

**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-09-92-T
Date: 21 November 2017
Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Carmel Agius, President

Registrar: Mr. John Hocking

Decision of: 21 November 2017

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**DECISION ON URGENT MOTION TO RECONSIDER
DECISION OF 13 NOVEMBER 2017**

The Office of the Prosecutor:

Mr. Peter McCloskey

Counsel for the Accused:

Mr. Branko Lukić

Mr. Dragan Ivetić

I, CARMEL AGIUS, President 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 (“President” and “Tribunal” respectively);

BEING SEISED of the “Urgent Motion to Reconsider Decision of 13 November 2017” filed by Ratko Mladić (“Mladić”) on 16 November 2017 (“Defence Motion”), whereby Mladić asks that I reconsider the “Decision on Three Defence Motions” issued by myself on 13 November 2017 (“Impugned Decision”) “and grant[] the relief originally sought”;¹

NOTING the “Prosecution Response to Defence Urgent Motion to Reconsider Decision of 13 November 2017” filed by the Office of the Prosecutor of the Tribunal (“Prosecution”) on 16 November 2017 (“Prosecution Response”), whereby the Prosecution submits that it finds nothing in the Defence Motion that would justify reconsideration of the Impugned Decision;²

NOTING the “Addendum to: Urgent Motion to Reconsider Decision of 13 November 2017” filed by Mladić on 17 November 2017 (“Defence Motion Addendum”), whereby Mladić submits, *inter alia*, that the evidence demonstrates that “forcing [Mladić] to Judgment without undertaking prior a Medical visit to diagnose and assess his medical and mental capacity may harm the accused, even with a fatal result”;³

NOTING the “Second Addendum to: Urgent Motion to Reconsider Decision of 13 November 2017” filed by Mladić on 20 November 2017 (“Defence Motion Second Addendum”), whereby Mladić argues, *inter alia*, that the Registry misrepresents facts in its latest filings;⁴

NOTING that, in the Impugned Decision, I, *inter alia*, dismissed one motion filed by Mladić insofar as it was inappropriately or prematurely filed before me, denied the remainder of that motion, and dismissed two other motions filed by Mladić in their entirety;⁵

RECALLING that reconsideration is permitted, *inter alia*, where an impugned decision presents a clear error of reasoning or particular circumstances justify its reconsideration in order to avoid an injustice;⁶

¹ Defence Motion, para. 26.

² Prosecution Response, para. 1.

³ Defence Motion Addendum, para. 10.

⁴ Defence Motion Second Addendum, paras 5-10, referring to Fourth Registry Submission in Relation to Defence Motion on the Provision of Medical Records, 13 November 2017 (public with confidential and *ex parte* annexes) (“Fourth Registry Submission”); Registry Submission in Relation to Defence Motion on Access to Medical Opinions, 16 November 2017 (confidential and *ex parte*); Registry Further Submission in Relation to Defence Motion on Access to Medical Opinions, 17 November 2017 (confidential and *ex parte*).

⁵ See Impugned Decision, para. 48.

RECALLING further that, where an impugned decision constitutes review of an administrative decision, “new facts arising after the relevant administrative decision would not constitute a valid basis for reconsideration, as they were not before the Registrar when he reached his decision”,⁷

NOTING that Mladić argues that the Impugned Decision should be reconsidered “insofar as it was made before new circumstances and information were available to the Registrar and therefore it is based on a clear error of reasoning and reconsideration is necessary to prevent an injustice”,⁸

CONSIDERING that, to the extent Mladić bases his submissions on this argument, he is incorrect at law and his submissions are accordingly dismissed;

RECALLING in any event that, in relation to Mladić’s request for a medical visit pursuant to Rule 31 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal (“Rule 31 Medical Visit”),⁹ I declined in the Impugned Decision to examine Mladić’s submissions on the basis that they were prematurely raised before me as President;¹⁰

CLARIFYING that I did not rule on the merits of these submissions because, based on the information available to me as of the date of the Impugned Decision, no final decision relating to the Rule 31 Medical Visit had yet been taken by the Registrar;¹¹

CONSIDERING that, in these circumstances, if Mladić wished to challenge any such decision taken by the Registrar after the Impugned Decision was issued, a request for reconsideration of the Impugned Decision was not the correct course of action;

NOTING further that Mladić wrongly suggests that I decided in the Impugned Decision that I “lack authority over the matters raised in the Defence filings”,¹² and submits that if the Impugned

⁶ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Request for Review of Decision on Defence Team Funding, 31 January 2012 (“*Karadžić* Decision of 31 January 2012”), para. 38.

⁷ *Karadžić* Decision of 31 January 2012, para. 38. I note that, while the Defence Motion cites paragraph 37 of the *Karadžić* Decision of 31 January 2012 in setting out the applicable law governing the President’s reconsideration of an administrative decision, the Defence Motion conspicuously neglects to refer to paragraph 38 of this decision (Defence Motion, para. 4).

⁸ Defence Motion, para. 5.

⁹ Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal, IT/38/Rev. 10, 15 November 2016.

¹⁰ Impugned Decision, para. 46.

¹¹ I note that such decision was taken on 13 November 2017 after the Impugned Decision was filed (See Fourth Registry Submission). I note in this regard that the Impugned Decision was distributed by the Registry at 12:34 on 13 November 2017, while the Fourth Registry Submission was distributed at 18:12 on the same day.

¹² Defence Motion, para. 8. See Defence Motion, paras 9, 12.

Decision is not reconsidered, this would lead to the conclusion that “there does not exist any organ within the [Tribunal] that has authority to take action”;¹³

RECALLING that, in the Impugned Decision, I dismissed Mladić’s submissions to the extent they concerned matters that fell within the domain of Trial Chamber I of the Tribunal (“Trial Chamber”), and not of the President,¹⁴ and that as of the date of the Impugned Decision, Mladić had not appealed any of these decisions;¹⁵

RECALLING further that I decided in the Impugned Decision that, while I could have dismissed Mladić’s remaining submissions on the basis that he had not clearly requested judicial review of any administrative decision taken by the Registrar or specified the bases of such review, I would nevertheless consider his submissions on an exceptional basis, taking into account that the Registrar had also filed substantive submissions before me, and in the interests of expediency and judicial economy;¹⁶

RECALLING in this respect that I specifically considered and addressed Mladić’s numerous submissions regarding the Registrar’s decisions concerning the provision of Mladić’s medical records;¹⁷

CONSIDERING in any event that, since Mladić has now received the final batch of his medical records,¹⁸ there is no need for any further intervention on my part;

CONSIDERING that Mladić also appears to seek reconsideration of the Impugned Decision insofar as it relates to his request for a waiver of immunity, but offers no support whatsoever to justify this request for reconsideration;¹⁹

¹³ Defence Motion, para. 12.

¹⁴ Impugned Decision, para. 30. See Impugned Decision, paras 5, 7, 13, referring to Decision on Urgent Defence Motion to Compel Registrar and United Nations Detention Unit to Provide Medical Records, 20 October 2017; Decision on Second Additional Submission in Support of Urgent Defence Motion to Compel Registrar and United Nations Detention Unit to Provide Medical Records, 23 October 2017; Decision on Urgent Defence Motions, 10 November 2017 (“Trial Chamber Decision of 10 November 2017”). I note in particular that the Trial Chamber found that Mladić failed to demonstrate that his health warrants cancellation of the scheduled delivery of the trial judgement and the issuance of a stay of proceedings (Trial Chamber Decision of 10 November 2017, p. 3).

¹⁵ See Motion to Reconsider Decision on Urgent Defence Motions of 10 November 2017 or in Alternative (sic) Motion for Certification to Appeal, 17 November 2017; Addendum to: Motion to Reconsider Decision on Urgent Defence Motions of 10 November 2017 or in Alternative (sic) Motion for Certification to Appeal, 20 November 2017. See also Decision on Motion to Reconsider Decision on Urgent Defence Motions of 10 November 2017 or in the Alternative Motion for Certification to Appeal, 21 November 2017.

¹⁶ Impugned Decision, paras 33-34.

¹⁷ Impugned Decision, paras 35-43.

¹⁸ See Defence Motion, para. 16.

¹⁹ See Defence Motion, para. 25.

CONSIDERING that Mladić otherwise fails to demonstrate any clear error of reasoning in the Impugned Decision or particular circumstances justifying reconsideration of the Impugned Decision in order to avoid an injustice;

HEREBY DISMISS the Defence Motion.

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



Judge Carmel Agius
President

Dated this twenty-first day of November 2017,
At The Hague,
The Netherlands.

[Seal of the Tribunal]