of the Statute of the Tribunal ("Statute") provides that:

³⁵ T 12068.

³⁶ T. 12081

³⁷ Prosecution Addendum, paras 1, 8, 10-11, 13.

³⁸ *Ibid*, para 2.

³⁹ *Ibid*, para 12.

⁴⁰ *Ibid*, paras 12-13

⁴¹ Registrar's Submission of Medical Report, 27 June 2013 (Confidential), Annex, para. 3, Appendix.

⁴² *Ibid*, Annex, para 3, Appendix.

⁴³ Registrar's Submission of Medical Report, 1 July 2013 (Confidential), Annex.

⁴⁴ *Ibid*, Annex.

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.

13. 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

14. As a preliminary matter, the Chamber notes its First Decision in which it considered the report of the medical personnel from Serbia and the Defence's submissions in support of the request to adjust the trial sitting schedule based on the health concerns of the Accused at that time.⁴⁵ The Chamber recalls its finding that the recommendation contained in the report for a reduction in the trial sitting schedule was founded on a series of hypothetical assertions, unsupported by any underlying empirical data.⁴⁶ The Chamber also recalls its finding that the Defence had not demonstrated that an order to change the trial sitting schedule was necessary at that time.⁴⁷

15. The Chamber notes that the routine medical reports filed by the Registrar since 2 April 2013 also include a recommendation for a reduction in the trial sitting schedule due to health concerns related to the Accused.⁴⁸ However, as the Chamber indicated in its invitation for the MO to appear in court, it does not consider these reports to contain an objective basis for the recommended reduction so as to be dispositive of the matter.⁴⁹ The Chamber further notes that this recommendation appears to have been adopted without any further explanation or reasoning immediately after the same recommendation by the medical personnel from Serbia was rejected by the Chamber as unsubstantiated.

16. The Chamber notes that at the oral hearing the MO disagreed with the opinion presented in the report of the medical personnel from Serbia concerning the risk of a TIA, and that the MO considered this was an unlikely, worst-case scenario.⁵⁰ The MO also considered that the only real risk to the Accused was burnout due to fatigue.⁵¹ The MO, who characterized his diagnosis as

⁴⁵ First Decision, paras 7-12.

⁴⁶ Ibid, para. 12.

⁴⁷ Ibid.

⁴⁸ See, e.g. Registrar's Submission of Medical Report, 2 April 2013 (Confidential), para. 3; Registrar's Submission of Medical Report, 8 April 2013 (Confidential), para. 4; Registrar's Submission of Medical Report, 12 April 2013 (Confidential), para. 4, Registrar's Submission of Medical Report, 31 May 2013 (Confidential), para. 6

⁴⁹ Invitation to Medical Officer, 24 May 2013, para. 3

⁵⁰ T. 12030, 12037-12038, 12065

⁵¹ T. 12032-12035.

experience-based rather than evidence-based, was not able to offer an opinion with regard to the risk of negative medical consequences resulting from an overall lengthening of the duration of the trial due to sitting fewer days per week.⁵²

17. The Chamber considers that the medical opinion offered by the MO was of a subjective nature and that the strength of the medical reasoning supporting the recommendation for a reduction of the trial sitting schedule is low. The Chamber further considers that the claims made during the oral hearing that the Accused had experienced weight loss and reduced muscle strength turned out to be unsubstantiated by the additional information provided by the RMO and MO which shows that the Accused's weight has remained stable and his general physical condition has improved significantly in the last year. The Chamber also considers the short-term versus the long-term benefits of a reduction in the weekly trial schedule, and finds in this regard that it has not been shown that a longer overall trial resulting from sitting four days per week would pose less of a medical risk to the Accused than a shorter overall trial resulting from sitting five days per week. Moreover, while ensuring that the Accused's fair-trial rights are fully respected and his medical necessities fully met, the Chamber must balance matters of the Accused's comfort and well-being not rising to the level of medical necessity with the international community's interests in the reasonably expeditious resolution of cases before the Tribunal.

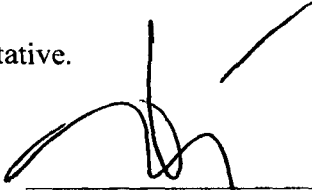
18. Having considered all of the factors discussed above, the Chamber finds, on balance, that an order to reduce the trial sitting schedule is not warranted at this time. The Chamber notes that it will continue to closely monitor the Accused's health and will reassess the trial sitting schedule if needed in the future, including whether or to what extent the trial should adjourn to allow the Accused to recover from any medical emergency.

⁵² T. 12018-12019, 12025-12026, 12050

IV. DISPOSITION

19. For the foregoing reasons, pursuant to Rule 54 of the Rules and Article 20 of the Statute, the Chamber **DENIES** the Motion, **INVITES** the parties and Registry to file, within two weeks of the date of this decision, any submissions as to why this decision should not be made public, and, if no such submissions are received, **INSTRUCTS** the Registry to lift the confidential status of this decision.

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



Judge Alphons Orie
Presiding Judge

Dated this twelfth day of July 2013
At The Hague
The Netherlands

[Seal of the Tribunal]