

**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: 21 May 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: 21 May 2015

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON URGENT MOTION FOR PROVISIONAL RELEASE FILED ON
28 APRIL 2015**

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for Goran Hadžić:

Mr. Zoran Živanović
Mr. Christopher Gosnell

The Government of the Kingdom of the Netherlands

The Government of the Republic of Serbia

Per: The Embassy of the Republic of Serbia
to the Kingdom of the Netherlands

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 Provisional Release” filed on 28 April 2015 (“Motion”). The “Prosecution’s Response to the Accused’s Urgent Motion for Provisional Release filed on 28 April 2015” was filed with annexes on 12 May 2015 (“Response”).¹ On 14 May 2015, the Defence filed the “Reply to Prosecution Response to Urgent Motion for Provisional Release” (“Reply”).

A. Background and Procedural History

2. In November 2014, Hadžić was diagnosed with *glioblastoma multiforme*.² 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.³ Hadžić started the second phase of the Treatment Plan consisting of six cycles of chemotherapy on 2 March 2015 (“Second Phase Treatment”).⁴ Having completed the first cycle of chemotherapy, Hadžić was planned to commence the second cycle, which includes

¹ In the Motion, the Defence requested that the Motion be decided expeditiously, including by modifying deadlines for the response and the reply. On 29 April 2015, the Prosecution filed a motion in which it requested an extension of time to respond to the Motion until three days after receipt of the results of the MRI scan, medical examinations ordered by the Chamber, and the Chamber’s decisions on the “Prosecution Motion to Proceed with the Defence Case”, filed on 2 March 2015 (“Motion to Proceed”), and the “Prosecution’s Proposal for Expediting Presentation of the Defence Case”, filed on 24 March 2015 (“Proposal”). See Prosecution Request for Extension of Time to Respond to Goran Hadžić’s Motion for Provisional Release filed on 28 April 2015 (confidential), 29 April 2015 (“Request for Extension of Time”), para. 7; Public Redacted Version of “Prosecution Request for Extension of Time to Respond to Goran Hadžić’s Motion for Provisional Release filed on 28 April 2015”, 29 April 2015, para. 7. The Defence responded to this request on the following day, requesting that the Prosecution be required to file a response to the Motion no later than one week from the filing of the Motion. See Response to Prosecution Request for Extension of Time to Respond to Goran Hadžić’s Motion for Provisional Release filed on 28 April 2015 (confidential), 30 April 2015; Public Redacted Version of “Response to Prosecution Request for Extension of Time to Respond to Goran Hadžić’s Motion for Provisional Release Filed on 28 April 2015”, 30 April 2015. On 5 May 2015, the Chamber denied both the request to expedite the Prosecution response to the Motion, as well as the request for extension of time to respond. See Decision on Prosecution Request for Extension of Time to Respond to Motion for Provisional Release and Defence Request to Expedite the Prosecution Response (confidential), 5 May 2015; Public Redacted Version of the Decision on Prosecution Request for Extension of Time to Respond to Motion for Provisional Release and Defence Request to Expedite the Prosecution Response, 5 May 2015.

² Deputy Registrar’s Submission of Medical Report (confidential), 26 November 2014, (“26 November Medical Report”), p. 1.

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

⁴ Deputy Registrar’s Submission of Medical Update (confidential), 2 March 2015, para. 1; Deputy Registrar’s Submission of Medical Report (confidential), 5 March 2015, para. 1.

an increased drug dosage, on 1 April 2015.⁵ However, this was postponed on the basis of unfavourable results of blood tests.⁶

3. On 22 January 2015, the Defence filed an urgent request for provisional release to run from the end of the Combined Therapy until the beginning of May 2015, when Hadžić was scheduled to undergo an MRI scan.⁷ In January and February 2015, the Trial Chamber heard from the Reporting Medical Officer of the United Nations Detention Unit (“RMO” and “UNDU”, respectively), the Registry, and an independent neurologist and independent neuro-oncologist (“Experts”) in relation to, *inter alia*, the conditions of Hadžić’s detention at the UNDU and the expected effects of the Treatment Plan on Hadžić’s physical and mental condition.⁸ Thereafter, on 13 March 2015, the Chamber denied the First Provisional Release Motion.⁹

4. On 1 April 2015, the Chamber ordered further medical examinations in order to receive additional information on Hadžić’s physical and mental health after the first cycle of the Second Phase Treatment from an independent neuro-psychologist and an independent neuro-oncologist. It considered that such information would assist the Chamber in determining whether Hadžić is fit to stand trial, including, *inter alia*, whether Hadžić has an ability to understand the essentials of the trial proceedings and has the capacity to instruct counsel.¹⁰ The Registry is currently in the process of identifying the relevant experts and scheduling the dates for the examinations.¹¹

⁵ Deputy Registrar’s Submission of Medical Report (confidential), 26 March 2015 (“26 March Medical Report”), paras 1-2; Deputy Registrar’s Submission of Medical Report (confidential), 2 April 2015 (“2 April Medical Report”), para. 2.

⁶ 2 April Medical Report, para. 2; Deputy Registrar’s Submission of Medical Report (confidential), 10 April 2015 (“10 April Medical Report”), para. 2; Deputy Registrar’s Submission of Medical Report (confidential), 17 April 2015 (“17 April Medical Report”), para. 2.

⁷ Urgent Request for Provisional Release, (confidential with confidential and confidential and *ex parte* annexes), 22 January 2015 (“First Provisional Release Motion”), paras 2, 13, 15, 19. A public redacted version of this motion was filed on 28 January 2015. A further public redacted version was filed on 13 March 2015. *See* 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.

⁸ Deputy Registrar’s Submission of Medical Report (confidential), 29 January 2015; Deputy Registrar’s Submission Regarding Interim Order in Relation to the Urgent Request for Provisional Release (confidential), 29 January 2015, *see* Decision on Motions for Reclassification, Annex D; Deputy Registrar’s Submission of Reports of Medical Experts (confidential), 13 February 2015, *see* Decision on Request for Reclassification of Expert Medical Reports, 9 April 2015; Patrick Cras, 25 February 2015, T. 12557-12588; Tatjana Seute, 26 February 2015, T. 12595-12622.

⁹ Decision on Defence Urgent Request for Provisional Release, 13 March 2015 (“Decision on First Provisional Release Motion”).

¹⁰ Order for Further Medical Examination, 1 April 2015 (“Order of 1 April 2015”), p. 2.

¹¹ *See* Deputy Registrar’s Submission in relation to the Order for Further Medical Examination (confidential), 9 April 2015 (“Deputy Registrar’s Submission of 9 April 2015”); Further Order in relation to Order for Further Medical Examination, 20 April 2015 (“Order of 20 April 2015”); Registrar’s Submission concerning Ongoing Efforts on Appointment of Additional Independent Medical Experts (confidential), 1 May 2015 (“Registrar’s Submission of 1 May 2015”); Second Registry Submission Concerning Ongoing Efforts on Appointment of Additional Independent Medical Experts (confidential), 7 May 2015.

5. On 13 April 2015, Hadžić was granted provisional release by the Appeals Chamber.¹² The Appeals Chamber subsequently ordered that Hadžić was to “return to the UNDU no later than three days prior to the final date of the MRI examination that [was] scheduled to take place between 11 and 15 May 2015.”¹³ Hadžić returned to the UNDU on 8 May 2015.¹⁴ According to a blood examination conducted on that day, the number of his blood platelets was adequate for the start of the second cycle of the Second Phase Treatment.¹⁵ However, the decision to re-start chemotherapy has been postponed pending the results of the MRI scan, which took place on 12 May 2015¹⁶ and consultation with Hadžić’s treating neuro-oncologist scheduled to take place in the week of 18 May.¹⁷

B. Submissions

1. The Motion

6. The Defence requests a renewed period of provisional release for Hadžić following the completion of the MRI scan until the end of the Second Phase Treatment on terms identical to those ordered by the Appeals Chamber.¹⁸ According to the Defence, the Second Phase Treatment is scheduled to end around August 2015.¹⁹

7. The Defence submits that, in conjunction with his disease, Hadžić is experiencing “debilitating side-effects” of the chemotherapy.²⁰ It argues that Hadžić’s current health condition is in line with the forecasts made by the Experts that Hadžić would not be able to participate in trial proceedings during the chemotherapy treatment and episodes with serious side effects like low blood counts.²¹ It argues that the symptoms that the Experts “predicted would preclude Mr. Hadžić’s participation in trial proceedings have come to pass.”²² These symptoms include: (i) loss of 10% of his body weight between 9 February and 20 March 2015; (ii) chronic and debilitating fatigue; (iii) deterioration of general physical condition; (iv) nausea; (v) headaches; (vi) complete lack of appetite; (vii) dizziness; (viii) difficulty in coordinating some movements; (ix) vomiting; (x) reduction in blood levels of thrombocyte (platelet); and (xi) serious problems with short-term

¹² Decision on Urgent Interlocutory Appeal from Decision Denying Provisional Release, filed publicly with a confidential annex on 13 April 2015 (“Appeals Chamber Decision”).

¹³ Decision on Requests for Modification of the Conditions of Provisional Release (confidential), 20 April 2015.

¹⁴ Deputy Registrar’s Submission of Medical Report (confidential), 12 May 2015 (“12 May Medical Report”), para. 1.

¹⁵ 12 May Medical Report, para. 2. *See also* Deputy Registrar’s Submission of Medical Report (confidential), 15 May 2015 (“15 May Medical Report”), para. 2.

¹⁶ 15 May Medical Report, para. 4.

¹⁷ 12 May Medical Report, para. 2; 15 May Medical Report, para. 4.

¹⁸ Motion, paras 2, 13, 24.

¹⁹ Motion, para. 1.

²⁰ Motion, para. 1.

²¹ Motion, paras 7, 9, 12.

²² Motion, paras 10-11.

memory.²³ The Defence adds that “as of the time when this request would be granted”, Hadžić’s medial life expectancy will be between 6 and 8 months, with a two-thirds to three-quarters likelihood of being deceased within 18 months.²⁴

8. According to the Defence, the same factors relied on by the Appeals Chamber in granting provisional release on 13 April 2015 still apply, namely: (i) the terminal nature of Hadžić’s illness and limited life expectancy; (ii) the health benefits of home care compared to conditions at the UNDU; and (iii) the unlikelihood of meaningful participation in trial proceedings while undergoing high-dose chemotherapy combined with the effects of his condition.²⁵ It argues that the humanitarian considerations arising from his terminal condition and short life expectancy remain.²⁶ It further argues that the “health benefits of home care over prison care are now concretely demonstrated by the objectively-reported deterioration of Mr. Hadžić’s condition while at the UNDU.”²⁷

9. In support of the Motion, the Defence refers to the *Talić and Djukić* cases, arguing that the Tribunal’s jurisprudence on requests for provisional release of terminally ill accused with a short-term life expectancy does not predicate release from detention on a finding that the accused is medically unfit to attend trial proceedings.²⁸ It adds that numerous decisions by national courts support this approach.²⁹

10. The Defence submits that no further medical reports or expert opinions are necessary to substantiate the factors for provisional release.³⁰ It further submits that the provisional release should not be conditioned on any such information, which may be obtained after the disposition of the Motion and any supplemental orders as considered necessary made following the provisional release.³¹ The Defence recalls that the Chamber has already found that Hadžić fulfilled the two objective conditions of provisional release under Rule 65(B).³²

11. The Defence also requests leave to exceed the word limit for the Motion.³³

²³ Motion, para. 10.

²⁴ Motion, para. 1.

²⁵ Motion, paras 2, 8.

²⁶ Motion, para. 12.

²⁷ Motion, para. 12.

²⁸ Motion, paras 14-17. The Defence refers to *Prosecutor v. Talić*, Case No. IT-99-36-T, Decision on the Motion for Provisional Release of the Accused Momir Talić, 20 September 2002; *Prosecutor v. Djukić*, Case No. IT-96-20-T, Decision Rejecting the Application to Withdraw the Indictment and Order for Provisional Release, 24 April 1996.

²⁹ Motion, paras 18-23.

³⁰ Motion, para. 13.

³¹ Motion, paras 13, 24.

³² Motion, paras 6, 8.

³³ Motion, para. 4.

2. The Response

12. The Prosecution opposes the Motion and argues that the ultimate objective of the request for provisional release until the completion of the Second Phase Treatment is an indefinite release of Hadžić without the recommencement of the trial proceedings.³⁴ The Prosecution argues that the Defence has not demonstrated that extending the provisional release for a lengthy and indefinite period is “proportionate to sufficiently compelling humanitarian grounds based on currently available information.”³⁵ Nor is the requested provisional release in the interests of justice as it would render the measures intended to facilitate Hadžić’s attendance or participation in proceedings “extremely difficult, if not impossible.”³⁶

13. The Prosecution adds that granting the requested provisional release would mean that the Registry would be unable to regularly monitor Hadžić’s medical condition and his ability to attend trial proceedings.³⁷ It further adds that the Defence estimate that the Second Phase Treatment, and thus the end of the requested provisional release, will be completed in August 2015 is “presumably based on an estimate made in early February 2015” and that subsequently there have been delays in the therapy which have extended this period significantly.³⁸

14. The Prosecution submits that the Defence based the Motion solely on the Appeals Chamber Decision and medical evidence that predates Hadžić’s provisional release on 16 April 2015.³⁹ In doing so, according to the Prosecution, the Defence ignores the limited scope of the Appeals Chamber Decision and the limited value of that medical evidence.⁴⁰ The Prosecution stresses the Appeals Chamber finding that the provisional release of Hadžić for a limited period and until the date of his MRI scan was “proportionate to the present circumstances of this case” and that Hadžić was not expected to be able to attend proceedings during the requested period.⁴¹ With regard to the medical evidence, the Prosecution argues that it is outdated and largely based on Hadžić’s self-reporting.⁴² The Prosecution also reiterates its position that only after it has received the results of the MRI scan and the further medical examinations as ordered by the Chamber—and the Chamber

³⁴ Response, paras 1, 9, 19.

³⁵ Response, paras 1, 6-7, 10.

³⁶ Response, para. 1.

³⁷ Response, para. 10.

³⁸ Response, para. 9.

³⁹ Response, para. 5.

⁴⁰ Response, para. 5.

⁴¹ Response, para. 5, referring to Appeals Chamber Decision, paras 18, 22.

⁴² Response, para. 11.

has decided on the Motion to Proceed and the Proposal—will it be in a position to provide an informed response regarding the requested provisional release.⁴³

15. Considering the life expectancy, the first of the three factors referred to by the Defence as having been relied on by the Appeals Chamber, the Prosecution submits that it is premature to reach any conclusions until the results of the MRI scan and the further medical examinations are available.⁴⁴ As to the second factor, benefits of home care, the Prosecution argues that Hadžić's condition in Serbia says nothing about his condition at the UNDU. Moreover, it should also be taken into account that any improvement in Hadžić's side-effects while in Serbia may be the result of him not undergoing chemotherapy for a protracted period.⁴⁵ As to the third factor, Hadžić's ability to participate in proceedings, the Prosecution submits that the Experts agreed that there may be days when Hadžić will be able to participate in the proceedings, which must be determined on an ongoing basis. In addition, it is premature to consider this factor without the benefit of the anticipated medical examinations.⁴⁶

16. The Prosecution submits that the *Talić* and *Djukić* decisions referred to by the Defence are different from Hadžić's situation as the prognoses for survival in those cases were "extremely short" and the trial proceedings in those cases had either not begun, or were in relatively early stages.⁴⁷ It further submits that neither the two cases, nor the domestic jurisprudence relied on by the Defence, establishes a rule that supports provisional release in Hadžić's case.⁴⁸ However, according to the Prosecution, domestic jurisprudence identifies a number of factors which may assist the Chamber in determining whether to resume trial proceedings.⁴⁹

17. The Prosecution argues that Hadžić's desire to undergo medical treatment was the basis upon which the Trial Chamber found that he was not a flight risk. It appears that Hadžić has not resumed chemotherapy while in Serbia and that his counsel has indicated that he may no longer wish to receive treatment and that there is "no need for the Tribunal 'to get him back'".⁵⁰ The Prosecution submits that the Defence has therefore failed to meet its burden under Rule 65(B) of the Rules.⁵¹ Moreover, the Prosecution submits that it is unknown whether any of Hadžić's 30 RSK

⁴³ Response, para. 4; *See also* Request for Extension of Time, paras 1-2.

⁴⁴ Response, paras 12-13.

⁴⁵ Response, paras 14-15.

⁴⁶ Response, paras 16-18.

⁴⁷ Response, para. 20.

⁴⁸ Response, para. 19.

⁴⁹ Response, paras 22-23.

⁵⁰ Response, para. 25, Annex C to the Response.

⁵¹ Response, para. 25.

associates, with whom he dined recently, are witnesses in this case, which would render his contact with them a violation of his release conditions.⁵²

18. The Prosecution applies for a stay of provisional release pursuant to Rule 65(E) of the Rules, in the event that the Chamber grants the Motion.⁵³ Finally, the Prosecution also requests leave to exceed the word limit.⁵⁴

3. The Reply

19. The Defence seeks leave to reply.⁵⁵ It submits that Hadžić's limited life expectancy is a central humanitarian consideration which should be accorded decisive weight.⁵⁶ It argues that most symptoms experienced by Hadžić were directly confirmed by medical professionals.⁵⁷ With regard to the Prosecution's argument that the medical evidence predating Hadžić's provisional release is outdated, the Defence replies that the Prosecution ignores the temporal scope of the medical evidence about the effects of chemotherapy and the terminal and degenerative nature of Hadžić's condition.⁵⁸

20. The Defence further submits that keeping Hadžić in detention while awaiting an examination by a yet unidentified neuro-oncologist and neuro-psychologist, would be inhumane and damaging to his health.⁵⁹ In its view, any further periodic reporting of Hadžić's medical condition can be conducted in Serbia by specialists from The Netherlands, Serbia, or any other country.⁶⁰ The Defence also submits that benefits of home care are confirmed by a significant recovery in Hadžić's weight while on provisional release.⁶¹ As to the *Talić* case, the Defence submits that the prognosis on Talić's life expectancy was significantly better than that of Hadžić's now.⁶²

21. The Defence argues that the Prosecution misrepresents Hadžić's willingness to receive treatment. It clarifies that a statement referred to by the Prosecution, which was made in a previous filing, makes clear that Hadžić cannot be forced to take a treatment in the UNDU or anywhere else.⁶³ The Defence adds that Hadžić has now informed the medical staff at the UNDU that he is

⁵² Response, para. 26, Annex A to the Response.

⁵³ Response, para. 2.

⁵⁴ Response, para. 3.

⁵⁵ Reply, para. 1.

⁵⁶ Reply, paras 2-7.

⁵⁷ Reply, para. 4.

⁵⁸ Reply, para. 6.

⁵⁹ Reply, para. 7.

⁶⁰ Reply, para. 7.

⁶¹ Reply, para. 8.

⁶² Reply, para. 9.

⁶³ Reply, para. 17.

“unwilling to endure the severe side-effects that he suffered during his last cycle of chemotherapy in the conditions of the UNDU.”⁶⁴

22. The Defence further submits that Hadžić is not a flight risk arguing that the case is no stronger now than when he voluntarily returned to The Hague earlier this month.⁶⁵ It also argues that none of the activities Hadžić undertook during provisional release support resumption of the trial.⁶⁶

C. Applicable Law

23. 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.

24. 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.⁶⁷ 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 release are fact sensitive, and cases are considered on an individual basis in light of the particular circumstances of the individual accused.”⁶⁸ 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,

⁶⁴ Reply, para. 18.

⁶⁵ Reply, para. 19.

⁶⁶ Reply, para. 20.

⁶⁷ Decision on Hadžić’s Urgent Request for Provisional Release, 31 October 2012 (“*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.

⁶⁸ *Hadžić* Provisional Release Decision, para. 6; *Prlić et al.* Provisional Release Decision, para. 6; *Popović et al.* Provisional Release Decision, para. 6.

but also, as much as can be foreseen, during the provisional release, and at the time the accused is expected to return to the Tribunal.⁶⁹

25. 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.

D. Discussion

26. The Chamber notes that there is no objection to Hadžić's provisional release from the host country.⁷⁰ The Chamber has been informed that a submission from Serbia is forthcoming.⁷¹ The Chamber anticipates that Serbia's position will be the same as it was in relation to the Decision on First Provisional Release Motion.⁷²

27. The Chamber recalls its findings in its Decision on First Provisional Release Motion that Hadžić did not pose a flight risk nor a danger to any victim, witness, or other person.⁷³ The Trial Chamber, however, must not only consider its previous determination, but also consider present circumstances. The Chamber considers that the following factors increase the likelihood that Hadžić will abscond if granted provisional release: (i) Hadžić did not voluntarily surrender himself to the custody of the Tribunal and evaded arrest for seven years;⁷⁴ (ii) the proceedings are at an advanced stage, whereby Hadžić's motion for acquittal pursuant to Rule 98 *bis* of the Rules has been dismissed;⁷⁵ and (iii) only 50% of the Defence case remains to be heard.⁷⁶

28. In its Decision on First Provisional Release Motion, the Trial Chamber also considered Hadžić's stated desire to undergo palliative treatment for his *glioblastoma* and to return for the MRI scan.⁷⁷ It concluded that undergoing such a treatment requires continuous monitoring by medical professionals, and would be incompatible with a life on the run. The Chamber was, therefore,

⁶⁹ *Prlić et al.* Provisional Release Decision, para. 6; *Popović et al.* Provisional Release Decision, para. 6.

⁷⁰ Correspondence from the Ministry of Foreign Affairs of the Netherlands (confidential), 30 April 2015.

⁷¹ Emails from the Defence dated 14 and 18 May 2015.

⁷² Decision on First Provisional Release Motion, paras 1, 32. Serbia stated that it will "comply with all orders of the ICTY Trial Chamber so that [Hadžić] may appear before the ICTY at any time."

⁷³ Decision on First Provisional Release Motion, paras 33-34.

⁷⁴ See *Hadžić* Provisional Release Decision, para. 9.

⁷⁵ Hearing, 20 February 2014, T. 9102-9126.

⁷⁶ Email from the Trial Chamber to the Parties and the Registry, 4 November 2014.

⁷⁷ Decision on First Provisional Release Motion, para. 33.

satisfied that Hadžić did not pose a flight risk despite his fugitive background.⁷⁸ The Prosecution now argues—on the basis of: (i) purported statements by Hadžić’s counsel that he may no longer wish to receive treatment; and (ii) the fact that Hadžić has not started the second cycle of the Second Phase Treatment—that the Chamber’s previous finding is not applicable to the current circumstances.⁷⁹ The Chamber considers, however, that the statements referred to by the Prosecution are not indicative of, and do not amount to, an expression of Hadžić’s intention to stop the Treatment Plan. Moreover, the Chamber considers that Hadžić’s serious illness is incompatible with a life on the run.⁸⁰

29. Further, the Chamber considers that during the period of provisional release Goran Hadžić complied with the conditions imposed by the Appeals Chamber and returned to the UNDU when so ordered. The Chamber is therefore satisfied that Hadžić does not presently pose a flight risk despite his fugitive background.

30. The Chamber considers that throughout proceedings in this case, there have been no claims or evidence that Hadžić or his Defence team have intimidated or influenced any victim, witness, or other person. The Chamber further considers that the Prosecution has not provided sufficient information in support of its allegation that some of the individuals with whom Hadžić had dinner while on provisional release may be witnesses and finds it to be speculative.⁸¹ The Chamber therefore finds that Hadžić, if provisionally released, will not pose a danger to any victim, witness, or other person.

31. The Chamber turns next to consider whether it should exercise its discretion and grant the provisional release as requested under the current circumstances. As noted in the Decision on First Provisional Release Motion, even if the mandatory conditions of Rule 65(B) of the Rules have been met, a Trial Chamber retains the discretion to deny provisional release.⁸² As stated above, the Trial Chamber’s discretion to grant provisional release must be exercised in light of all the relevant

⁷⁸ Decision on First Provisional Release Motion, para. 33.

⁷⁹ Response, para. 25; Annexes A and C to the Response. Response to Prosecution Request for Extension of Time, para. 4.

⁸⁰ In this respect, the Chamber notes that Hadžić has a serious illness which, regardless of whether he is undergoing treatment, may result in significant symptoms, for example, epileptic attacks (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, p. 7; Seute Report, p. 2). As the tumour progresses, Hadžić is likely to develop cognitive dysfunction; hemiparesis (paralysis on the left side of his body); and epilepsy may become more difficult to contain. See Patrick Cras, 25 February 2015, T. 12577 and Tatjana Seute, 26 February 2015, T. 12609, 12611, 12613-12614, 12619.

⁸¹ In this respect, it is not clear from the exhibits referred to by the Prosecution how Milomir Dafičić is related to witness Milenko Dafičić.

⁸² Decision on First Provisional Release Motion, para. 25; *Prosecutor v. Šešelj*, 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.

factors of the case; the determination of what constitutes “relevant factors” and the weight to be attributed to such factors is case-specific.

32. The hearings in this case have been adjourned since 20 October 2014, around which time Hadžić fell ill.⁸³ Currently, the Chamber is waiting for the results of the ordered further medical examinations by an independent neuro-psychologist and an independent neuro-oncologist, as well as the results of the MRI scan, which will assist in determining whether Hadžić is fit to stand trial.⁸⁴ While there have been a number of reports regarding Hadžić’s health from the RMO, the Defence, and Hadžić’s common law wife since the Chamber issued its Decision on First Provisional Release Motion and after Hadžić had commenced the Second Phase Treatment,⁸⁵ there are still a number of unknowns with regard to how Hadžić has reacted to the Second Phase Treatment. Therefore the Defence’s request for provisional release until the end of the Second Phase Treatment is premature and will be denied.

33. However, the Chamber considers that it is not expected that the hearings in this case will resume until the determination on Hadžić’s fitness to stand trial has been made. Hadžić’s presence in The Hague, other than for the medical examinations, is not required pending the resolution of that matter. The Chamber is therefore inclined to grant provisional release until the time of its decision on his fitness to stand trial, as specified below, taking into consideration that his presence in The Hague will be necessary for the outstanding medical examinations.

34. Finally, the Chamber notes that it did not receive any updates on Hadžić’s health condition during his time in Serbia. It further notes that Hadžić did bring some medical documentation with him upon return from provisional release.⁸⁶ The Chamber finds it important to be kept continuously informed about Hadžić’s health condition and will thus order measures to that effect.

E. Disposition

35. Accordingly, the Chamber, pursuant to Article 29 of the Tribunal’s Statute and 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,⁸⁷ hereby:

- (a) **GRANTS** the Defence leave to exceed the word limit in the Motion;

⁸³ See Deputy Registrar’s Submission of a Further Medical Report (confidential), 20 October 2014.

⁸⁴ See Order of 1 April 2015; Deputy Registrar’s Submission of 9 April 2015; Order of 20 April 2015; Registrar’s Submission of 1 May 2015.

⁸⁵ See *e.g.* 26 March Medical Report, 2 April Medical Report, 10 April Medical Report, 17 April Medical Report. See also Reply Regarding Urgent Motion for Daily and Detailed Medical Monitoring and Reporting of Mr. Hadžić’s Health Condition (confidential), 30 March 2015, para. 2.

- (b) **GRANTS** the Prosecution leave to exceed the word limit in the Response;
 - (c) **GRANTS** the Defence leave to file the Reply;
 - (d) **GRANTS** the Motion **IN PART**;
 - (e) **ORDERS** Hadžić's provisional release under the terms and conditions as set out below;
 - (f) **DENIES** the Motion in all other respects.
36. The Chamber **FURTHER ORDERS** as follows:
1. Hadžić shall be transported to Schiphol airport in The Netherlands as soon as practicable after the filing of a guarantee from the Republic of Serbia that it will comply with all conditions and orders by the Chamber with regard to Hadžić's provisional release;
 2. At Schiphol airport, Hadžić shall be provisionally delivered into the custody of a representative of the Government of the Republic of Serbia who shall accompany Hadžić for the remainder of his travel to and from Novi Sad, in the Republic of Serbia;
 3. The period of the provisional release shall commence when Hadžić is delivered into the custody of the authorized representative of the Government of Serbia and suspended upon his return to the UNDU, no later than three days prior to the date of the further medical examinations of Hadžić, as ordered by the Chamber, which are to be scheduled as soon as practicable;
 4. Following the medical examinations referred to above, Hadžić's provisional release shall be reinstated, under the same terms and conditions, until further order;
 5. During the period of his provisional release, Hadžić shall abide by the following conditions:
 - a. Before leaving the UNDU, Hadžić shall provide details of his itinerary to the Ministry of Justice of The Netherlands and to the Registrar of the Tribunal;
 - b. Hadžić shall remain within the confines of the City of Novi Sad, Serbia, apart from his travel to and from the airport;
 - c. Between 11:00 p.m. and 7:00 a.m., Hadžić shall be confined to the residence referred to in the Confidential Annex to this Decision;

⁸⁶ 12 May Medical Report, p. 1.

- d. Police officers designated by the Ministry of Interior of Serbia shall visit Hadžić's residence on a daily basis and submit written reports with the Registrar of the Tribunal confirming that Hadžić complies with all imposed conditions;
- e. Hadžić shall surrender all his travel documents to the Ministry of Interior of the Republic of Serbia for the entire duration of his provisional release;
- f. Hadžić shall have no contact whatsoever or in any way interfere with victims or witnesses or otherwise interfere in any way with the proceedings of the Tribunal or the administration of justice;
- g. Hadžić shall not discuss his case with anyone, including the media, other than his counsel;
- h. Hadžić shall strictly comply with any requirements of the authorities of the Government of Serbia necessary to enable them to comply with their obligations under the present decision;
- i. Hadžić shall comply with any order of the Chamber varying the terms of or terminating his provisional release;
- j. Within seven days of arriving in Novi Sad, Republic of Serbia, Hadžić shall, directly or via counsel, provide the Registrar with the name, specialisation, and address of a treating physician who, in consultation with Hadžić's current treating team in The Netherlands, will undertake the care of Hadžić while he is on provisional release and who will meet with him on a weekly basis, or as required, in order to assess and report to the RMO and treating team on Hadžić's state of health and any changes or disruptions to the Treatment Plan; and
- k. If required to seek urgent medical attention, or if specifically advised by the Medical Service of the UNDU, his current treating team, or his treating physician in Serbia to seek medical attention, notify the Registrar, directly or via counsel, as soon as possible of the name and address of any medical practitioner consulted and, if applicable, of the name and address of any institution where he has been or will be treated or to which he has been or will be admitted;

⁸⁷ IT/184/Rev. 2, 16 September 2005.


6. The Chamber **REQUIRES** the Government of the Republic of Serbia to assume responsibility for:
- a. Designation of the official into whose custody Hadžić shall be provisionally released and who shall accompany Hadžić from Schiphol airport in The Netherlands to Novi Sad, Republic of Serbia, and notification, as soon as practicable, to the Chamber and the Registrar of the Tribunal of the name of this designated official;
 - b. Designation of the police officers in Novi Sad, Republic of Serbia, who shall visit Hadžić's residence on a daily basis and submit written reports with the Registrar of the Tribunal confirming that Hadžić complies with all imposed conditions;
 - c. Immediately informing the Registrar of the Tribunal and the Chamber should Hadžić fail to report to the police officers assigned to visit his residence on a daily basis as required by this Decision;
 - d. Ensuring Hadžić's personal security and safety while on provisional release in the Republic of Serbia;
 - e. All expenses in connection with the transport from Schiphol airport to the City of Novi Sad, Republic of Serbia, and back;
 - f. All expenses in connection with Hadžić's treatment while on provisional release;
 - g. Facilitating, at the request of the Chamber or of the parties, all means of co-operation and communication between the parties and ensuring the confidentiality of any such communication;
 - h. Reporting immediately to the Registry of the Tribunal as to the substance of any threats to Hadžić's security, including full reports of investigations related to such threats;
 - i. Detaining Hadžić immediately should he attempt to escape from the territory of the Republic of Serbia, or should he, in any other way, breach the terms and conditions of his provisional release as set out in the present decision and immediately reporting any such breach to the Registry of the Tribunal and the Chamber;
 - j. Reporting, to the fullest extent possible, on any treatment Hadžić is to receive or has received from any institution to which Hadžić is admitted during the period of provisional release;

- k. Allowing the RMO, the Medical Service of the UNDU, Hadžić's current treating specialists, and any other medical experts appointed by the Chamber, to examine Hadžić at any time; and
 - l. Respecting the primacy of the Tribunal in relation to any existing or future proceedings in the Republic of Serbia concerning Hadžić;
7. The Chamber **INSTRUCTS** the Registrar of the Tribunal to:
- a. Consult with the Dutch and Serbian authorities, as to the practical arrangements for Hadžić's provisional release;
 - b. Request the authorities of the State(s) through whose territory Hadžić may travel to:
 - (i) hold him in custody for any time he will spend in transit at the airport of the State(s) in question; and
 - (ii) arrest and detain Hadžić pending his return to the UNDU should he attempt to escape during travel;
 - c. Continue to detain Hadžić at the UNDU in The Hague until such time as the Chamber and the Registrar of the Tribunal have been notified of the name of the designated official of the Government of Serbia into whose custody Hadžić is to be provisionally released;
8. Finally, the Chamber **INSTRUCTS** the RMO and the UNDU Medical Service to:
- a. Put questions to Hadžić by telephone once a week during his provisional release and communicate with the physician identified by Hadžić as his treating physician in Novi Sad, Republic of Serbia, pursuant to 5(j) above;
 - b. Report to the Chamber on the medical condition of Hadžić within at least two days of the aforementioned communications.

37. **FURTHER ORDERS** that the provisional release of Hadžić is stayed pending an appeal by the Prosecution pursuant to Rule 65(D), (E), (F), and (G) of the Rules.

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

Done this twenty-first day of May 2015,
At The Hague,
The Netherlands.



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]