

**UNITED  
NATIONS**

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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-04-75-T  
Date: 13 March 2015  
Original: English

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**IN THE TRIAL CHAMBER**

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

**Registrar:** Mr. John Hocking

**Decision:** 13 March 2015

**PROSECUTOR**

v.

**GORAN HADŽIĆ**

**PUBLIC**

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

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**The Office of the Prosecutor:**

Mr. Douglas Stringer

**Counsel for Goran Hadžić:**

Mr. Zoran Živanović

Mr. Christopher Gosnell

1. **THIS TRIAL CHAMBER** 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 (“Tribunal”) is 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”).<sup>1</sup> The Defence confidentially filed the “Supplemental Submission in Support of Urgent Request for Provisional Release” with confidential annexes on 22 January 2015 (“First Supplement”) and the “Corrigendum to Urgent Request for Provisional Release” on 26 January 2015. On 28 January 2015, the Kingdom of the Netherlands confidentially filed its “Communication from Ministry of Foreign Affairs of the Kingdom of the Netherlands” (“Correspondence from Host State”). On 29 January 2015, the “Deputy Registrar’s Submission Regarding Interim Order in Relation to the Urgent Request for Provisional Release” (“Registry Submission”) was filed confidentially.<sup>2</sup> On 2 February 2015, the Defence filed the “Supplemental Submissions in Relation to Urgent Request for Provisional Release” (“Second Supplement”) confidentially with a confidential annex<sup>3</sup> and the “Second Supplemental Submissions in Relation to Urgent Request for Provisional Release” (“Third Supplement”) with a confidential annex. On 11 February 2015, the Defence’s “Notice of Filing of Official Translation of Guarantee from the Government of Serbia Pertaining to Provisional Release” was confidentially filed with a confidential annex (“Serbia Guarantee”). The “Prosecution’s Response to the Accused’s Urgent Request for Provisional Release and Request for Oral Hearing to Question Independent Experts” was filed on 16 February 2015 (“Response”). On 18 February 2015, the Defence filed its “Reply Concerning Urgent Request for Provisional Release” (“Reply”) and its “Corrigendum to Reply Concerning Urgent Request for Provisional Release”. On 2 March 2015, the “Defence Submission of Additional Guarantees of the Government of Serbia” was confidentially filed with a confidential annex (“Second Serbia Guarantee”). On 4 March 2015, the Defence’s “Filing of Documentation Requested by Trial Chamber on 3 March 2015 Relating to Mr. Hadžić’s Urgent Request for Provisional Release” was confidentially filed with confidential annexes (“Additional Documents”). On 5 March 2015, the “Prosecution Submission on Provisional Release Documentation Provided by the Defence on 3 March 2015” was confidentially filed (“Prosecution Submission on Additional Documents”). On 6 March 2015, the Defence’s “Filing of Additional Documentation in Support of Mr. Hadžić’s Urgent Request for Provisional Release” was confidentially filed with a confidential and *ex parte* annex (“Second Filing of Additional Documents”). On 9 March 2015, the Defence

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<sup>1</sup> A public redacted version of the Motion was filed on 13 March 2015. Decision on Defence Request for Reclassification of Filings Related to Hadžić’s Health Condition as Public and Prosecution Motion for Reclassification of Testimony as Public, 13 March 2015 (“Decision on Motions for Reclassification”), Annex A.

<sup>2</sup> A public redacted version of the Second Supplement was filed on 13 March 2015. Decision on Motions for Reclassification, Annex E.

confidentially filed “Legislation Relating to Validity of Prescriptions in Croatia in Support of Mr. Hadžić’s Urgent Request for Provisional Release” with a confidential annex (“Legislation on Prescriptions in Croatia”). On 10 March 2015, the Defence confidentially filed “Documentation Establishing Availability of Temozolomide in Serbia and Coverage for its Dispensation, in Support of Mr. Hadžić’s Urgent Request for Provisional Release” (“Third Filing of Additional Documents”) with confidential annexes.

### A. Background

2. In November 2014, Hadžić was diagnosed with *glioblastoma multiforme*.<sup>4</sup> According to medical experts, including the specialist treating him, Hadžić’s expected survival can be estimated in the range of 12 to 24 months.<sup>5</sup> Hadžić chose to undergo a prescribed plan for palliative treatment (“Treatment Plan”) which includes (a) six weeks of daily radiotherapy and chemotherapy (“Combined Therapy”); (b) four weeks of recuperation; and (c) up to six cycles of chemotherapy consisting of five days of a high dose oral chemotherapy followed by a 23-day rest period.<sup>6</sup> The Deputy Registrar has filed a series of medical reports prepared by the Reporting Medical Officer of the United Nations Detention Unit (“RMO” and “UNDU”, respectively) to update the Trial Chamber and the parties on developments related to Hadžić’s medical situation.<sup>7</sup> On 30 January 2015, the Medical Officer of the UNDU (“MO”) reported that Hadžić had completed the radiotherapy component of the Combined Therapy, but the chemotherapy had been suspended the

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<sup>3</sup> A public redacted version of the Registry Submission was filed on 13 March 2015. Decision on Motions for Reclassification, Annex D.

<sup>4</sup> Deputy Registrar’s Submission of Medical Report (confidential), 26 November 2014, confidential Annex (“26 November Medical Report”), p. 1.

<sup>5</sup> Deputy Registrar’s Submission of Reports of Medical Experts (confidential), 13 February 2015, confidential Annex I, Medical Report of Professor Dr. Patrick Cras, dated 12 February 2015 (“Cras First Report”), pp. 5, 7; confidential Annex II, Medical Report of Professor Dr. Patrick Cras, dated 13 February 2015 (“Cras Second Report”), pp. 2-3. See also Deputy Registrar’s Submission of Reports of Medical Experts (confidential), 13 February 2015, confidential Annex III, “Report medically examination of Mr. G. Hadzic”, Tatjana Seute, MD, PhD, dated 12 February 2015 (“Seute Report”), p. 4; 26 November 2014 Medical Report, p. 1.

<sup>6</sup> 26 November Medical Report, p. 1; Deputy Registrar’s Submission of Medical Report (confidential), 12 February 2015, confidential Annex (“11 February Medical Report”), para. 3; Seute Report, pp. 1-2, 3.

<sup>7</sup> 26 November Medical Report; Deputy Registrar’s Submission of Medical Report (confidential), 5 December 2014; Deputy Registrar’s Submission of Medical Report (confidential), 11 December 2014; Deputy Registrar’s Submission of Medical Report (confidential), 18 December 2014; Deputy Registrar’s Submission of Medical Report (confidential), 8 January 2015; Deputy Registrar’s Submission of Medical Report (confidential), 15 January 2015; Deputy Registrar’s Submission of Medical Report (confidential), 22 January 2015; Deputy Registrar’s Submission of Medical Report (confidential), 29 January 2015; Deputy Registrar’s Submission of Medical Report (confidential), 5 February 2015; 11 February Medical Report; Deputy Registrar’s Submission of Medical Report (confidential), 20 February 2015; Registrar’s Submission of Medical Report (confidential), 27 February 2015 (“27 February Medical Report”); Deputy Registrar’s Submission of Medical Report (confidential), 5 March 2015, confidential Annex (“4 March Medical Report”); Deputy Registrar’s Submission of Medical Report (confidential), 13 March 2015, confidential Annex (“13 March Medical Report”).

previous week due to a drop in his white blood cell count and blood platelets.<sup>8</sup> Subsequently, Hadžić restarted chemotherapy on 2 March 2015.<sup>9</sup>

3. On 3 February 2015, and again on 17 February 2015, the Defence indicated that Hadžić maintains his previously stated position declining to waive his right to be present during trial proceedings.<sup>10</sup> Evidentiary hearings have been suspended since 20 October 2014.<sup>11</sup>

4. On 2 March 2015, the “Prosecution Motion to Proceed with the Defence Case” was filed (“Prosecution Motion to Proceed”). The Prosecution requests that the Trial Chamber order the resumption of the trial in order to complete the Defence case, including, if necessary, conducting trial proceedings when Hadžić is unable to attend.<sup>12</sup> The Defence has not yet filed a response to this motion. A decision on it will be rendered in due course.

### **B. Procedural History**

5. 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 Trial 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 enumerated questions related to Hadžić’s ability to attend and participate in trial proceedings.<sup>13</sup> In the same decision, the Trial Chamber also invited the RMO, in consultation with the multi-disciplinary team of doctors treating Hadžić, to prepare a medical report addressing the same questions.<sup>14</sup> On 26 January 2015, the Deputy Registrar notified the Trial Chamber that she had appointed two medical experts: Professor Dr. Patrick Cras, a specialist in the field of neurology, and Dr. Tatjana Seute, a specialist in the field of neuro-oncology.<sup>15</sup>

6. On 27 January 2015, after considering submissions from the Defence<sup>16</sup> and the Prosecution,<sup>17</sup> the Trial Chamber ordered the RMO, in consultation with the multi-disciplinary team

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<sup>8</sup> Deputy Registrar’s Submission of Medical Report (confidential), 30 January 2015, confidential Annex (“30 January MO Report”), paras 1-2; Cras First Report, p. 5.

<sup>9</sup> Deputy Registrar’s Submission of Medical Update (confidential), 2 March 2015, para. 1; 4 March Medical Report, para. 1.

<sup>10</sup> Notice in Response to Trial Chamber Inquiry, 3 February 2015; Notice in Response to Trial Chamber Inquiry of 16 February 2015, 17 February 2015.

<sup>11</sup> See Decision on Prosecution Request for a Medical Examination of the Accused Pursuant to Rules 54 and 74 *bis*, 16 January 2015 (“Order on Experts”), p. 1.

<sup>12</sup> Prosecution Motion to Proceed, para. 1.

<sup>13</sup> Order on Experts, pp. 4-5.

<sup>14</sup> Order on Experts, p. 5.

<sup>15</sup> Deputy Registrar’s Notification of Appointment of Medical Experts, 26 January 2015, para. 2.

<sup>16</sup> Motion, paras 13, 18, 19.

of doctors treating Hadžić, and the Experts to provide answers to certain enumerated questions relevant to the current application for provisional release and asked the Registry to provide submissions on, *inter alia*, the conditions of Hadžić's detention at the UNDU.<sup>18</sup> On 28 January 2015, the RMO submitted a report to address the questions enumerated in the Order on Experts and Interim Order.<sup>19</sup> On 29 January 2015, the Deputy Registrar provided submissions in relation to the conditions of Hadžić's detention at the UNDU and indicated that the earliest dates the Experts could examine Hadžić were 5 and 11 February 2015, respectively.<sup>20</sup> On 13 February 2015, the Deputy Registrar submitted the reports prepared by the Experts (collectively "Expert Reports").<sup>21</sup>

7. On 3 February 2015, after considering submissions from the Defence and the Prosecution,<sup>22</sup> the Trial Chamber considered that it would benefit from fully informed, streamlined submissions from the parties and, noting the date of the Expert Reports, it allowed the Prosecution to file a response to the Motion no later than the close of business on 16 February 2015.<sup>23</sup>

8. On 11 February 2015 and 2 March 2015, the Defence submitted guarantees from the Government of the Republic of Serbia ("Serbia").<sup>24</sup>

9. On 11 and 25 February 2015, the Trial Chamber denied Defence requests for interim provisional release.<sup>25</sup>

<sup>17</sup> Prosecution's Response to the Defence Requests Set Out in Paragraphs 13 and 18 of the Urgent Request for Provisional Release (confidential), 26 January 2015. A public redacted version was filed on 13 March 2015. Decision on Motions for Reclassification, Annex B.

<sup>18</sup> Interim Order in Relation to the Urgent Request for Provisional Release (confidential), 27 January 2015 ("Interim Order"), pp. 4-5. A public redacted version the Interim Order was filed on 13 March 2015. Decision on Motions for Reclassification, Annex C.

<sup>19</sup> Deputy Registrar's Submission of Medical Report (confidential), 29 January 2015, confidential Annex ("28 January RMO Report").

<sup>20</sup> Registry Submission, para. 15.

<sup>21</sup> Deputy Registrar's Submission of Reports of Medical Experts (confidential), 13 February 2015.

<sup>22</sup> In the Motion, the Defence requested that the Trial Chamber order the Prosecution to respond to the Motion on an expedited basis. Motion, para. 19. On 30 January 2015, however, the Prosecution noted in an email to the Trial Chamber and the Defence that, pursuant to Rule 126 *bis* of the Rules, a response to the Motion was due on 5 February 2015 whereas the reports of the Experts, which were to address questions arising from the Motion, were due on 13 February 2015. The Prosecution submitted that it would be more efficient to file a single, informed response to the Motion that addresses all of the relevant information and sought an extension of the deadline for a response. In an email to the Trial Chamber and Prosecution on 31 January 2015, the Defence "strenuously objected" to the Prosecution's request arguing that the Motion "should be dealt with as expeditiously as reasonably possible, for reasons that are evident from the content of the motion." The Defence instead requested that the Trial Chamber advance the deadline for any Prosecution response to 3 February 2015. In an email on 2 February 2015, the Prosecution replied that giving the Prosecution an opportunity to address the Expert Reports as part of its overall response was "fully justified and more efficient than multiple responses on such interlinked issues."

<sup>23</sup> Email from the Trial Chamber to Parties, 3 February 2015.

<sup>24</sup> See Serbia Guarantee, pp. 3-4. In the second guarantee, Serbia confirms that (a) the costs of Hadžić's treatment during provisional release will be paid by the government of Serbia; (b) the Institute for Oncology in Novi Sad, Serbia, is a specialised institution for patients with malignant diseases; and (c) it is not possible to determine the name of the doctor who will treat Hadžić as a general practitioner at the Health Centre in Novi Sad or the name of the doctor at the Institute for Oncology in Novi Sad because the choice of doctor can only be made in-person by signing a statement. Second Serbia Guarantee.

10. On 20 February 2015, after considering submissions from the Prosecution<sup>26</sup> and the Defence,<sup>27</sup> the Trial Chamber granted a Prosecution request for an oral hearing to question the Experts in relation to Hadžić's health.<sup>28</sup> Dr. Cras and Dr. Seute testified on 25 and 26 February 2015, respectively.<sup>29</sup>

### C. Submissions

#### 1. Motion

11. The Defence requests provisional release starting at the end of the Combined Therapy on or about 29 January 2015 until the beginning of May 2015.<sup>30</sup> The Defence submits that the conditions for release under Rule 65(B) of the Rules are satisfied. Namely, the Defence argues that Hadžić does not pose a flight risk and “is in no position to become a fugitive and has no interest in doing so”<sup>31</sup> because “[b]ecoming a fugitive would accelerate Mr. Hadžić's own death by depriving him of necessary medical care and cut off his contact with family.”<sup>32</sup> Further, the Defence argues that there has been no indication that Hadžić, or anyone associated with him, has attempted to contact, influence, or intimidate any witness or victim and that there is no basis to believe that Hadžić would attempt to do so if released.<sup>33</sup>

12. The Defence submits that, while Rule 65(B) of the Rules provides that provisional release “may” be granted, there is no “residual discretion” to hold a person in detention on remand where a Trial Chamber is satisfied that the accused will be present for his trial.<sup>34</sup> The Defence further submits that provisional release on the basis of serious illness may be granted even when the consequence is an interruption of trial proceedings, and the 2011 amendment to Rule 65(B) of the Rules, which states that “the existence of sufficiently compelling humanitarian grounds may be considered in granting such release”, is particularly salient in this regard.<sup>35</sup>

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<sup>25</sup> Decision on Urgent Request for Interim Provisional Release, 11 February 2015; Decision on Second Urgent Request for Interim Provisional Release, 25 February 2015.

<sup>26</sup> Response, paras 3, 23.

<sup>27</sup> Reply, paras 28-29.

<sup>28</sup> Scheduling Order (confidential), 20 February 2015.

<sup>29</sup> On 13 March 2015, the confidentiality of the testimony of Dr. Cras was lifted. Decision on Motions for Reclassification, para. 7(f).

<sup>30</sup> Motion, paras 2, 19. The Defence also seeks leave to exceed the word limit “in light of the importance and complexity of the present application.” Motion, fn. 1. In the Corrigendum, the Defence provides an editorial correction to the Motion.

<sup>31</sup> Motion, para. 15.

<sup>32</sup> Motion, para. 15.

<sup>33</sup> Motion, para. 16.

<sup>34</sup> Motion, paras 3-4.

<sup>35</sup> Motion, paras 5-6, citing *Prosecutor v. Brdanin and Talić*, Case No. IT-99-36-T, Decision on the Motion for Provisional Release of the Accused Momir Talić, 20 September 2002 (“*Talić Decision*”); *Prosecutor v. Đukić*, Case No.

13. The Defence, citing decisions in *Talić*<sup>36</sup> and *Đukić*<sup>37</sup> before the Tribunal and the case of *Mouisel v. France*<sup>38</sup> before the European Court of Human Rights (“ECHR”), submits that the UNDU is not a suitable place for Hadžić during the current “critical phase of palliative care”.<sup>39</sup> The Defence asserts that, at the UNDU, Hadžić is “frequently awoken by fellow inmates or prison guards; has no dedicated caregiver; and is not provided with the range of nourishment that would optimize the chance of recovery from aggressive chemotherapy and radiotherapy.”<sup>40</sup> The Defence argues that keeping Hadžić in detention during the next two cycles of the second phase of the Treatment Plan would be “inhumane and deprive him of the best chance to extend his life beyond the median survival expectancy.”<sup>41</sup> The Defence submits that Hadžić “not only fervently wishes to live beyond the median survival rate, but to recover sufficiently to be able to participate in the remainder of his trial”.<sup>42</sup> It argues that providing “suitable conditions for Mr. Hadžić’s recovery”, and thus increasing the likelihood that he will survive for a longer period, “serves the interests of all those who wish to see a Trial Judgement pronounced in this case”.<sup>43</sup> The Defence submits that Hadžić is prepared to submit to any conditions of release as may be deemed necessary and appropriate by the Trial Chamber.<sup>44</sup>

## 2. Supplemental Defence Submissions

14. The Defence filed three supplemental submissions. In the First Supplement, the Defence submits a medical report from the *Medisch Centrum Haaglanden* with a draft English translation and the *curriculum vitae* of the neuro-oncologist who is one of the authors of the report.<sup>45</sup> The Defence also submits a personal guarantee signed by Hadžić.<sup>46</sup>

15. In the Second Supplement, the Defence attaches a personal statement of Hadžić.<sup>47</sup> The Defence submits that the 28 January RMO Report supports the factual basis for granting provisional release because it confirms that: (a) provisional release for the remainder of the Treatment Plan is

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IT-96-20-T, Decision Rejecting the Application to Withdraw the Indictment and Order for Provisional Release, 24 April 1996 (“*Đukić* Decision”).

<sup>36</sup> *Talić* Decision.

<sup>37</sup> *Đukić* Decision.

<sup>38</sup> *Case of Mouisel v. France*, ECHR, Application no. 67263/01, Judgment, 14 November 2002 (“*Mouisel v. France*”).

<sup>39</sup> Motion, paras 7-11.

<sup>40</sup> Motion, paras 2, 11.

<sup>41</sup> Motion, paras 2, 11-12.

<sup>42</sup> Motion, para. 14.

<sup>43</sup> Motion, para. 14.

<sup>44</sup> Motion, para. 17.

<sup>45</sup> First Supplement, para. 1, confidential Annexes A and C.

<sup>46</sup> First Supplement, confidential Annex B.

<sup>47</sup> Second Supplement, para. 12, Annex.

medically appropriate; (b) Hadžić's symptoms imply that he is not physically fit to attend trial; and (c) Hadžić has an estimated life expectancy of one year.<sup>48</sup>

16. The Defence further submits that the day-to-day activities of detainees at the UNDU, as described in the Registry Submission, "are disruptive of Mr. Hadžić's attempts to sleep during those hours."<sup>49</sup> It asserts that cell doors do not shut out these noises and "do not prevent other detainees or guards from knocking and entering as they wish."<sup>50</sup> The Defence asserts that, contrary to what is stated in the Registry Submission, Hadžić does require a dedicated caregiver and that the only reason one has not been necessary to this point is that he has been assisted by two other detainees.<sup>51</sup> It submits that, while the food at the UNDU may comply with international standards, it is "utterly unappetizing", particularly for Hadžić whose illness has made him more selective of the foods he eats.<sup>52</sup> Hadžić "strongly agrees" with the MO's opinion, referenced in the 28 January RMO Report, that being moved to the medical ward is not a viable or appropriate solution to provide a more peaceful environment.<sup>53</sup>

17. Finally, the Defence clarifies that provisional release is sought not only on the basis of the medical benefits of recuperating at home, but also because it would be inhumane, given Hadžić's short life expectancy, "to prevent him from spending as much of his remaining life as possible with his family."<sup>54</sup> The Defence argues that provisional release should therefore encompass any periods when he is unfit to attend trial, which, the Defence asserts will be the case for the remainder of the Treatment Plan.<sup>55</sup>

18. In the Third Supplement, the Defence submits that a medical report submitted by the MO on 30 January 2015, in conjunction with the 28 January RMO Report and Registry Submission, provides answers to all the questions set out in the Interim Order and, therefore, the factual basis for provisional release is established.<sup>56</sup> It asserts that the 30 January MO Report demonstrates that provisional release should occur as soon as possible.<sup>57</sup>

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<sup>48</sup> Second Supplement, para. 3.

<sup>49</sup> Second Supplement, para. 6.

<sup>50</sup> Second Supplement, para. 6.

<sup>51</sup> Second Supplement, para. 8.

<sup>52</sup> Second Supplement, para. 9.

<sup>53</sup> Second Supplement, para. 7.

<sup>54</sup> Second Supplement, para. 13.

<sup>55</sup> Second Supplement, para. 13.

<sup>56</sup> Third Supplement, paras 2, 4.

<sup>57</sup> Third Supplement, paras 2, 4.

### 3. Response

19. The Prosecution opposes the request for provisional release arguing that the conditions of Rule 65(B) of the Rules are not met.<sup>58</sup> The Prosecution argues the Trial Chamber has previously found that Hadžić is a flight risk, notwithstanding guarantees provided by Serbia.<sup>59</sup> The Prosecution argues that the fact that Hadžić did not voluntarily surrender himself to the custody of the Tribunal, evaded arrest for seven years, and is alleged to have committed crimes of considerable gravity while in a senior position remain salient factors in relation to the present request for provisional release.<sup>60</sup> The Prosecution adds that subsequent to the First Provisional Release Decision, the Prosecution has completed its case-in-chief and the Trial Chamber has issued a detailed decision denying Hadžić's Rule 98 *bis* motion, both of which are factors that have been recognised to justify greater scrutiny of risk of flight.<sup>61</sup> The Prosecution asserts that these factors, coupled with Hadžić's diagnosis of a terminal illness with an approximate prognosis of 12 to 24 months, means "the risk of the Accused's flight may be at its highest".<sup>62</sup>

20. The Prosecution further submits that the Defence has not shown sufficiently compelling humanitarian grounds to support provisional release. It asserts that neither the Defence submissions, nor the Expert Reports, provide sufficient information concerning arrangements for the medical treatment and monitoring of Hadžić or concerning the conditions for recuperation in Serbia.<sup>63</sup> It asserts that "[w]ithout specific information about the availability of medical professionals and related care for the Accused, it cannot be said that releasing him to Serbia is an appropriate or humanitarian course of action."<sup>64</sup> The Prosecution further submits that Hadžić's situation differs from that of both Talić and Đukić, noting that the cases against those accused were not at stages as advanced as the proceedings against Hadžić, and that the health situations of Talić and Đukić were "such that they sought to return home to spend their last days with their families."<sup>65</sup> In contrast, Hadžić "is in the midst of ongoing treatment by local physicians and will remain so in the coming months."<sup>66</sup> The Prosecution asserts that the situation of Hadžić can also be distinguished from the situation in the case of *Mouisel v. France*. There, the ECHR found that the conditions of Mouisel's

<sup>58</sup> Response, para. 1. The Prosecution requests leave to exceed the word limit "in light of the complex nature of this response and to allow the Prosecution to respond to multiple submissions". Response, para. 6.

<sup>59</sup> Response, para. 7, *citing* Decision on Hadžić's Urgent Request for Provisional Release, 31 October 2012, ("*Hadžić* Provisional Release Decision") para. 9.

<sup>60</sup> Response, paras 7-8, *citing* *Hadžić* Provisional Release Decision, para. 9.

<sup>61</sup> Response, para. 8, *citing* *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.5, Decision on Prosecution's Consolidated Appeal Against Decisions to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Čorić, 11 March 2008, para. 20.

<sup>62</sup> Response, para. 8.

<sup>63</sup> Response, paras 9-11.

<sup>64</sup> Response, para. 11.

<sup>65</sup> Response, paras 12-14.

<sup>66</sup> Response, para. 14.

detention, which included placing him in chains while under escort to the hospital and detaining him in a communal cell without sanitary precautions while he was receiving chemotherapy, “undermined his dignity and entailed particularly acute hardship that caused suffering beyond that inevitably associated with a prison sentence and treatment for cancer.”<sup>67</sup> The Prosecution submits that Hadžić’s complaints about the conditions at the UNDU, “taken individually and as a whole, do not constitute compelling humanitarian grounds justifying provisional release.”<sup>68</sup> The Prosecution asserts that the Registry Submission describes conditions that conform to the necessary conditions described in the Expert Reports and confirms that the UNDU is willing to accommodate the needs of Hadžić.<sup>69</sup>

21. The Prosecution argues that “[w]ith effective time management and the use of measures to expedite the proceedings, the evidence-taking phase of the trial can be completed within a relatively low number of court days” and that “as long as there remains a reasonable prospect of completing the trial” the victims and international community, as well as Hadžić himself, have an interest in a final determination of Hadžić’s responsibility.<sup>70</sup> The Prosecution notes that the Experts agree that, if Hadžić is not experiencing serious side effects, it may be possible for him to attend and to participate in hearings for at least part of the day.<sup>71</sup> The Prosecution asserts that retaining Hadžić at the UNDU during this period will provide the Trial Chamber with “maximum flexibility” in its ability to provide for the expeditious completion of the trial.<sup>72</sup>

22. The Prosecution submits that if the Trial Chamber is minded to grant provisional release, the security conditions of the release “must be strengthened to account for the Accused’s fugitive history and continuing flight risk”.<sup>73</sup>

23. Finally, pursuant to Rule 65(E) of the Rules, the Prosecution applies for a stay of the decision if the Trial Chamber grants the request for provisional release.<sup>74</sup>

#### 4. Reply

24. The Defence requests leave to file a reply<sup>75</sup> and replies that the Expert Reports “clearly demonstrate” that Hadžić is unfit to participate in trial proceedings.<sup>76</sup> It submits that the Experts

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<sup>67</sup> Response, para. 19, citing *Mouisel v. France*, para. 48.

<sup>68</sup> Response, para. 15.

<sup>69</sup> Response, paras 15-18.

<sup>70</sup> Response, para. 20.

<sup>71</sup> Response, para. 21.

<sup>72</sup> Response, para. 21.

<sup>73</sup> Response, para. 24.

<sup>74</sup> Response, paras 5, 27.

<sup>75</sup> Reply, para. 4. The Defence also requests leave to exceed the applicable word limit “in light of the new information in the Expert Reports and their volume, and the content and length of the Response”. Reply, para. 4.

were only asked whether Hadžić will be able to attend trial physically or by video-conference link during treatment, a level of activity that is “an extremely low threshold of participation in proceedings.”<sup>77</sup> The Defence submits that this level of activity does not adequately convey the minimum requirements of meaningful participation of an accused in his trial. For this, it argues, he must also be able to engage in sustained preparation and reading, “without which attendance at trial would be pointless”.<sup>78</sup> The Defence notes that Dr. Cras stated that, during the treatment, Hadžić will not be able to meet even the minimal threshold stipulated in the question and stated that Hadžić’s cognitive and physical condition will be such that his ability to intervene will be compromised.<sup>79</sup> The Defence further submits that Dr. Seute’s report, when “viewed fairly and as a whole, attests to a serious cognitive incapacity that is not consistent with participating in trial proceedings”.<sup>80</sup>

25. The Defence further asserts that while Dr. Cras stated in his report that “there may be a few days where [Hadžić] will be fit enough to attend, but it will be difficult to predict when this will occur”, the windows of potential fitness are so narrow and unpredictable and that, even if they occur, they would provide no opportunity for Hadžić to adequately prepare for meaningful participation in the proceedings.<sup>81</sup> The Defence asserts that conducting proceedings under circumstances that would require day-to-day or hour-to-hour assessments of whether the accused is able to participate is “wholly impracticable”.<sup>82</sup> It argues that the “Prosecution’s assertion that even the slightest ‘prospect’ of any level of participation justifies ‘retaining’ Mr. Hadžić in custody, regardless of the health consequences, the presumption of innocence, or basic principles of humane treatment, applies an incorrect standard of proof.”<sup>83</sup>

26. The Defence further asserts that the condition and treatment for which Talić was released are “precisely the conditions and treatments for which Mr. Hadžić seeks release”.<sup>84</sup> It asserts that, contrary to the Prosecution’s submissions, the medical condition of Talić appears to have been “significantly better” than that of Hadžić and that the case against Talić was well underway. It notes that “as it ultimately transpired, judgement against Talić’s co-accused was rendered almost two years to the day after the request for provisional release—a date to which General Talić had a 40% chance of survival.”<sup>85</sup> The Defence further asserts that even adopting the most optimistic schedule for the remainder of the trial, “it is difficult to conceive of a final trial judgement—let alone an

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<sup>76</sup> Reply, para. 2.

<sup>77</sup> Reply, paras 5-8.

<sup>78</sup> Reply, para. 5

<sup>79</sup> Reply, paras 6-7.

<sup>80</sup> Reply, para. 8.

<sup>81</sup> Reply, paras 11-12.

<sup>82</sup> Reply, para. 12.

<sup>83</sup> Reply, para. 14.

<sup>84</sup> Reply, para. 18.

<sup>85</sup> Reply, paras 16-17.

appeal judgement—being finalized in less than about eighteen months” and therefore the chances of Hadžić being alive at the conclusion of the first instance judgement are less than could have been contemplated for Talić.<sup>86</sup>

27. The Defence submits that Hadžić will not require “oncological expertise” during the period of requested provisional release, but that the “Institute of Oncology” in the Sremska Kamenica Hospital in Novi Sad is an internationally-respected institute for oncological care and there are “numerous” other clinics and practitioners available in the area.<sup>87</sup> The Defence notes that it is in the process of providing the names of treating physicians to be in direct contact with the RMO to ensure continuity of treatment.<sup>88</sup> The Defence further submits that Dr. Seute opined that “there is no additional risk of returning to Serbia” and that the benefits of home care are “obvious and reflected” in the Expert Reports.<sup>89</sup> The Defence submits that notwithstanding any measures cited by the Prosecution, the disturbances at the UNDU continue, as do the consequences to Hadžić’s health.<sup>90</sup> The Defence anticipates that these conditions will only worsen in the future.<sup>91</sup> The Defence asserts that, contrary to the submissions of the Prosecution, the Experts did not indicate that satisfactory conditions are available at the UNDU, and the Deputy Registrar has not offered any opinion on the adequacy of the UNDU in relation to Hadžić’s specific health needs.<sup>92</sup> The Defence submits that no evidence is required to show the suitability of conditions at Hadžić’s family member’s home in Novi Sad.<sup>93</sup>

28. The Defence submits that since the First Provisional Release Decision, Hadžić has been diagnosed with inoperable cancer. He has a 25% to 33% chance of surviving to the two-year mark and requires medical care, rest, and family support.<sup>94</sup> It asserts that these facts fundamentally alter

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<sup>86</sup> Reply, para. 19.

<sup>87</sup> Reply, para. 21.

<sup>88</sup> Reply, para. 21. On 4 March 2015, the Defence confidentially filed: (a) a list of medications currently prescribed for Hadžić prepared by the MO; (b) a letter dated 19 February 2015 sent by the Defence to Sremska Kamenica Hospital in Novi Sad seeking confirmation that there is an adequate medical institution in Novi Sad to treat Hadžić’s condition; (c) a list of drugs available in Serbia with estimated prices, (d) two lists of medications available in Croatia, both including the chemotherapy medication prescribed for Hadžić; and (e) signed statements from a resident of Croatia guaranteeing to pay for and provide the necessary medication to Hadžić. *See* Additional Documents. In response, the Prosecution questions whether Hadžić’s medication can be prescribed in Croatia despite provisional release to Serbia and suggests that it should be investigated whether the Croatian resident who has guaranteed payment for the medication is actually in a position to do so. Prosecution Submission on Additional Documents. In reply, the Defence provided further documentation detailing the financial standing of the resident of Croatia guaranteeing payment for Hadžić’s medication and legislation regarding the validity of prescriptions filled in Croatia. *See* Second Filing of Additional Documents and Legislation on Prescriptions in Croatia. On 10 March 2015, the Defence provided documentation to establish that the chemotherapy drug, Temozolomide is available in Serbia and to give further details regarding the expertise of the Institute of Oncology. Third Filing of Additional Documents.

<sup>89</sup> Reply, para. 22.

<sup>90</sup> Reply, paras 23, 25.

<sup>91</sup> Reply, para. 24.

<sup>92</sup> Reply, para. 24.

<sup>93</sup> Reply, para. 26.

<sup>94</sup> Reply, paras 31-32.

the flight risk assessment and that “[n]o conceivable interest or scenario supports the slightest possibility that he would go into hiding.”<sup>95</sup> The Defence submits that Hadžić does not oppose the imposition of additional control or supervision as may be deemed fit by the Trial Chamber, though they are not necessary.<sup>96</sup> The Defence submits that other accused before the Tribunal have been granted provisional release despite “Prosecution findings” that they had spent time as fugitives;<sup>97</sup> that following the amendment of Rule 65(B) of the Rules in October 2011, release may be ordered at any stage of the trial proceedings prior to the rendering of the final judgement;<sup>98</sup> and that the existence of “humanitarian grounds”, while a factor that may be considered, is not a requirement for provisional release.<sup>99</sup>

#### **D. Applicable Law**

29. Rule 65 of the Rules governs provisional release at the Tribunal. 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 judgment 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.

Rule 65(C) of the Rules provides that the Trial Chamber may impose those conditions that it determines are appropriate upon the release of an accused. Rule 65(H) of the Rules authorises a Chamber to issue an arrest warrant if necessary to secure the presence of an accused who has been released.

30. When determining a request for provisional release, a Trial Chamber must address all relevant factors that a reasonable Trial Chamber is expected to take into account before coming to a decision and must include a reasoned opinion indicating its view on those relevant factors.<sup>100</sup> The determination of what constitutes “relevant factors” and the weight to be attributed to them depends upon the particular circumstances of each case given that “decisions on motions for provisional

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<sup>95</sup> Reply, paras 31-32.

<sup>96</sup> Reply, para. 33.

<sup>97</sup> Reply, para. 34, citing *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Pandurević’s Motion for Provisional Release, 21 July 2008, paras 7, 20; *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Further Decision on Borovčanin’s Motion for Custodial Visit, 22 May 2008.

<sup>98</sup> Reply, para. 35.

<sup>99</sup> Reply, para. 36.

<sup>100</sup> *Hadžić* Provisional Release Decision, para. 6; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR65.35, Decision on the Prosecution’s Appeal of the Decision on Further Extension of Milivoj Petković’s Provisional Release, 12 June 2012 (“*Prlić et al.* Provisional Release Decision”), para. 6; *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.4-6, Decision on Consolidated Appeal Against Decision on Borovčanin’s Motion for a Custodial Visit and Decisions on Gvero’s and Miletić’s Motions for Provisional Release During the Break in the Proceedings, 15 May 2008 (“*Popović et al.* Provisional Release Decision”), para. 6.

release are fact sensitive, and cases are considered on an individual basis in light of the particular circumstances of the individual accused”.<sup>101</sup> The Trial Chamber is required to assess these circumstances not only as they exist at the time when it reaches its decision on provisional release, but also, as much as can be foreseen, at the time the accused is expected to return to the Tribunal.<sup>102</sup>

31. Rule 65(D) of the Rules provides that any decision under Rule 65 of the Rules shall be subject to appeal, which, subject to paragraph (F), is to be filed within seven days of the filing of the impugned decision. Rule 65(E) of the Rules provides that the Prosecution may apply for a stay of a decision by the Trial Chamber to release an accused on the basis that the Prosecution intends to appeal the decision. If a stay is granted, Rule 65(F) of the Rules requires the Prosecution to file the appeal no later than one day from the rendering of that decision.

### **E. Discussion**

32. The Trial Chamber notes that there is no objection to Hadžić’s provisional release from the host country.<sup>103</sup> The Trial Chamber also notes the guarantee from Serbia that it will “comply with all orders of the ICTY Trial Chamber so that [Hadžić] may appear before the ICTY at any time.”<sup>104</sup>

33. The Trial Chamber recalls that it has previously held that Hadžić is a flight risk.<sup>105</sup> The Trial Chamber, however, must not only consider its previous determination, but also consider present circumstances. It remains a fact that Hadžić did not voluntarily surrender himself to the custody of the Tribunal and evaded arrest for seven years.<sup>106</sup> The Trial Chamber also views the advanced stage of the proceedings, whereby Hadžić’s motion for acquittal pursuant to Rule 98 *bis* of the Rules has been dismissed<sup>107</sup> and only 50% of the Defence case remains to be heard,<sup>108</sup> as factors likely to provide increased motivation to abscond. Nevertheless, the Trial Chamber is mindful of Hadžić’s recent diagnosis with *glioblastoma multiforme* (“*glioblastoma*”) in November 2014.<sup>109</sup> The Trial Chamber is also mindful of Hadžić’s stated desire to undergo palliative treatment for his *glioblastoma*<sup>110</sup> and, if provisionally released, return for an MRI scan scheduled in May.<sup>111</sup> The Trial Chamber further considers that undergoing treatment for *glioblastoma*, which requires

<sup>101</sup> *Hadžić* Provisional Release Decision, para. 6; *Prlić et al.* Provisional Release Decision, para. 6; *Popović et al.* Provisional Release Decision, para. 6.

<sup>102</sup> *Prlić et al.* Provisional Release Decision, para. 6; *Popović et al.* Provisional Release Decision, para. 6.

<sup>103</sup> Correspondence from Host State.

<sup>104</sup> Serbia Guarantee, p. 3.

<sup>105</sup> *Hadžić* Provisional Release Decision, para. 9.

<sup>106</sup> *See Hadžić* Provisional Release Decision, para. 9.

<sup>107</sup> Hearing, 20 February 2014, T. 9102-9126.

<sup>108</sup> Email from the Trial Chamber to the Parties and the Registry, 4 November 2014.

<sup>109</sup> 26 November Medical Report, p. 1.

<sup>110</sup> 26 November Medical Report, p. 1.

<sup>111</sup> Motion, para. 15. *See also* 28 January RMO Report.

continuous monitoring by medical professionals,<sup>112</sup> would be incompatible with a life on the run. In light of Hadžić's stated desire to undergo treatment and the incompatibility of doing so on the run, the Trial Chamber is satisfied that Hadžić does not presently pose a flight risk despite his fugitive background.

34. Throughout proceedings in this case, there have been no claims or evidence that Hadžić or his Defence team have intimidated, influenced, or sought unauthorized contact with any victim, witness, or other person. The Trial Chamber therefore finds that Hadžić, if provisionally released, will not pose a danger to such persons.

35. A Trial Chamber may only order provisional release if satisfied that the mandatory conditions of Rule 65(B) of the Rules have been met. However, a Trial Chamber retains the discretion to deny provisional release even where the mandatory conditions have been met.<sup>113</sup> The Trial Chamber's discretion to grant provisional release must be exercised in light of all the relevant factors of the case.<sup>114</sup> The determination of what constitutes "relevant factors" and the weight to be attributed to such factors is case-specific given that "decisions on motions for provisional release are fact sensitive, and cases are considered on an individual basis in light of the particular circumstances of the individual accused".<sup>115</sup> Despite the fact that hearings have been adjourned to accommodate the diagnosis and early phases of Hadžić's treatment, proceedings in this case are nevertheless ongoing.<sup>116</sup> The Trial Chamber is accordingly mindful of its obligation to avoid unnecessary interruptions and further delays in the trial proceedings. Therefore, although the mandatory conditions of Rule 65(B) of the Rules have been met, the Trial Chamber will not exercise its discretion to grant provisional release, until it has considered whether other relevant factors justify provisional release.

36. Turning to the question of whether there are compelling humanitarian grounds warranting provisional release, the Trial Chamber notes the inherent conflict in the arguments advanced by the Defence through the course of litigating the present request for provisional release. On the one hand the Defence contends that "holding a person presumed innocent in detention on remand, in effect, for most of the remainder of their life, which will probably not even extend to final judgement, is

<sup>112</sup> 28 January RMO Report, p. 2; Dr. Patrick Cras, 25 February 2015, T. 12565.

<sup>113</sup> *Prosecutor v. Šešelji*, Case No. IT-03-67-PT, Decision on Defence Motion for Provisional Release, 28 July 2004, para. 6; *Prosecutor v. Čermak and Markač*, Case No. IT-03-73-PT, Decision on Ivan Čermak's and Mladen Markač's Motions for Provisional Release, 29 April 2004, para. 8

<sup>114</sup> *Hadžić* Provisional Release Decision, para. 6; *Prlić et al.* Provisional Release Decision, para. 6; *Popović et al.* Provisional Release Decision, para. 6.

<sup>115</sup> *Hadžić* Provisional Release Decision, para. 6; *Prlić et al.* Provisional Release Decision, para. 6; *Popović et al.* Provisional Release Decision, para. 6.

<sup>116</sup> The Trial Chamber notes in this regard that it is also seised of a motion to proceed with the Defence case. See Prosecution Motion to Proceed.

unjust and inhumane.”<sup>117</sup> On the other hand, it also contends that Hadžić wants to recover sufficiently to be able to participate in the remainder of his trial and that provisional release until May 2015 will increase the likelihood that he will survive for a longer period of time.<sup>118</sup> The Trial Chamber, having heard the testimony of the Experts, concludes that, at present, nothing definitive can be said of Hadžić’s life expectancy or how he will react to the second phase of his treatment because it is too soon to tell. Despite estimating Hadžić’s survival rate to be between 12 to 24 months, Dr. Cras emphasised the difficulties in answering a question concerning life expectancy and pointed out that some prognostic indicators are in Hadžić’s favour while others are not.<sup>119</sup> Dr. Seute testified that “in this early phase of [Hadžić’s] disease nothing is to be said about [the] 12 to 14 months” life expectancy<sup>120</sup> she referenced in her expert report.<sup>121</sup> In relation to treatment, Dr. Seute similarly stated that “it’s really not possible up front to predict how it’s going to be for [Hadžić].”<sup>122</sup> The Trial Chamber has come to understand that it is only as treatment progresses further and MRI scans are evaluated that more definitive answers can be provided.<sup>123</sup> At the moment, though fatigued from the combined radiotherapy and chemotherapy, the Experts agree that Hadžić does not appear to have any cognitive dysfunction; he is well oriented in time, space, and person; and he expresses himself clearly.<sup>124</sup>

37. The Trial Chamber notes the Defence submissions that Hadžić is frequently awoken by fellow inmates or prison guards, has no dedicated caregiver, and is not provided with a range of nourishment that would optimise recovery.<sup>125</sup> The Trial Chamber further notes the information received from the MO and Dr. Seute that Hadžić is suffering from, *inter alia*, insomnia, noise sensitivity, and a diminished taste for food.<sup>126</sup> These symptoms, which can be attributed to the side effects of the combined radiotherapy and chemotherapy treatment recently completed at the end of January 2015,<sup>127</sup> may or may not be an ongoing issue during the next phase of treatment which follows a completely different regimen.<sup>128</sup> With respect to Hadžić’s need for rest, the Deputy Registrar has assured the Trial Chamber that UNDU management is aware of Hadžić’s need and

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<sup>117</sup> Reply, para. 3.

<sup>118</sup> Motion, para. 14.

<sup>119</sup> Dr. Patrick Cras, 26 February 2015, T. 12575-12576, 12578.

<sup>120</sup> Dr. Seute noted that the life expectancy is calculated from the date of biopsy. Dr. Tatjana Seute, 26 February 2015, T. 12601, 12618.

<sup>121</sup> Dr. Tatjana Seute, 26 February 2015, T. 12599-12601.

<sup>122</sup> Dr. Tatjana Seute, 26 February 2015, T. 12608. *See also* Dr. Patrick Cras, 25 February 2015, T. 12583.

<sup>123</sup> Dr. Tatjana Seute, 26 February 2015, T. 12606-12607.

<sup>124</sup> Cras First Report, p. 6; Seute Report, p. 2; Dr. Patrick Cras, 25 February 2015, T. 12583; Dr. Tatjana Seute, 26 February 2015, T. 12603.

<sup>125</sup> Motion, para. 2.

<sup>126</sup> Seute Report, p. 2; 30 January MO Report, para. 3; 27 February Medical Report, p. 1; 13 March Medical Report, p. 1.

<sup>127</sup> 28 January RMO Report, p. 1.

<sup>128</sup> Dr. Tatjana Seute, 26 February 2015, T. 12608, 12614-12615.

that measures have been taken to accommodate this need.<sup>129</sup> For example, Hadžić is not subjected to periodic checks in the middle of the night and the door of Hadžić's single occupancy cell is closed after the morning wake-up round to enable him to sleep longer.<sup>130</sup> In relation to the issue of noise, the MO has advised against measures, such as moving Hadžić to a more separated cell, that provide a quiet environment at the expense of having beneficial social interaction.<sup>131</sup> The Trial Chamber therefore finds that Hadžić's need for rest is being met and dealt with appropriately by the UNDU. As for the need for a caregiver, the MO has advised the UNDU that Hadžić's illness is not at a stage where a caregiver is needed to assist him with his personal care.<sup>132</sup> In relation to adequate nourishment, the Trial Chamber notes that the food at the UNDU meets international standards.<sup>133</sup> Furthermore, while the desire for home-cooked food, particularly while ill, is understandable, there is no evidence before the Trial Chamber supporting the suggestion that the food provided at the UNDU is detrimental to Hadžić's recovery or current treatment needs.

38. At the UNDU, Hadžić is currently being treated by Dr. Taphoorn, a highly respected neuro-oncologist, based in The Hague, who was among the doctors involved in developing the Stupp Scheme, the treatment plan that Hadžić is currently undergoing.<sup>134</sup> When asked about the quality of care that Hadžić is currently receiving, Dr. Seute stated that Hadžić has received high-quality medical care, in particular noting the quality of pathological reports and Dr. Taphoorn's respected position as an oncologist in the field of neurology.<sup>135</sup> The Defence has not made any complaints about the quality of medical care Hadžić is receiving and maintains that Hadžić is intent on carrying on with the Treatment Plan.<sup>136</sup> The Trial Chamber therefore has no reason to doubt that Hadžić is receiving high-quality, appropriate medical care in The Hague. While the second phase of treatment may be taken orally on an outpatient basis, the RMO, Dr. Tenhaeff, and the Experts have stated that monitoring and immediate access to medical doctors and medical facilities trained in neuro-oncology is necessary to manage the second phase of treatment and the possible attendant side effects.<sup>137</sup> For example, Hadžić's blood count level must be monitored because a low blood count level could be life threatening and could necessitate adjustments to the future course of treatment.<sup>138</sup> In The Hague, Hadžić has the benefit of continuous monitoring, an established reporting system between the UNDU and the doctors treating him, and medical care overseen by a highly respected

<sup>129</sup> Registry Submission, para. 4.

<sup>130</sup> Registry Submission, paras 4-5.

<sup>131</sup> Registry Submission, para. 9; 28 January RMO Report, p. 2.

<sup>132</sup> Registry Submission, para. 10.

<sup>133</sup> Registry Submission, paras 12, 14.

<sup>134</sup> Dr. Patrick Cras, 25 February 2015, T. 12560; Dr. Tatjana Seute, 26 February 2015, T. 12599-12600.

<sup>135</sup> Dr. Tatjana Seute, 26 February 2015, T. 12599-12600. *See also*, Dr. Patrick Cras, 25 February 2015, T. 12560, 12565.

<sup>136</sup> *See* Motion, para. 15.

<sup>137</sup> 28 January RMO Report, p. 2; Cras Second Report, p. 2; Seute Report, pp. 3-4.

<sup>138</sup> *See* Dr. Tatjana Seute, 26 February 2015, T. 12606-12607, 12614-12615, 12620-12622.

neuro-oncologist. The Trial Chamber is therefore satisfied that the conditions of detention at the UNDU are sufficiently compatible with the requirements of Hadžić's treatment.

39. The question remains whether the benefits of provisional release to Serbia are such that they constitute a compelling humanitarian ground warranting provisional release. The scenario advanced by the Defence envisions Hadžić returning to Serbia to be cared for in the home of a family member where he will self-administer the next course of treatment and have access to an oncology institute if needed.<sup>139</sup> The Trial Chamber accepts that there are benefits to recovering in an environment surrounded by family,<sup>140</sup> and notes, positively in this regard, that Hadžić has been able to have family visit him at the UNDU.<sup>141</sup> Nevertheless, having concluded that the conditions of detention at the UNDU are sufficiently compatible with Hadžić's current treatment needs, the Trial Chamber is not of the view that the weight of this benefit is such as to constitute a compelling humanitarian ground for provisional release in the present circumstances of this case.

40. The Trial Chamber will continue to evaluate Hadžić's health situation, but at present finds that Hadžić's detention at the UNDU, where he can be closely monitored and receive satisfactory medical care while undergoing the second phase of his treatment, is compatible with Hadžić's treatment needs.

41. In light of the foregoing, the Trial Chamber finds that the Defence has failed to provide sufficiently compelling humanitarian reasons justifying provisional release.

#### **F. Disposition**

42. Accordingly, the Trial Chamber, pursuant to Rules 54, 65, and 126 *bis* of the Rules and paragraphs (C)(5) and (7) of the Practice Direction on the Length of Briefs and Motions,<sup>142</sup> hereby:

- (a) **GRANTS** the Defence leave to exceed the word limit in the Motion;
- (b) **GRANTS** the Prosecution leave to exceed the word limit in the Response;
- (c) **GRANTS** the Defence leave to file the Reply and to exceed the word limit therein; and

<sup>139</sup> Motion, para. 15; Hearing, 26 February 2015, T. 12622-12623 (confidential).

<sup>140</sup> See 28 January RMO Report, p. 2; Cras Second Report, p. 2; Seute Report, p. 3; Dr. Patrick Cras, 25 February 2015, T. 12564-12565; Dr. Tatjana Seute, 26 February 2015, T. 12598.

<sup>141</sup> See 27 February Medical Report.

<sup>142</sup> IT/184/Rev. 2, 16 September 2005.

(d) **DENIES** the Motion.

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

Done this thirteenth day of March 2015,  
At The Hague,  
The Netherlands.



Judge Guy Delvoic  
Presiding

[Seal of the Tribunal]