

**UNITED
NATIONS**



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: 10 April 2015
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. John Hocking

Decision: 10 April 2015

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON URGENT MOTION FOR DAILY DETAILED MEDICAL
MONITORING AND REPORTING OF MR. HADŽIĆ'S HEALTH CONDITION**

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 Motion for Daily Detailed Medical Monitoring and Reporting of Mr. Hadžić’s Health Condition”, filed on 18 March 2015 (“Motion”), and the Supplement thereto, filed on 19 March 2015.¹ On 24 March 2015, the Deputy Registrar filed the “Deputy Registrar’s Submission Regarding Defence Motion for Daily Detailed Medical Reporting”, with a confidential and *ex parte* annex (“Registry Submission”). The “Prosecution Response to Defence Motion for Daily Detailed Medical Monitoring and Reporting” was filed on 25 March 2015 (“Response”). On 30 March 2015, the Defence confidentially filed the “Reply Regarding Urgent Motion for Daily and Detailed Medical Monitoring and Reporting of Mr. Hadžić’s Health Condition” (“First Reply”). On 2 April 2015, the Deputy Registrar confidentially filed the “Deputy Registrar’s Further Submission Regarding Defence Motion for Daily Medical Reporting” (“Registry Further Submission”). On 7 April 2015, the Defence confidentially filed the “Reply to Deputy Registrar’s Further Submission Regarding Defence Motion for Daily and Detailed Medical Reporting” with confidential annexes (“Second Reply”).

A. Background

2. In November 2014, Hadžić was diagnosed with *glioblastoma multiforme*.² Hadžić chose to undergo a prescribed plan for palliative treatment 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 (“Treatment Plan”).³ 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 Chamber and the parties on developments related to Hadžić’s medical situation.⁴ On 30 January 2015, the Medical Officer of the UNDU (“MO”) reported that

¹ Correction and Supplement to Urgent Motion for Daily and Detailed Monitoring and Reporting of Mr. Hadžić’s Health Condition, 19 March 2015 (“Supplement”).

² Deputy Registrar’s Submission of Medical Report (confidential), 26 November 2014 (“26 November Medical Report”).

³ 26 November Medical Report, p. 1; Deputy Registrar’s Submission of Medical Report (confidential), 12 February 2015 (“12 February Medical Report”).

⁴ 26 November Medical Report; Deputy Registrar’s Submission of Medical Report (confidential), 5 December 2014 (“5 December Medical Report”); Deputy Registrar’s Submission of Medical Report (confidential), 11 December 2014 (“11 December Medical Report”); Deputy Registrar’s Submission of Medical Report (confidential), 18 December 2014 (“18 December Medical Report”); Deputy Registrar’s Submission of Medical Report (confidential), 8 January 2015 (“8 January Medical Report”); Deputy Registrar’s Submission of Medical Report (confidential), 15 January 2015 (“15 January Medical Report”); Deputy Registrar’s Submission of Medical Report (confidential), 22 January 2015 (“22 January Medical Report”); Deputy Registrar’s Submission of Medical Report (confidential), 29 January 2015; Deputy Registrar’s Submission of Medical Report (confidential), 30 January 2015 (“30 January Medical Report”); Deputy Registrar’s Submission of Medical Report (confidential), 5 February 2015; 12 February Medical Report; Deputy Registrar’s Submission of Medical Report (confidential), 20 February 2015 (“20 February Medical Report”); Registrar’s Submission of Medical Report (confidential), 27 February 2015 (“27 February Medical Report”); Deputy

Hadžić had completed the radiotherapy component of the Combined Therapy, but the chemotherapy had been suspended the previous week due to a drop in his white blood cell count and blood platelets.⁵ Subsequently, Hadžić started the second phase of the Treatment Plan consisting of chemotherapy on 2 March 2015 (“Second Phase Treatment”).⁶

B. Submissions

1. The Motion

3. In the Motion, the Defence submits that Hadžić is suffering from a number of severe side-effects from the most recent course of chemotherapy. These include: (i) additional drastic weight loss; (ii) complete loss of appetite; (iii) severe disorientation; (iv) severe loss of short-term memory, including forgetting recent conversations; (v) difficulties speaking; (vi) inability to take care of himself; and (vii) extreme fatigue.⁷

4. The Defence describes the medical reporting on Hadžić’s health as “manifestly deficient”.⁸ In its view, the weekly reports: (i) do not adequately track Hadžić’s condition or symptoms; (ii) do not indicate how many medical visits Hadžić received; (iii) do not show what tests were performed; and (iv) do not include measurements of weight, or any other detailed observations.⁹ The Defence argues that it, as well as the Chamber and the Prosecution, needs more detailed and timely information about Hadžić’s medical condition.¹⁰

5. The Defence submits that the Registry has not responded to a Defence request for more frequent medical monitoring and reporting.¹¹ The Defence thus requests the Chamber to order the Registry to produce daily medical reports for disclosure to the Chamber and the parties providing detailed information about: (i) Hadžić’s observed condition, (ii) the nature of any and all medical

Registrar’s Submission of Medical Report (confidential), 5 March 2015 (“5 March Medical Report”); Deputy Registrar’s Submission of Medical Report (confidential), 13 March 2015 (“13 March Medical Report”); Deputy Registrar’s Submission of Medical Report (confidential), 20 March 2015 (“20 March Medical Report”); Deputy Registrar’s Submission of Medical Report (confidential), 26 March 2015 (“26 March Medical Report”); Deputy Registrar’s Submission of Medical Report (confidential), 2 April 2015 (“2 April Medical Report”).

⁵ 30 January Medical Report, paras 1-2.

⁶ Deputy Registrar’s Submission of Medical Update (confidential), 2 March 2015, para. 1; 5 March Medical Report, para. 1.

⁷ Motion, para. 1.

⁸ Motion, para. 2.

⁹ Motion, para. 2.

¹⁰ Motion, paras 4-5.

¹¹ Motion, para. 5.

visits—including duration and tests performed—and (iii) all treatment protocols or assistance provided to Hadžić since the previous medical report.¹²

2. The Registry Submission

6. The Deputy Registrar submits that there is no legal basis for the Motion in the Tribunal’s Statute, Rules of Procedure and Evidence (“Rules”), Rules of Detention, or the Tribunal’s jurisprudence.¹³ In addition, she continues, the Defence fails to explain why daily medical reports are essential for the conduct of Hadžić’s legal defence.¹⁴ She argues that the Defence confuses the purpose of the weekly medical reports, which are provided at the Registry’s own initiative solely to assist the Chamber in the discharge of its functions.¹⁵

7. According to the Deputy Registrar, the Defence “appears to insinuate” that the medical care provided to Hadžić is suspect, despite the opinion of independent experts that the quality of the medical care is high.¹⁶ The Deputy Registrar argues, moreover, that the quality of the care that Hadžić receives is not linked to the reporting mechanism in place between the UNDU and the Chamber and the parties.¹⁷ The Deputy Registrar further submits that she will continue to keep the Chamber informed about Hadžić’s health on a weekly basis, or at any intervening point should there be significant developments, as has been the practice to date.¹⁸

3. The Response

8. The Prosecution responds that in the past it has advocated for “detailed monitoring and reporting” of Hadžić’s health condition in order to enable the Chamber and the parties to assess the extent to which he may participate in the trial proceedings. It further submits that recently, it has proposed to continue with the Defence case under a regime that includes “daily assessments of the Accused’s ability to participate in the proceedings in order to ensure that continuing proceedings in the absence of the Accused is limited to the extent necessary”.¹⁹ It, however, shares the position expressed in the Registry Submission and opposes the Motion as there is no legal basis for it and as

¹² Motion, para. 6. The Defence also requested that detailed information be provided about whether anyone is assisting Hadžić in the dispensation of drugs. Considering the correction included in the Supplement that the Defence “has ascertained that Mr. Hadžić is, in fact, dispensed his pills on a daily basis by the UNDU custodial staff”, the Trial Chamber considers this request to be moot and will not deal with it in this decision. *See* Supplement, para. 1. *See also* Registry Submission, paras 9-10.

¹³ Registry Submission, paras 3-4, 12.

¹⁴ Registry Submission, para. 4.

¹⁵ Registry Submission, para. 3.

¹⁶ Registry Submission, paras 3, 5-7.

¹⁷ Registry Submission, paras 3, 8.

¹⁸ Registry Submission, para. 8.

¹⁹ Response, para. 1.

the Motion is premised on “unfounded aspersions of inadequate medical care provided by the UNDU medical staff”.²⁰

4. The First Reply

9. The Defence seeks leave to reply.²¹ In the First Reply, it argues that the factual basis of the Motion is the apparently serious worsening of Hadžić’s health condition, in particular between 13 and 16 March 2015.²² It submits that its greatest concern is the indication from Hadžić that while suffering from serious symptoms, he was not seen by a doctor, or possibly any caregiver at all. The Defence states that the medical reports are silent on this issue and that the Defence has no other channel to confirm the veracity of Hadžić’s claim.²³

10. The Defence argues that when it receives information suggesting a serious decline in Hadžić’s health condition, it has a duty to bring it to the Chamber’s attention.²⁴ It adds that its role also includes making sure that Hadžić is receiving adequate and appropriate medical care while at the UNDU, even more so at times when Hadžić is unable to raise any concerns regarding his care himself.²⁵ In the Defence’s view, “[t]he current frequency and level of detail in the weekly medical reports [...] are not minimally adequate for that purpose”.²⁶

11. The Defence submits that the medical reports of 13 and 20 March 2015 illustrate the need for additional information.²⁷ It argues that while on 13 March it had received information that Hadžić was suffering serious health side-effects, the 13 March Medical Report describes various symptoms but does not state when and by whom they were observed, nor that Hadžić was visited by a medical professional on that day.²⁸ Also, the 20 March Medical Report does not state whether and when Hadžić was visited by medical professionals.²⁹ The Defence further notes that it is unclear whether special monitoring of Hadžić every three hours, like that which took place from 16 to 18 March 2015, is conducted by medical professionals and what symptoms are being reported to the MO.³⁰

²⁰ Response, paras 1, 3, 4.

²¹ First Reply, para. 1.

²² First Reply, para. 2.

²³ First Reply, para. 3.

²⁴ First Reply, para. 5.

²⁵ First Reply, paras 6, 23.

²⁶ First Reply, para. 6.

²⁷ First Reply, paras 7-8. The Chamber notes the medical report of the RMO, dated 18 March, was filed on 20 March 2015.

²⁸ First Reply, paras 7-8.

²⁹ First Reply, para. 7.

³⁰ First Reply, para. 7.

12. The Defence challenges the Deputy Registrar's submission that the independent experts praised the quality of medical care at the UNDU arguing that they only did so in relation to the neuro-oncological care provided by the treating specialist. In fact, the Defence goes on, one of the experts doubted whether optimal or even minimally acceptable care could be provided at the UNDU.³¹ It further argues that there have been lapses in Hadžić's medical care in the past which justify detailed reporting.³² According to the Defence, *ad hoc* medical inquiries from the Defence to the Registry are no substitute for formal and transparent reporting by the UNDU medical professionals.³³

5. The Registry Further Submission and the Second Reply

13. The Chamber considers the Registry Further Submission to amount to a sur-reply and a request for leave to file a sur-reply to the First Reply. The Second Reply is thus a reply to the sur-reply. The Chamber notes that it will usually not entertain filings beyond a reply. However, due to the nature of the issues litigated here, it will exceptionally do so on this occasion.

14. The Deputy Registrar emphasises that increasing the frequency of regular reporting on Hadžić's health situation: (i) will not assist the Chamber in carrying out its judicial function; (ii) will leave less time for the UNDU Medical Service to perform its primary care function; and (iii) is neither an adequate nor appropriate tool to assess the quality of the medical care provided.³⁴ The Deputy Registrar notes that if the Chamber considers that the content of the weekly reports could be amended to meet its needs, the Registry "stands ready to receive guidance and adapt the reports accordingly".³⁵ She further notes that Hadžić is seen by a doctor or a nurse on a daily basis, but that unlike the weekly visit by the RMO, those visits are not for the purpose of providing reports.³⁶

15. In the Second Reply, the Defence submits that the Registry Further Submission makes it clear that there are two types of medical visits that Hadžić receives: those to provide care, and those for the purpose of the weekly medical report.³⁷ In its view, this explains the "very limited scope" of many of the weekly medical reports.³⁸ The Defence further submits that the medical reports omit important symptoms as well as opinions of the treating physicians.³⁹ The Defence refers to information regarding Hadžić's health that was conveyed to him on 27 March, yet the Chamber and

³¹ First Reply, para. 9.

³² First Reply, paras 12-15.

³³ First Reply, paras 16-18.

³⁴ Registry Further Submission, para. 1. *See also* paras 3-8.

³⁵ Registry Further Submission, paras 3, 10.

³⁶ Registry Further Submission, para. 7.

³⁷ Second Reply, para. 2.

³⁸ Second Reply, para. 3.

³⁹ Second Reply, paras 5-6; Confidential Annex A to the Second Reply.

the parties were only made aware of this information at the close of business on 2 April 2015.⁴⁰ The Defence therefore concludes that the Registry did not consider this information to be a “significant development”.⁴¹ In the Defence’s view, this episode raises doubts about who exactly within the Registry and the UNDU determines what constitutes a “significant development”.⁴²

16. The Defence argues that contrary to the Registry Further Submission, it has information that Hadžić is not seen by a doctor or a nurse every day.⁴³ It refers to an episode that occurred on 5 April 2015 and submits that medical personnel did not visit Hadžić on that day.⁴⁴ The Defence further argues that the Deputy Registrar implies that the UNDU Medical Unit has insufficient resources to provide both for the medical care as well as more detailed reporting.⁴⁵ The Defence submits that lack of resources is not a valid excuse in this respect, nor is it a credible excuse, considering the “patently minimal resources being devoted to reporting at the moment”.⁴⁶

17. The Defence also refers to the proposal made by the Deputy Registrar to discuss how, if necessary, the weekly medical reports could be adapted and requests that the Registry make further and more specific submissions regarding this proposal pursuant to Rule 33(B) of the Rules.⁴⁷

C. Discussion

18. With regard to the argument that there is no legal basis for the Defence to request more detailed and more frequent medical reporting of Hadžić’s health condition, the Chamber notes that in order to discharge its statutory function of ensuring a fair and expeditious trial, it is within its power to order the requested measures. It follows from this authority that it is appropriate for either party to make submissions regarding the medical reporting, as has been done in this case by both the Prosecution and the Defence.⁴⁸ In this respect, the Chamber agrees with the Defence submission that the Defence has a role in ensuring that Hadžić is receiving adequate and appropriate medical care while detained in the UNDU.⁴⁹

19. Having denied the Defence’s motion for provisional release, the Chamber noted that it will continue to evaluate Hadžić’s health situation.⁵⁰ On 1 April 2015, the Chamber issued the “Order

⁴⁰ Second Reply, para. 6.

⁴¹ Second Reply, para. 6.

⁴² Second Reply, para. 7.

⁴³ Second Reply, para. 9; Confidential Annex C to the Second Reply.

⁴⁴ Second Reply, para. 9.

⁴⁵ Second Reply, para. 10.

⁴⁶ Second Reply, para. 11.

⁴⁷ Second Reply, paras 16-17.

⁴⁸ See Response, para. 1.

⁴⁹ See First Reply, para. 6.

⁵⁰ Decision on Defence Urgent Request for Provisional Release, 13 March 2015, para. 40.

for Further Medical Examination” wherein it reiterated this commitment.⁵¹ The Chamber further considered that it would benefit from receiving additional information on Hadžić’s physical and mental health after the first cycle of the Second Phase Treatment from a neuro-psychologist and a neuro-oncologist in order to assist the Chamber in determining whether Hadžić is fit to stand trial.⁵²

20. While the Chamber is satisfied with the medical reports that it has so far received from the UNDU medical staff concerning Hadžić’s health condition, it could benefit, at this stage, from more detailed information on Hadžić’s health situation and the monitoring thereof in future medical reports.

21. The Chamber notes that in a number of earlier medical reports, from November, December and January, the medical staff at the UNDU, through the RMO, noted that “[w]e will continue to monitor [Hadžić’s] physical and mental condition daily”.⁵³ However, some of the more recent reports do not include such a clause. Those reports state, for example, that “the Medical service continues to follow the health condition of Mr. Hadžić closely and to assess the (supplementary) need for care”.⁵⁴ The Chamber has no reason to believe that the practice of the daily monitoring of Hadžić’s physical and mental condition has stopped despite the mentioned change in the language of the reports. The Deputy Registrar also makes this clear in the Registry Further Submission where it is stated that Hadžić is seen by a doctor or a nurse on a daily basis.⁵⁵ However the Chamber would benefit from more information regarding the monitoring of Hadžić’s health, in particular how often and by whom it was monitored, and about any significant observations made throughout the reporting week. Also, at this stage, the Chamber would further benefit from more detailed information about all interviews with Hadžić and any medical tests that take place during such a week. With regard to the Defence submission that Hadžić was not visited by a doctor or a nurse on 5 April 2015, the Chamber invites the Deputy Registrar to address this concern in the next medical report since the Chamber has been informed that Hadžić is monitored on a daily basis.

22. With regard to the Defence submission that the medical reports do not make it clear who observed certain symptoms, the Chamber notes that some of the reports indeed lack such information.⁵⁶ The Chamber considers that the medical reports would also benefit from a clear distinction between the symptoms Hadžić indicated experiencing during the week, and those the

⁵¹ Order for Further Medical Examination, p. 2.

⁵² Order for Further Medical Examination, p. 2.

⁵³ See e.g. 26 November Medical Report; 5 December Medical Report; 11 December Medical Report; 18 December Medical Report; 8 January Medical Report; 15 January Medical Report; 22 January Medical Report.

⁵⁴ 20 March Medical Report, para. 7; 26 March Medical Report, para. 5.

⁵⁵ Registry Further Submission, para. 7.

⁵⁶ See e.g. 27 February Medical Report; 20 February Medical Report; 12 February Medical Report.

medical staff could verify or observe on its own. The Chamber encourages the medical staff to provide such information, as exhibited in the 20 March Medical Report, in all future reports.

23. The Defence complains that the medical reports do not include measurements of weight. In the 15 January Medical Report it was stated that Hadžić's weight was being monitored.⁵⁷ The Chamber notes that the 26 March Medical Report and the 2 April Medical Report state that Hadžić is continuing to lose weight.⁵⁸ The Chamber is of the view that, at this stage, it and the parties would benefit from a more detailed report on Hadžić's loss of weight following his diagnosis with *glioblastoma multiforme*, and from at least a monthly report on future measurements of his weight.

24. The Chamber welcomes the Deputy Registrar's submission that the Registry will continue to keep the Chamber informed about Hadžić's health on a weekly basis, or at any intervening point should there be significant developments, as has been the practice to date.⁵⁹ This has always been the Chamber's understanding and the Chamber has full confidence in the medical reporting regarding Hadžić's health by the UNDU medical staff. It is in this light that the Chamber does not find it necessary to order daily reporting on Hadžić's health. Weekly medical reports, supplemented in line with the above, are sufficient at this time.

25. With regard to the Defence request for further submissions by the Deputy Registrar concerning the proposal to adapt the weekly medical reports, the Chamber, considering the reasoning provided in this Decision, sees no need for further submissions on the matter at this time.

⁵⁷ 15 January Medical Report, para. 2.

⁵⁸ 26 March Medical Report, para. 3; 2 April Medical Report, para. 3.

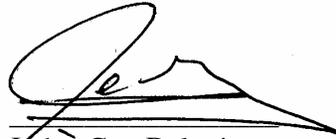
⁵⁹ Registry Submission, para. 8.

D. Disposition

26. Accordingly, the Chamber, pursuant to Rules 54 and 126 *bis* of the Rules hereby:
- (a) **GRANTS** the Defence leave to file the First Reply and the Second Reply;
 - (b) **GRANTS** the Registry leave to file the Registry Further Submission;
 - (c) **GRANTS** the Motion **IN PART**;
 - (d) **INSTRUCTS** the Registry to continue to file weekly medical reports concerning Hadžić's health in line with the reasoning of this Decision as set out above.

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

Done this tenth day of April 2015,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]