



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: 11 May 2017
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Decision of: 11 May 2017

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC REDACTED VERSION

**DECISION ON URGENT DEFENCE MOTION FOR
PROVISIONAL RELEASE**

Office of the Prosecutor
Mr Peter McCloskey

Counsel for Ratko Mladić
Mr Branko Lukić
Mr Dragan Ivetić

I. PROCEDURAL HISTORY

1. On 22 February 2017, the Russian Embassy filed a Note Verbale dated 16 February 2017 stating that, should the Tribunal temporarily release Ratko Mladić (“Accused”) in order to receive medical treatment in its territory, it would (i) undertake to accept the Accused and to observe all of the Tribunal’s conditions for temporary release and (ii) guarantee the personal safety of the Accused during his stay (“Russian Guarantee”).¹ On 20 March 2017, the Defence filed an urgent motion seeking the provisional release of the Accused on medical grounds (“Motion”) and annexed four medical reports.² On 24 March 2017, the Ministry of Foreign Affairs of the Netherlands filed a submission stating its understanding that should provisional release be granted, such release would not commence until the Accused had been transferred into the custody of Russia and would terminate upon his return to the Tribunal.³ On 27 March 2017, the Defence supplemented the Motion (“Supplement”), by attaching an English translation of one of the medical reports relied upon in the Motion.⁴ On 31 March 2017, the Prosecution responded opposing the Motion (“Response”).⁵ On 7 April 2017, the Defence requested leave to reply (“Request”) and attached its reply (“Reply”).⁶ On 7 April 2017, the Defence filed a corrigendum to the Reply (“First Corrigendum”).⁷ On 7 April 2017, the Registrar made submissions in relation to the Motion (“Registry Submission”) annexing medical reports from the United Nations Detention Unit (“UNDU”) and the Chamber-appointed independent medical expert in the field of neurology, [REDACTED].⁸ On 7 April 2017, the Deputy Registrar filed a submission annexing a medical report (“Deputy Registrar Submission”) from the Chamber-appointed medical expert in the field of cardiology, [REDACTED] collectively referred to as “Independent Medical Specialists”).⁹ On 13 April 2017, the Registry filed a medical report from the Reporting Medical Officer (“RMO”) on the

¹ Note Verbale from the Embassy of the Russian Federation in the Kingdom of the Netherlands dated 16 February 2017 and filed on 22 February 2017 (Confidential).

² Emergency and Urgent Motion for Provisional Release of Mr. Ratko Mladic based on Humanitarian and Medical Reasons, 20 March 2017 (Confidential with Confidential Annexes). On 21 March 2017, the Defence filed a public redacted version of the Motion.

³ Submission by Ministry of Foreign Affairs of the Kingdom of the Netherlands, 24 March 2017 (Confidential).

⁴ Supplement to Emergency and Urgent Motion for Provisional Release of Mr. Ratko Mladic based on Humanitarian and Medical Reasons and Notice of Availability of Official Translation, 27 March 2017 (Confidential with Confidential Annex), paras 1-4.

⁵ Prosecution Response to Emergency and Urgent Motion for Provisional Release of Mr. Ratko Mladić based on Humanitarian and Medical Reasons, 31 March 2017 (Confidential). On 3 April 2017, the Prosecution filed a public redacted version of the Response.

⁶ Motion for Leave to File a Reply and Proposed Reply in Support of - Emergency and Urgent Motion for Provisional Release of Mr. Ratko Mladic based on Humanitarian and Medical Reasons, 7 April 2017 (Confidential with Confidential Annex). On 7 April 2017, the Defence filed a public redacted version of the Request and Reply.

⁷ Corrigendum to Motion for Leave to File a Reply and Proposed Reply in Support of – Emergency and Urgent Motion for Provisional Release of Mr. Ratko Mladic Based on Humanitarian and Medical Reasons, 7 April 2017.

⁸ Registrar’s Submission Concerning the Defence Motion of 20 March 2017, 7 April 2017 (Confidential with Confidential Annexes).

⁹ Deputy Registrar’s Submission of Independent Expert’s Medical Report, 7 April 2017 (Confidential with Confidential Annexes).

Accused dated 12 April 2017 (“RMO Report of 12 April 2017”).¹⁰ On 14 April 2017, the Defence responded to the Registry Submission (“Response to Registry”).¹¹ On 18 April 2017, the Defence filed a corrigendum to the Response to Registry (“Second Corrigendum”).¹²

II. SUBMISSIONS OF THE PARTIES

A. Motion

2. The Defence requests the immediate and temporary provisional release of the Accused for medical treatment in Russia at the [REDACTED] until delivery of the judgment.¹³ The Defence submits that the requirements of Rule 65 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) have been met.¹⁴ The Defence argues that although health is not explicitly listed as a factor in Rule 65 of the Rules, a Chamber must consider all relevant factors, including the health condition and treatment of an ill detainee, which a reasonable Chamber would have been expected to take into account before coming to a decision.¹⁵ Considering the Accused’s physical and mental condition, it argues that there is no flight risk.¹⁶ It further argues that the medical state of the Accused makes him incapable of posing a danger or risk of harm to any witnesses or alleged victims.¹⁷ It adds that if released to Russia, the Accused would be geographically distant from Bosnia-Herzegovina, where a majority of the witnesses and alleged victims reside.¹⁸ Additionally, it submits that the Russian Guarantee (i) satisfies the requirements under the jurisprudence that Russia will meet the requirements of Rule 65 of the Rules and (ii) provides further assurances that it will observe and adhere to all the conditions of temporary release set by the Tribunal.¹⁹

3. The Defence submits that the medical care the Accused is currently receiving at the UNDU is inadequate and has resulted in a prolonged, and dangerous, state of high risk for the Accused.²⁰ In support, the Defence offers the opinions of three medical professionals, each of whom identify failures and lapses in the medical treatment received by the Accused, and of two medical professionals from the Russian Federation who visited the Accused in 2015.²¹ The Defence further

¹⁰ Deputy Registrar’s Submission of Medical Report, 13 April 2017 (Confidential with Confidential Annex).

¹¹ Consolidated Response to the Registrar’s Submission Concerning the Defence Motion of 20 March 2017 and Deputy Registrar’s Submission of Independent Medical Report, 14 April 2017 (Confidential). On 18 April 2017, the Defence filed a public redacted version of the Response to Registry.

¹² Corrigendum to Consolidated Response to the Registrar’s Submission Concerning the Defence Motion of 20 March 2017 and Deputy Registrar’s Submission of Independent Medical Report, 18 April 2017 (Confidential).

¹³ Motion, paras 1-4, 7, 11, 46-48.

¹⁴ Motion, para. 15.

¹⁵ Motion, paras 12-14.

¹⁶ Motion, para. 18.

¹⁷ Motion, paras 19-23.

¹⁸ Motion, para. 21.

¹⁹ Motion, para. 22.

²⁰ Motion, paras 2-11.

²¹ Motion, paras 5-6, 8-10, 27-45; Annex A, pp. 2-3; Annex F, pp. 9-11.

submits that on approximately 3 March 2017, the Accused experienced an episode [REDACTED], and received only basic pain medication from the UNDU medical staff in response [REDACTED].²² [REDACTED].²³ The Defence argues that in these circumstances, continued detention “may well constitute a violation of Article 3 of the European Convention on Human Rights” (“ECHR”).²⁴

B. Response and Reply

4. The Prosecution argues that the Accused does not satisfy the prerequisites for provisional release as set out in Rule 65 of the Rules.²⁵ It argues that the Accused’s long history as a fugitive from justice, as well as the severity of the charges against him and the life sentence sought by the Prosecution, establish a significant risk that he would abscond prior to the issuance of the judgment.²⁶ Additionally, it contends that the Defence’s argument that the Accused cannot sustain a life on the run because of his health is contradicted by the Accused’s history of having previously evaded justice while seriously ill.²⁷

5. The Prosecution argues that the Defence bases the Motion on a mischaracterisation of opinions of medical personnel who have had either minimal and outdated contact or no contact at all with the Accused.²⁸ The Prosecution argues that while the Accused has longstanding medical issues stemming from his life as a fugitive, his condition has dramatically improved under the care he has received at the UNDU.²⁹ Additionally, the Accused is regularly evaluated by the Independent Medical Specialists whose assessments do not support provisional release on medical grounds.³⁰ The Prosecution submits that both the Accused and the Independent Medical Specialists have praised the treatment the Accused receives at the UNDU.³¹ The Prosecution submits that the Defence misrepresents the nature of a recent medical intervention in an attempt to claim deterioration in the Accused’s health and that the Defence claim that it is impossible to determine whether the Accused’s symptoms were dealt with adequately is belied by the Deputy Registrar’s confirmation that the Accused was promptly and properly treated at [REDACTED].³²

6. The Defence in its reply submits that the Prosecution (i) mischaracterizes the applicable law relating to provisional release; (ii) ignores the effect of the Russian Guarantee; (iii) ignores the

²² Motion, para. 8.

²³ *Ibid.*

²⁴ Motion, para. 4.

²⁵ Response, paras 1, 5-6, 14.

²⁶ Response, paras 1, 6.

²⁷ Response, para. 5.

²⁸ Response, para. 1.

²⁹ Response, para. 2.

³⁰ Response, para. 7.

³¹ Response, paras 2, 13.

³² Response, paras 1, 11.

content of the medical reports annexed to the Motion; and (iv) misapprehends the type of review performed by the Defence medical experts.³³ Finally, the Defence submits that immediate action is necessary to avoid a fatal outcome.³⁴

C. Registry Submission and Response to Registry

7. The Registry submits that upon his arrival at the UNDU, the Accused was assessed to be [REDACTED].³⁵ The Accused has since been monitored by the UNDU medical team and a range of specialists.³⁶ The Registry submits that the health of the Accused has improved since he arrived, largely due to the efforts of the UNDU medical team.³⁷

8. The Registry further submits that the Independent Medical Specialists state the Accused receives appropriate medical treatment in accordance with internationally-accepted standards, and they do not recommend any diagnostic tests outside the current treatment plan.³⁸ The Independent Medical Specialists conclude that the transfer of the Accused to [REDACTED] or provisional release for medical reasons is not warranted.³⁹ The Registry submits that the Accused has, on a number of occasions, praised the medical care provided by the UNDU.⁴⁰

9. The Registry submits that the report from the RMO on 13 March 2017 [REDACTED].⁴¹ The RMO report further stated that the Accused's health was stable and that his pain was mostly diminished.⁴² However, the Accused is still at high risk for [REDACTED].⁴³ The RMO Report of 12 April 2017 states that apart from [REDACTED], there have been no new pathological or radiological findings in relation to his last MRI scan in [REDACTED].⁴⁴ The report also states that the Accused's physical and laboratory measurements have remained stable and within normal limits.⁴⁵

10. The Defence in its response argues that the Registry Submission misrepresents the current situation of the Accused following his [REDACTED] on 8 March 2017.⁴⁶ It argues that in contrast to the Registry Submission in relation to the Accused's [REDACTED], the Accused told the

³³ Reply, paras 4-24; First Corrigendum.

³⁴ Reply, paras 25-28.

³⁵ Registry Submission, para. 4.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Registry Submission, para. 7.

³⁹ *Ibid.*

⁴⁰ Registry Submission, para. 8.

⁴¹ Registry Submission, para. 5.

⁴² Registry Submission, para. 6.

⁴³ *Ibid.*

⁴⁴ RMO Report of 12 April, Annex paras 3-4.

⁴⁵ RMO Report of 12 April, Annex para. 5. *See also* Registrar's Submission of Medical Report, 11 May 2017 (Confidential), Annex, para. 5.

⁴⁶ Response to Registry, para. 6.

Registrar [REDACTED].⁴⁷ The Defence adds that the medical experts relied upon by the Registry have ignored the signs of [REDACTED] from the Accused's test results.⁴⁸

III. APPLICABLE LAW

11. Rule 65(B) of the Rules provides as follows:

Release may be ordered at any stage of the trial proceedings prior to the rendering of the final judgement by a Trial Chamber only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person. The existence of sufficiently compelling humanitarian grounds may be considered in granting such release.

12. Once the Trial Chamber is satisfied that the preliminary requirements of Rule 65 (B) of the Rules are met, it still retains the discretion to deny provisional release in light of all the relevant factors of the case.⁴⁹ The determination of what constitutes "relevant factors" and the weight to be attributed to them depends upon the circumstances of each case and the particular circumstances of the individual accused.⁵⁰

13. In relation to the Defence request to exceed the word limit for motions, the Chamber notes that the Practice Direction on the Length of Briefs and Motions states that motions shall not exceed 3,000 words and that a party must seek authorization from the relevant chamber to exceed this word limit, providing an explanation of the exceptional circumstances that necessitate the oversized filing.⁵¹

14. Pursuant to Rule 126 *bis* of the Rules, a reply to a response, if any, shall be filed within seven days of the filing of the response, with the leave of the Chamber.

IV. DISCUSSION

15. As a preliminary matter, the Chamber will, due to the complex nature of the subject-matter of the Motion, grant the Defence request for an enlargement of the word count in the Motion, the Reply (as amended by the First Corrigendum), and the Response to Registry (as amended by the Second Corrigendum). Moreover, in light of the submissions in the Response, the Chamber finds that the Defence has shown good cause for its Request. The Chamber refrained from granting the Defence request for ordering an expedited response from the Prosecution. Considering that the Defence filed the Supplement a full week after the Motion, and given the complex nature of the

⁴⁷ *Ibid.*

⁴⁸ Response to Registry, paras 18-23.

⁴⁹ *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-T, Decision on Defence Urgent Request for Provisional Release, 13 March 2015, para. 35.

⁵⁰ *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-T, Decision on Urgent Motion for Provisional Release Filed on 28 April 2015, 21 May 2015, para. 24.

⁵¹ Practice Direction on the Length of Briefs and Motions, IT/184 Rev. 2, 16 September 2005, paras 5, 7.

subject-matter, the Chamber was of the view that it would not be in the interests of justice to shorten the Prosecution's response time.

16. The Chamber notes that the host state does not object to the Accused's provisional release and that the Russian Guarantee contains undertakings to accept the Accused in its territory, to observe all the conditions of temporary release from custody that may be set by the Tribunal, and to guarantee the Accused's personal safety.

17. However, the Chamber is not convinced that the Accused will return to the seat of the Tribunal if granted provisional release. The Chamber recalls that the Accused did not voluntarily surrender to the custody of the Tribunal and instead evaded arrest for 16 years. The Chamber further recalls that the Accused lived as a fugitive until 2011 despite suffering serious medical episodes [REDACTED]. These medical episodes did not prevent the Accused from continuing his life as a fugitive. Therefore, the Chamber finds that the Defence argument that the Accused's medical condition is not compatible with "life on the run" is discredited. Under these circumstances, the Chamber finds that the requirements of Rule 65 of the Rules are not met.

18. This notwithstanding, the Chamber, as part of its responsibility to ensure respect for the Accused's fundamental rights, considered whether the Accused's state of health is incompatible with continued detention. While Article 3 of the ECHR is not directly applicable in this context, the Chamber recalls that it is bound to uphold commonly accepted basic human rights standards.⁵² The Chamber notes that the health of the Accused has been monitored extensively by the Registrar and the Chamber itself, evidenced by the plethora of medical reports on the record since 2011. The Chamber observes that the medical reports the Defence relies upon are based on findings by medical professionals who have either not personally examined the Accused or seen the Accused in 2015 only.⁵³ In contrast, the RMO and Independent Medical Specialists have regularly seen and assessed the Accused for many years. Under these circumstances, the Chamber considers the reports of the RMO and the Independent Medical Specialists more reliable than those annexed to the Motion. Their reports have consistently shown a consolidated stable state of health of the Accused, with risks described as corresponding with his age and medical incidents in the past,

⁵² The Appeals Chamber has held that Rule 65 (B) of the Rules must be read in light of the International Covenant on Civil and Political Rights, the ECHR, and relevant jurisprudence. See e.g. *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-AR65, Decision on Fatmir Limaj's Request for Provisional Release, 31 October 2003, paras 8-13; *Prosecutor v. Radoslav Brđanin & Momir Talić*, Case No. IT-99-36-T, Decision on the Motion for Provisional Release of the Accused Momir Talić, 20 September 2002, para. 32 ("There can be no doubt that when the medical condition of the accused is such as to become incompatible with a state of continued detention, it is the duty of this Tribunal and any court or tribunal to intervene and on the basis of humanitarian law provide the necessary remedies. In this context, the Trial Chamber makes reference to the recent decision of the First Section of the European Court of Human Rights *in re* Mouïsel v. France, which ruled for admissibility in a case which dealt with the continued detention of a person suffering from cancer requiring intensive treatment involving transfer to hospital under escort as being in violation of Article 3 of the ECHR.")

⁵³ Motion, Annexes A, C, F; Supplement, Annex A.

mainly stemming from before his arrest. The Independent Medical Specialists have assessed the medical treatment over the last years as in accordance with internationally accepted standards. In relation to the episode suffered by the Accused on or around 3 March 2017, the Chamber is similarly satisfied, given the report from the RMO of 13 March 2017, that there is no acute medical issue that remains unaddressed. The Chamber therefore finds that the Defence has failed to substantiate its submission that the Accused is receiving inadequate medical treatment at the UNDU. Accordingly, the Chamber remains convinced that the Accused's state of health is compatible with continued detention.

V. DISPOSITION

19. For the foregoing reasons, pursuant to Rules 65, and 126 *bis* of the Rules, the Chamber

GRANTS the Defence leave to exceed the word limit in the Motion;

DENIES the Defence request for ordering an expedited response to the Motion;

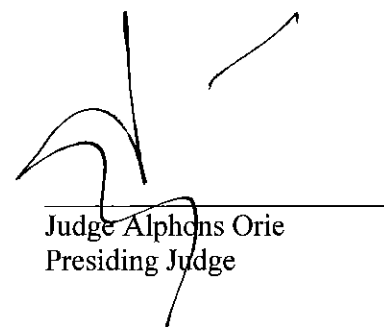
GRANTS the Request;

GRANTS the Defence leave to exceed the word limit in the Reply (as amended by the First Corrigendum);

GRANTS the Defence leave to exceed the word limit in the Response to Registry (as amended by the Second Corrigendum); and

DENIES the Motion.

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



Judge Alphons Orié
Presiding Judge

Dated this eleventh day of May 2017
At The Hague
The Netherlands

[Seal of the Tribunal]