

**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: 1 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

Order: 1 April 2015

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

ORDER FOR FURTHER MEDICAL EXAMINATION

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for Goran Hadžić:

Mr. Zoran Živanović

Mr. Christopher Gosnell

TRIAL CHAMBER II 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 (“Trial Chamber” and “Tribunal”, respectively);

NOTING that Hadžić was diagnosed with *glioblastoma multiforme* in November 2014 and has been undergoing a prescribed plan for palliative treatment (“Treatment Plan”) comprised of: (i) six weeks of daily radiotherapy and chemotherapy treatments until the end of January; (ii) four weeks of recuperation in February; and (iii) up to six cycles of chemotherapy consisting of five days of a high-dose oral chemotherapy followed by a 23-day rest period (“Second Phase Treatment”);¹

NOTING that the Second Phase Treatment began on 2 March 2015;²

NOTING the “Decision on Prosecution Request for a Medical Examination of the Accused Pursuant to Rules 54 and 74 *bis*”, issued on 16 January 2015 (“Order”), in which the Trial Chamber ordered the Registry to appoint an independent neurologist and an independent neuro-oncologist;³

NOTING the “Deputy Registrar’s Notification of Appointment of Medical Experts”, filed with confidential annexes on 26 January 2015, in which the Deputy Registrar appointed two medical experts, Dr. Cras and Dr. Seute (“Experts”), a neurologist and a neuro-oncologist, respectively, to examine Hadžić in accordance with the Order;

NOTING that Dr. Cras and Dr. Seute, who examined Hadžić on 5 and 12 February 2015, respectively, and whose reports were submitted to the Trial Chamber on 13 February 2015,⁴ testified before the Trial Chamber on 25 and 26 February 2015;

NOTING that the Experts stated that Hadžić does not appear to have any cognitive dysfunction; he is well oriented in time, space, and person; and he expresses himself clearly;⁵

NOTING that the Reporting Medical Officer (“RMO”) at the United Nations Detention Unit states that Hadžić does not exhibit any cognitive dysfunctions;⁶

¹ Deputy Registrar’s Submission of Medical Report (confidential), 26 November 2014, confidential Annex, p. 1; Deputy Registrar’s Submission of Medical Report (confidential), 12 February 2015, confidential Annex, 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 (“Seute Report”), pp. 1-2, 3.

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

³ Order, p. 4. *See also* Public Redacted Version of 16 January 2015 Decision on Prosecution Request for a Medical Examination of the Accused Pursuant to Rules 54 and 74 *bis*, 22 January 2015, p. 4.

⁴ Deputy Registrar’s Submission of Reports of Medical Experts (confidential), 13 February 2015.

⁵ 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. 6; Seute Report, p. 2; Dr. Patrick Cras, 25

NOTING, however, that the Defence raises the issue of Hadžić's fitness to stand trial, asserting that Hadžić is "incapacitated by terminal brain cancer and high-dose chemotherapy" and is believed to be suffering from additional drastic weight loss, complete loss of appetite, severe disorientation, severe loss of short-term memory including forgetting recent conversations, difficulties speaking, an inability to take care of himself, and extreme fatigue;⁷

RECALLING that fitness to stand trial is a legal concept the determination of which is within the purview of the Trial Chamber;⁸

RECALLING FURTHER the Trial Chamber's stated commitment to continue to evaluate Hadžić's health situation;⁹

CONSIDERING that neuropsychological examinations can be administered which are specifically designed to make an in-depth assessment of an individual's cognitive functioning;¹⁰

CONSIDERING that further medical assessments will take place after the first cycle of the Second Phase Treatment;¹¹

CONSIDERING that the Trial Chamber 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 Trial 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;

PURSUANT to Rules 33(B), 54, and 74 *bis* of the Rules hereby, *proprio motu*:

- (a) **ORDERS** the Registry to appoint an independent neuro-psychologist to carry out in-depth test(s) that would assist the Trial Chamber in determining whether Hadžić is fit to stand trial;

February 2015, T. 12582-12583; Dr. Tatjana Seute, 26 February 2015, T. 12603. *See also* Decision on Defence Urgent Request for Provisional Release, 13 March 2015, para. 36.

⁶ Deputy Registrar's Submission of Medical Report (confidential), 20 March 2015, confidential Annex ("18 March Medical Report"), p. 1.

⁷ Urgent Motion for Daily Detailed Medical Monitoring and Reporting of Mr. Hadžić's Health Condition, 18 March 2015, para. 1.

⁸ *See Prosecutor v. Popović et al.*, Case No. IT-05-88-A, Public Redacted Version of 30 November 2012 Decision on Request to Terminate Appellate Proceedings in Relation to Milan Gvero, 16 January 2013, para. 21; *Prosecutor v. Strugar*, Case No. IT-01-42-A, Judgement, 17 July 2008, para. 55.

⁹ Decision on Defence Urgent Request for Provisional Release, para. 40.

¹⁰ Dr. Tatjana Seute, 26 February 2015, T. 12616-12617.

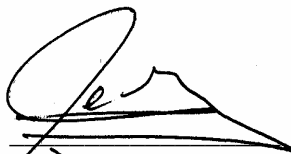
¹¹ *See* Deputy Registrar's Submission of Medical Report (confidential), 27 February 2015, confidential Annex, para. 5; *see also*, Dr. Tatjana Seute, 26 February 2015, T. 12606-12607.

- (b) **ORDERS** the independent neuro-psychologist to submit, as early as practicable, a report on the results of his/her neuropsychological examination(s) of Hadžić;
- (c) **ORDERS** Dr. Seute to submit, as early as practicable, a medical report answering the following questions:
- i. Is Hadžić currently suffering from any cognitive dysfunctions? Please provide details concerning the basis for your assessment and indicate what tests, if any, were carried out to make your determination.
 - ii. What are the observed physical side-effects of the first cycle of the Second Phase Treatment? If physical side-effects have been observed, what measures can be or have been taken to mitigate them? Please provide details concerning the basis for your assessment and indicate what tests, if any, were carried out to make your determination.
 - iii. How has Hadžić's *glioblastoma* responded to the prescribed Treatment Plan thus far? Please provide details concerning the basis for your assessment and indicate what tests, if any, were carried out to make your determination. If such an assessment cannot be made now, when is the earliest opportunity for such an assessment?
- (d) **INVITES** the RMO to prepare a medical report, in consultation with Dr. Taphoorn, answering the questions enumerated in (c)(i) through (c)(iii) above;
- (e) **INSTRUCTS** the Registry to make available to the independent neuro-psychologist and Dr. Seute, without undue delay, Hadžić's medical records as necessary to prepare the written reports;
- (f) **INSTRUCTS** the Registry to, no later than 9 April 2015, provide written submissions:
- i. Indicating the earliest possible date for the independent neuro-psychologist to carry out a neuropsychological examination of Hadžić and submit a report;
 - ii. Indicating the earliest possible date for Dr. Seute to examine Hadžić and submit a report;
 - iii. Indicating the earliest possible date for the RMO to prepare a medical report, in consultation with Dr. Taphoorn;

- iv. Indicating the earliest possible date the independent neuro-psychologist and Dr. Seute are available to attend a hearing on this matter;
- (g) **ORDERS** the Prosecution and the Defence to file submissions on the issue of Hadžić's fitness to stand trial four days after said hearing; and
- (h) **ORDERS** the Prosecution and the Defence to file responses four days after the filing of their respective submissions.

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

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



Judge Guy Delvoie
Presiding

[Seal of the Tribunal]