

IT-09-92-PT
D30552-D30549
16 November 2011

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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-PT
Date: 16 November 2011
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr John Hocking

Order of: 16 November 2011

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**ORDER FOR A MEDICAL EXAMINATION OF THE
ACCUSED PURSUANT TO RULE 74 *BIS***

Office of the Prosecutor

Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić

Mr Branko Lukić

I. PROCEDURAL HISTORY

1. At the 8 November 2011 Rule 65 *ter* meeting, the Defence informed the Chamber of concerns regarding the general health condition of Mr. Ratko Mladić (“Accused”).¹ On 9 November 2011, in a confidential informal communication, the Defence expanded upon its concerns regarding the Accused’s health and clarified that, in its layperson’s opinion, the situation was more serious than previously expressed. Also on 9 November 2011, the Accused consented to the release of his complete medical records to the Chamber and the Registry. The consent and the medical records were provided to the Chamber in an informal communication from the Registry later that same day. On 10 November 2011, the Registry submitted an Absence from Court Due to Illness Form completed and signed by the Accused, stating that he was unable to attend proceedings on that day due to illness and waiving his right to be present at the Status Conference.² Attached to the form was a statement of a nurse of the United Nations Detention Unit (“UNDU”), indicating that the Accused had “observable symptoms which indicate he may feel too unwell to attend” the 10 November 2011 Third Status Conference.³ On that same day, the Registry filed a brief medical report generally describing the current health condition of the Accused.⁴

II. APPLICABLE LAW

2. 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.

3. 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.

4. Rule 74 *bis* of the Rules provides:

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.

¹ Transcript of Rule 65 *ter* meeting, T. 100-101 (Closed session).

² UNDU Absence from Court Due to Illness Form, 10 November 2011.

³ Ibid.

⁴ UNDU Medical Report, 10 November 2011 (Confidential).

III. DISCUSSION

5. The Chamber has the primary duty to prepare for and conduct the Accused's trial. Pursuant to Article 20 of the Statute, the Chamber also has the obligation to ensure that the trial is fair and expeditious. The Accused's current health condition is relevant to the Chamber's fulfilment of its duties and statutory obligations.

6. To date, despite numerous intimations both in court and in various filings by both parties, the Chamber has not been seised of a request from either party for a medical examination of the Accused to be conducted. Such a request could be made by either party under Rule 74 *bis*. Notwithstanding, given that the Accused's health has been informally raised multiple times and, more importantly, the Accused's apparent inability to attend the 10 November 2011 Third Status Conference due to his health condition, the Chamber considers that it is appropriate for it to order, *proprio motu*, a complete medical examination of the Accused. A full report on the Accused's health will assist the Chamber in the Pre-Trial stage to better assess whether and to what extent his health condition could affect the preparation of the upcoming trial. Additionally, the examination will allow the Chamber to understand the actual current condition of the Accused's health, thereby permitting it to better evaluate and decide on any potential future motions or requests made directly or in relation to this topic.

IV. DISPOSITION

7. For the foregoing reasons, pursuant to Rules 54 and 74 *bis* of the Rules, the Chamber

ORDERS the Registry to have a complete medical examination of the Accused conducted and to have a detailed report thereof compiled;

INSTRUCTS the Registry to entrust the medical examination of the Accused to an expert, in accordance with the provisions of Rule 74 *bis*;

INSTRUCTS the expert to address in his or her report:

1. The current health condition of the Accused, including:
 - a. an assessment of his overall current health condition;
 - b. any specific adverse health conditions and their physical and mental effects on the Accused, including a detailed estimation of severity and duration; and

- c. treatment the Accused has received, including its chronology, since his arrival at the UNDU;
2. An evaluation of the Accused's medical history, including:
 - a. the original source of knowledge of any health condition predating the Accused's arrival at the UNDU and whether the expert can independently confirm its existence or occurrence on the basis of examinations of the Accused since his arrival at the UNDU; and
 - b. whether and to what extent the Accused's current overall health condition, including any physical and/or mental effects, is related to his medical history;

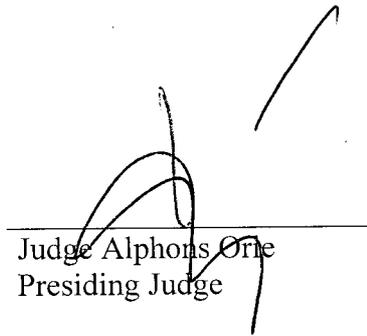
ORDERS the Registry to file the expert report confidentially as soon as it is compiled, but in any case, no later than 6 December 2011 in time for the next Status Conference in the Accused's case;

ORDERS the Registry to notify the Chamber when it has appointed an expert pursuant to Rule 74 *bis* to conduct a medical examination;

ORDERS the Registry to file the Accused's consent to the release of his medical records and to file the medical records, confidentially and *ex parte* as an annex to the consent filing, which were both informally communicated to the Chamber, within 5 days of the filing of this Order; and

ORDERS the Defence to file confidentially its informal communication of 9 November 2011 within 5 days of the filing of this Order.

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



Judge Alphons Orie
Presiding Judge

Dated this sixteenth day of November 2011
At The Hague
The Netherlands

[Seal of the Tribunal]