

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case No. IT-09-92-T

BEFORE THE TRIAL CHAMBER

Before: Judge Alphons Orie, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: Mr. John Hocking

Date Filed: 20 March 2017

THE PROSECUTOR

v.

RATKO MLADIĆ

Public Redacted Version

**EMERGENCY AND URGENT MOTION FOR PROVISIONAL RELEASE OF
MR. RATKO MLADIC BASED ON HUMANITARIAN AND MEDICAL
REASONS**

The Office of the Prosecutor:

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Mr. Branko Lukić
Mr. Dragan Ivetić

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The Accused, RATKO MLADIĆ, by and through his counsel of record, respectfully submits this Emergency and Urgent Motion for provisional release,¹ and in support thereof states as follows:

I. Preliminary Matter - Request to Exceed Word Count

1. The instant motion deals with serious, and emergent-urgent issues relating to the current health situation of Mr. Mladić, including recent unexpected and worsening conditions. This motion likewise deals with no fewer than the reports and findings of 6 medical care professionals, and several ICTY appointed medical care professionals. The medical health of Mr. Mladić is very complicated and involves several very serious and even life-threatening conditions. Thus it is necessary to enlarge the word count in order to adequately address all the foregoing and sufficiently apprise this Trial Chamber of the urgency of the situation, and also of the findings and conclusions and concerns of the medical personnel as well as to demonstrate why the immediate provisional release of Mr. Mladić is the only appropriate outcome, from a medical and humanitarian aspect. Accordingly we would submit the foregoing provides "good cause" for an enlargement of the word count of this motion by 5358 for a total of 8358 words and would kindly request the same.

¹ And thus kindly asks for it to be subjected to an expedited briefing and decision process

II. Introduction and Background/Summary

A) Reasons for the Motion

2. The instant motion is brought on an emergency and urgent basis, based on several grounds. The principal purposes of the provisional release being sought is to try and immediately address by all medically recognized and internationally accepted means the noted degradation and decline in the health status of Mr. Mladić so as to halt or slow down same and provide optimum conditions for his recovery, to prevent further serious deterioration of health and to ensure that Mr. Mladić's life is not further endangered by a non-clinical environment. It is manifest that notwithstanding the care that Mr. Mladić has received within detention, the environmental and medical care have proven insufficient over the last 6 years to adequately address several of his health conditions or prevent further degradation or minimize risk of serious health consequences.

3. In sum, the medical evidence, as supported by the various medical opinions attached hereto (from a variety of medical specialists from multiple fields) indicates that Mr. Mladić's health is gravely endangered by both chronic and new, emergent complaints which logically are exacerbated by continued detention at this time. Unfortunately, it is the opinion of the attached medical care professionals, that despite the treatment at the UNDU and Bronovo, these complaints have not been sufficiently or adequately treated, in that various available testing and therapy that is recognized and commonly accepted within the medical community is not being pursued or employed such that the optimum course of treatment is not being pursued, and potentially there have even been serious lapses in treatment which deviate from the accepted standard of care in the medical community. The instant motion does not seek to assess blame for same, but only to demonstrate the need for Mr. Mladić's transfer to a medical facility that is equipped, capable and willing to engage a multi-disciplinary team to immediately intervene to try improve the health and quality of life as well as life expectancy of Mr. Mladić. We have such a facility that has been volunteered and stated its readiness and willingness to do so - [REDACTED]. We also have a Permanent Member of the United Nations Security Council which was agreed to host Mr. Mladić for purposes of this treatment, and they have

issued the necessary, official and written assurances to observe and undertake all conditions that would be set by the Tribunal if Provisional Release were granted.

4. In these circumstances continued detention may not only endanger the health and survival chances of the Accused, but further may well constitute a violation of Article 3 of the ECHR.² At a minimum the medical evidence provides sufficient foundation for provisional release pursuant to Rule 65 of the ICTY's RPE. It is thus evident from the existing and overwhelming medical evidence that Mr. Mladić's health is now gravely endangered. Thus both medical and humanitarian reasons support the granting of immediate provisional release.

B) Relevant Background

5. ~~The complete medical records of Mr. Mladić have only been recently provided to the~~ Accused and to his attorneys and family for their review.³ The existence of real and present danger of further damage of Mr. Mladić's mental and physical condition is clearly demonstrated through the latest medical reports. Serious concerns have been raised by no fewer than 3 Medical Professionals (2 of whom are certified court medical experts) as to serious failures and lapses in the treatment of Mr. Mladić that have resulted in a needlessly prolonged and dangerous state of high risk for Mr. Mladić given his condition, that should have been properly treated in a different manner and according to the recommended and accepted standards in the relevant medical fields with procedures that are available and recommended by the medical community. The Medical Professionals believe that these failures in treatment have contributed to a serious degradation in his health, and/or prolonged a dangerous consistent state of high risk that could and should (according to the accepted medical standards in the relevant fields) have been undertaken to minimize the risk or treat the stated medical conditions involved more effectively. There can be little doubt that

² In the case of *Lorsé v. The Netherlands*, of 4 February 2003, the ECtHR held in paragraph 61 "Conditions of detention may sometimes amount to inhumane or degrading treatment. When assessing conditions of detention, account has to be taken of the cumulative affect of those conditions as well as the specific allegations made by the Applicant."

³ Specifically, 21 February 2017 a paper hard copy of 2 volumes was provided by Mr. Mladić to his counsel during a UNDU visit as per the relevant medical authorization and request and prevailing UNDU guidelines. Said material was scanned and sent by secure means to Belgrade to the family and for review by physicians and experts willing to undertake the same.

continued detention at this time is unhelpful and may in fact constitute an underlying cause. Upon information and belief, the main medical care provider at UNDU is a general practitioner, and neither a cardiac specialist nor cardiac nurse or other medical specialist is available on-call at UNDU to treat Mr. Mladić for emergent conditions he is at risk for. **This first ground for provisional release is discussed herein below.**

6. Additionally, pursuant to Rule 31 of the Rules of Detention, a medical team of 2 Medical Professionals from the Russian Federation visited Mr. Mladić at the UNDU in 2015. The findings and report of this medical delegation and a 3rd Russian Medical Expert have only recently been made available to the Defence, and have been translated. A copy of the same is attached hereto as **confidential annex A**. The observations and findings of this Russian Medical Delegation raise serious concerns about the quality of the medical care and treatment of Mr. Mladić and certain lapses in ~~the medical records, as well as in the treatment, such that the appropriate standard of~~ care and all available treatments and diagnostic testing has not been performed that would be expected under the relevant accepted medical standards for the stated medical conditions of Mr. Mladić. All 3 Russian Doctors from the [REDACTED] [REDACTED] recommended an immediate thorough clinical and laboratory control and series of instrumental examinations at their institution to properly treat Mr. Mladić and preserve his health given his high risk category. **This Second Ground for provisional release is discussed further below.**

7. The serious medical issues and concerns of the Russian Medical Delegation, led the Defence to approach a Permanent Member of the UN Security Council, the Russian Federation, who had itself facilitated and made available the medical delegation for the Rule 31 visit, on behalf of the Accused, as to whether the medically appropriate and recommended treatment would be authorized and thus could be undertaken in stated medical facility, and if the Russian Federation would be willing to invite the same and issue the necessary undertakings for provisional release according to the relevant Rules and jurisprudence of the ICTY. Attached at **confidential Annex B** is a copy of the Note Verbale from the Russian Embassy, dated 16 February 2017 agreeing to accept Mr. Mladić for the required treatment at the [REDACTED] [REDACTED] and agreeing to observe and undertake all

conditions that would be set by the Tribunal if Provisional Release were granted, and guarantees his return to the ICTY at the appropriate time.

8. Additionally, recently, suddenly, and without warning, approximately 3 March 2017 the condition of Mr. Mladić worsened and deteriorated rapidly, with presentation of new, previously not present symptoms. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Upon information and belief Mr. Mladić only received basic pain medication for these symptom [REDACTED] and was told that if the symptoms [REDACTED] [REDACTED] did not resolve he would be taken to Bronovo Hospital. After this information was relayed by the family to the Co-Counsel, Co-Counsel sought, via email, on 5 March 2017 an update and verification from the UNDU as this medical issue, confirmation if Mr. Mladić had been taken to Bronovo, and an urgent impromptu meeting with Mr. Mladić on 6 March 2016 in the afternoon to ascertain his condition, as well as the regular weekly visit for 7 March 2016. UNDU failed and refused to communicate to Co-Counsel anything about the current medical condition of the Accused or to confirm he had been taken to Hospital Bronovo, and delayed responding as to the sought impromptu meeting until the expiration of the day, then granted the regular weekly visit, albeit at a different time. Despite the serious concerns raised, as well as the medically recognized potential causes of the stated symptoms (which include fatality) the ICTY and UNDU failed to officially inform counsel for Mr. Mladić or his family of any of the medical issues from 3 March to 6 March 2017 until a confidential filing dated 14 March 2017. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Per the Confidential filing of the Deputy Registrar dated 14 March 2017, the complaints of pain by Mr. Mladić as well as his transfer to Bronovo are confirmed, but the description of the treatment is rather vague such that it is impossible to determine whether these new symptoms and this

emergent medical complaint is being dealt with adequately. The Defence and Family have not been given access to the medical records of this latest treatment. [REDACTED]

[REDACTED] Mr. Mladić continues to have complaints of the new, symptoms. Per consultation with Medical care professionals, these type of new symptoms described by Mr. Mladić are of a serious medical concern, and specifically are warning signs of an impending or ongoing TIA, which could lead to a stroke, or cardiac event that could lead to a fatality. Together with a review of the available medical documentation. Defence retained medical experts are of the opinion that Mr. Mladic is at an extremely high risk of TIA which could lead to a stroke or cardiac event that could lead to a fatality. This view is shared by the Russian doctors. This view is confirmed by the Independent Medical Examiner Dr. Cras. Respectfully, swift, urgent and emergency action is required to transfer Mr. Mladić to a medical facility capable and willing to perform all the available and medically recommended testing and treatments that apparently are not being provided at Bronovo. Otherwise the end result and further evolution of these court proceedings could tragically follow in the case with Mr. Slobodan Milosevic who died in the UNDU, while awaiting a decision on provisional release to Russia or Dr. Milan Kovacevic,⁴ who died in the UNDU despite repeated complaints and requests by both himself and his attorney who was also a physician, of the risk of precisely the same death he encountered if urgent medical procedures were not undertaken. **This is yet another ground for provisional release which is being sought.**

9. Mr. Mladić health concerns have been long known to this trial chamber and have the subject of many confidential and partly confidential filings throughout the trial. It should be recalled in this regard, that no fewer than 2 Defence retained medical specialists, and the UNDU medical officer, as well as all 3 Independent Medical Examiners ultimately agreed and recommended as the best course of action to reduce the risk of a TIA which could lead to a stroke or cardiac event and complications therefrom (such as a fatality) that the trial sitting schedule be adjusted such that Mr. Mladić not sit longer than 2 days in a row, then have one day of rest, and then 2 days of trial. Unfortunately, this Trial Chamber disregarded the medical opinions and recommendations of ALL the above medical professionals and instead enforced a 5

⁴ a case wherein current co-counsel was involved as an extern, and where co-counsel's former long time law partner was one of the counsel for Dr. Kovacevic.

day sitting schedule for most of the Prosecution case, until the Appeals Chamber⁵ granted the Defence Appeal, and then the Trial Chamber adjusted the schedule to 4 days in a row, which again, was in direct contradiction to the medical advice and recommendations of ALL the above medical professional, and was NOT supported by any counter medical expert.⁶

10. Attached hereto as **confidential Annex C** is the medical opinion of Serbian Court Medical Expert Ratko Kovacevic which definitively opines based upon his medical knowledge and medial certainty, after a review of the medical file (and based upon his prior visit and discussions with Mr. Mladić at the UNDU several years ago, pursuant to Rule 31, to perform a review and prepare a report at that time), that the aforesaid schedule has contributed to a severe degradation in the health and medical condition of the Accused, set forth in greater detail below. Attached hereto as **confidential Annex D** is the medical opinion of Serbian Certified Court Medical Expert Dr. Gorica Djokic that confirms this very same medical opinion based upon her medical knowledge and review of the medical file of Mr. Mladić. **This is yet another ground supportive of the provisional release being sought.**

11. The urgency of the need for expeditious release of Mr. Mladić can be seen by the fact that, apart from an a brief and initial improvement in the overall health of Mr. Mladić when he first arrived at UNDU, now despite 6 years⁷ of treatment at UNDU and Bronovo, there have been few changes to his rehabilitative care and treatment, and lack of improvement, and rather there has been a severe decline and degradation of the same. Thus, for the foregoing reasons set out in detail herein below, the Defence requests that Mr. Mladić be granted urgent temporary provisional release during the period necessary for medical treatment in [REDACTED] until the Trial Judgment, or alternatively, under such conditions as the Chamber deems appropriate to impose pursuant to Rule 65(C).

III. Applicable Law

⁵ *Prosecutor v. Mladic*, IT-09-92-AR73.3, *Decision on Mladic's Interlocutory Appeal regarding Modification of Trial Sitting Schedule due to Health Concerns*, 22 October 2013, para.17

⁶ To the knowledge and belief of the Defence, neither of the 3 judges holds a medical degree or license to practice medicine. Or at least we have never been made aware of such a fact

⁷ The Medical Professional opine that mandated tests and treatments were not performed even during the initial time period that would have been mandated by relevant medical standards

12. The jurisprudence and decisional authority of the ICTY makes it clear that, although health is not listed as in issue in Rule 65, the Chamber should first consider the question of whether the state of health of the Accused is incompatible with his further detention.⁸ As for the decision whether the requirements of Rule 65(B) have been met, a Trial Chamber must consider all of those relevant factors which a reasonable Trial Chamber would have been expected to take into account before coming to a decision. Then it must provide a reasoned opinion indicating its view on those relevant factors.⁹ The health condition and considerations regarding treatment of ill detainees are factors to be part of "all of those relevant factors which a reasonable Trial Chamber would have been expected to take into account before coming to a decision."¹⁰

13. Insofar as Mr. Mladić has the benefit of the presumption of innocence prior to any conviction, the rationale behind detention on remand cannot have as its basis a penal character, and must only be concerned with ensuring the defendant will appear for trial.¹¹ As the presumption of innocence continued for the period between closing argument and delivery of the judgment, no reason exists to require him to remain in detention.¹² Furthermore, the nature of the charges alleged against a particular defendant and the likely severity of any potential sentence in the event of a successful prosecution are not considered proper grounds to refuse provisional release.¹³ The gravity of the offences charged cannot, by itself, justify long periods of detention.¹⁴

⁸ *Prosecutor v. Limaj et al.*, IT-3-66PT, *Decision on Provisional release of Haradin Bala*, 16 September 2003,

⁹ *Prosecutor v. Haradinaj et al*, No. IT-04-84-PT *Decision on Lahi Brahimaj's Interlocutory Appeal against Trial Chamber's Decision Denying his Provisional Release*, 9 March 2009, para. 8.

¹⁰ *Prosecutor v. Stanisic and Simatovic*, IT-03-69-PT, *Decision on Provisional Release*, dated 26 May 2008, para. 40 [citing to *Pusic Decision*, para. 7, 16, 17]

¹¹ *Prosecutor v. Brdjanin*, IT-99-36-T, *Decision on the motion for Provisional Release of the Accused Momir Talic*, dated 20 September 2002, p.5

¹² *Prosecutor v Halilovic*, No. IT-01-48-T, *Decision on Motion for Provisional Release* (1 September 2005); *Prosecutor v Prlic et al*, No. IT-04-74-T, *Decision on Motion for Provisional Release of the Accused Milivoj Petkovic* (30 November 2011)

¹³ See, *Prosecutor v. Limaj et al.*, IT-03-66-PT, *Decision on Provisional Release of Fatmir Limaj*, dated 12 September 2003 [citing to the precedent of the European Court of Human rights]; *Prosecutor v. Stanisic*, IT-03-69-AR65.1, *Decision on Prosecution's Appeal against Decision Granting Provisional Release*, dated 3 December 2004, para.27; *Prosecutor v. Simatovic*, IT-03-69-AR65.2, *Decision on Prosecution's Appeal Against on Provisional Release*, dated 3 December 2004, para.15

¹⁴ *Prosecutor v Pavkovic et al*, No. IT-04-70-PT, *Decision on Defence Request for Provisional Release* (14 April 2005) at page 4; *Prosecutor v Delic*, No. IT-04-83-PT, *Decision on Defence Request for Provisional Release* (6 May 2005); *Prosecutor v Perisic*, No. IT-04-81-PT, *Decision on Momcilo Perisic's Motion for Provisional Release* (9 June 2005); *Prosecutor v Popovic et al*, No. IT-05-88-AR65.1, *Decision on Interlocutory Appeal of Trial Chamber Decision Denying Drago Nikolic's Motion for Provisional Release* (24 January 2006)

The expectation of a lengthy sentence cannot be held against the accused *in abstracto* because all accused before this Tribunal, if convicted, are likely to face heavy sentences.¹⁵ Provisional release pending the Trial Judgment has been granted in other cases at the tribunal, most notably the Prlic et al case.

14. A reasonable Trial Chamber should take into account the health condition and considerations regarding treatment of ill detainee.¹⁶ In the application of Rule 65 to requests for provisional release, the Tribunal has held that the failing health of an accused may be a proper ground to grant such release.¹⁷

15. Both the [REDACTED] of Mr. Mladić are in a fragile state of high risk due to a variety of factors, as discussed in the confidential annexes hereto. The Defence respectfully submits that the requirements of Rule 65 have been met and provisional release is appropriate, particularly in light of the opinions of the medical professionals who have urgently recommended that a new course of treatment at another facility is needed and appropriate to adequately address his medical concerns.

16. Respectfully, it is not necessary, at this stage, for the Defence to establish that Mr. Mladić needs treatment that is unavailable while at the UNDU or that the necessary medical care at UNDU and Bronovo deviated or violated professional standards of appropriate medical care in the relevant fields of treatment. Rather, the recent jurisprudence has no longer required that the treatment be "unavailable" at UNDU, and rather, in the case of *Prosecutor v. Pavle Strugar*, the Appeal Chamber held that "provisional release may be granted to an accused who may remain temporarily outside of the Netherlands for the purpose of receiving medical treatment, provided that the prerequisites of Rule 65 of the Rules are fulfilled."¹⁸ Pursuant to Rule 65 of the Rules of Procedure and Evidence a provisional release may be ordered only if the Trial Chamber is satisfied that the Accused will appear for trial and, if released, will

¹⁵ *Prosecutor v. Haradinaj*, No. IT-04-84-PT, *Decision on Ramush Haradinaj's Motion for Provisional Release* (6 June 2005) at para. 24

¹⁶ *Pusic Decision*, paras 7, 16 and 17, *Stanisic and Simatovic Decision*, para 40

¹⁷ *Prosecutor v. Brdjanin*, IT-99-36-T, *Decision on the motion for Provisional Release of the Accused Momir Talic*, dated 20 September 2002, p.6

¹⁸ *Prosecutor v. Stanisic and Simatovic*, IT-03-69-PT, *Decision on Provisional Release*, dated 26 May 2008, para. 40 [citing to *Prosecutor v. Pavle Strugar*, IT-01-43-A, *Decision on Defence Motion: Defence Request for Provisional Release for Providing Medical Aid in the Republic of Montenegro*, dated 16 December 2005, p.2, citing multiple other cases]

not pose a danger to any victim, witness or other person. Rule 65 was recently amended to codify that judges may consider a compelling humanitarian ground in granting the release.¹⁹

17. The following analysis demonstrates that these prerequisites of Rule 65 have been met in this case, such that there is no impediment to the granting of provisional release.

IV. Submissions

A) First Prong - There is no risk of flight - There is Sufficient Evidence satisfying the Return for Proceedings once treatment is complete or under conditions of Rule 65(C)

18. This Trial Chamber is well aware, though regular medical reports received and through the medical opinions attached hereto as confidential annexes, that the current state of Mr. Mladić's health requires constant and complicated medical care and treatment, and [REDACTED] Such [REDACTED] are incompatible with a life on the run, so that there is no risk of him absconding. Further, the Russian Federation, a Permanent Member of the UN Security Council, has issued a *Note Verbale* which satisfies the requirements under the jurisprudence that they will meets the requirements of Rule 65 of the RPE.

19. Due to advanced stage of proceeding, there is no negative effect on victims and witnesses if provisional release would be granted.²⁰ Considering that the trial was concluded, there would be no danger to witnesses from provisional release of the accused awaiting judgment.²¹

B) Second Prong - There is no Danger or Risk to witnesses or victims.

¹⁹ See, Rule 65

²⁰ *Prosecutor v Prlic et al*, No. IT-04-74-AR65.26, *Decision on Prosecution Appeal of Decision on Provisional Release of Jdranko Prlic* (15 December 2011) at para. 10

²¹ *Prosecutor v Prlic et al*, No. IT-04-74-T, *Decision on Jdranko Prlic's Motion for Provisional Release* (24 November 2011)

20. Again, given the specific medical state of Mr. Mladić and the physical limitations imposed upon him by the same, he is incapable of posing a danger or risk to harm any witnesses or victims.
21. Furthermore, insofar as he will be located, if released, within the Russian Federation, this would be geographically distant from Bosnia-Herzegovina, and thus the vast majority of the witnesses and victims so as to prevent any risk of harm or danger to them. Furthermore, he would be geographical distant from all other witnesses, save for one Defence witness who resides in the Russian Federation, such that there is no risk of harm or danger that can reasonably be asserted.
22. Furthermore, the assurances of the *Note Verbale* of the Russian Federation to observe and adhere to all the conditions of temporary release from custody of R.Mladić that may be set out by the Tribunal, are a further assurance that orders of the Trial Chamber to refrain from contact or posing risk of harm to victims is ensured.
23. Thus, respectfully, this second prong of the prerequisites for provisional release have been satisfied and release is appropriate.

C) Humanitarian and Medical Reasons provide sufficient grounds for the granting of the provisional release being sought

24. Provisional release would have the dual purpose of enabling optimal medical treatment of the Mr. Mladić considering his grave health state, and preventing further deterioration of health risks objectively endangering Mr. Mladić's life. If granted, provisional release would have solely positive impact on Mr. Mladić's medical condition, since he would be subjected to respectable institution in Russia.
25. Notwithstanding the fact that the Accused has received medical care by the UNDU staff and at Bronovo hospital, this medical care provided so far at least appears as insufficient, inefficient/incorrect and finally untimely, considering overall grave and

life-threatening present medical condition of the Accused, as it has been confirmed in independent medical reports attached.²²

26. Having in mind entire history of Accused illness, timeline of events and constant deteriorating of the Accused health, stress of a medically unsound trial sitting schedule, and 6 years²³ of ineffective treatment at UNDU/Bronovo, and the accumulative and growing risk factors that the Medical Professionals have opined upon in the attached Annexes, it become obvious that appropriate medical care can be ensured solely through provisional release and treatment in a **clinical environment**, in accord with the recommendations and observations of the medical professionals whose opinions are attached hereto as confidential annexes.

27. Expert medical reports attached in Annexes A, C, D, and F attached hereto included ~~available data on history of illness and treatments received by Mr. Mladić while at UNDU.~~ They clearly demonstrates several equally seriously concerning circumstances justifying request for provisional release due to health issues: a) inappropriate current treatments/therapy or lack of the same; b) lack of proper and timely medical treatment/therapy of the Accused in the current environment and conditions; c) necessity of medical treatment of the Accused in appropriate Medical institution/Clinic.

V. **Additional Details for the First Ground of Provisional Release**

a) **Dr. Ristic report and conclusions**

28. Attached at Annex E is the CV for Dr. Velibor Ristic. His medical experience and professional expertise are of assistance to this Chamber in assessing the current medical state of Mr. Mladić.

29. Attached at Confidential Annex F is the Report recently prepared by Dr. Ristic. From the expert report of Dr. Ristic, it has been concluded, inter alia, that the patient, Mr.

²² See Annexes A, C, D, and F attached hereto

²³ albeit with a brief period of improvement noted at the beginning of Mr. Mladić's stay at UNDU, but the Medical Professionals opine that mandatory tests were not performed even at that time that are mandated by the accepted medical standards.

Mladić is in an exceptionally severely damaged state of health characterized by several concerns.²⁴ These include but are not limited to:

a. The [REDACTED] risk for the patient Ratko Mladić according to, for example, the [REDACTED] for fatal complications (death, stroke, and myocardial infarction) is: **extremely high!!!**²⁵

b. The patient was always treated with the same therapy although the [REDACTED] Consequently, the therapy for [REDACTED] should have been adjusted to achieve a better control of [REDACTED] and prevent damage to [REDACTED] Furthermore, each new [REDACTED] can again cause a recurrence of [REDACTED] and sudden death²⁶

c. Non-invasive diagnostic methods were used to test the [REDACTED] while invasive diagnostic methods were not utilised (e.g. coronary angiography, which is the most important method for [REDACTED])²⁷

d. Therefore, all [REDACTED] at rest show a clear [REDACTED]. This indicates the necessity of testing the [REDACTED]

e. The [REDACTED] were inconclusive for [REDACTED] Therefore, according to the recommendations of the European and American cardiology society (ESC/ACC /?American College of Cardiology/) another non-invasive test for [REDACTED] should have been undertaken [REDACTED] [REDACTED] [REDACTED] Therefore, the condition of the [REDACTED] of the patient Ratko Mladić was never established. Considering that he survived [REDACTED] it is expected that there is [REDACTED] [REDACTED]. For instance, patients who have a significant stenosis [REDACTED] require [REDACTED] [REDACTED] or surgical [REDACTED]²⁸

f. An [REDACTED] was not calculated. To clarify that this is exceptionally important, The [REDACTED] is the main independent predictor of mortality of [REDACTED] The therapy and manner of treatment are decided dependent on the [REDACTED] Therefore, the diagnostic procedurs performed - [REDACTED] does not contain the important

²⁴ See, Annex F, Report of Dr. Ristic dated 12 March 2017, page 3 English

²⁵ See, Annex F, Report of Dr. Ristic dated 12 March 2017, page 3 English [this is confirmed also by Dr. Cras in the Confidential 8 January 2015 Deputy Registrar's Sumbmission of Independent Medical Expert's Report, last page]

²⁶ See Annex F Report of Dr. Ristic dated 12 March 2017, page 4 English

²⁷ See, Annex F, Report of Dr. Ristic dated 12 March 2017, page 4 English

²⁸ See, Annex F, Report of Dr. Ristic dated 12 March 2017, page 5 English

or necessary information. Not all the necessary diagnostic tests for the [REDACTED] [REDACTED] were undertaken for the patient (that are mandatory according to the recommendations of the ESC and ACC).²⁹

g. The patient constantly had increased values for [REDACTED] Considering that the patient had constantly elevated [REDACTED] an increase of the patient's dose of the medicine [REDACTED] should be considered or the introduction of one of the [REDACTED] [REDACTED] bearing in mind the potential possibility of the onset of [REDACTED]

h. He was prescribed [REDACTED] tablets, while the adequate treatment method would have been a quicker correction of the [REDACTED] with transfusions [REDACTED] perhaps the intravenous application [REDACTED] Further during the period 2011-2017, on a number of occasions the patient's [REDACTED] was measured. Each time the values found were lower than normal [REDACTED] but regardless of this [REDACTED] were not prescribed and he did not receive any other therapy for [REDACTED] Considering the above it is clear that the patient has chronic [REDACTED] [REDACTED] Therefore, it is necessary to establish the real cause of the [REDACTED] and introduce therapy for the [REDACTED] [REDACTED] [REDACTED] [REDACTED]

i. The patient is being given an extremely high dosage of certain medication. The dose of the medicine [REDACTED] should be reduced to the maintenance dose [REDACTED] and avoid the onset of the adverse effects of a high dose of the medicine [REDACTED]

j. The patient does not have a specific therapy for improving and preventing further [REDACTED]³²

k. Ratko Mladić frequently has marked [REDACTED] [REDACTED] I assume that the therapy for [REDACTED] and for prevention of [REDACTED] and recurrence of [REDACTED] needs to be improved.³³

l. Based on the foregoing Dr. Ristic Concludes " Considering that the patient Ratko Mladić is in an exceptionally severely damaged state of health [REDACTED] [REDACTED] that was not treated over an extended period of time and [REDACTED] that he has an extremely high [REDACTED]

²⁹ See, Annex F, Report of Dr. Ristic dated 12 March 2017, page 6 English

³⁰ See, Annex F, Report of Dr. Ristic dated 12 March 2017, page 7 English

³¹ See, Annex F, Report of Dr. Ristic dated 12 March 2017, page 7 English

³² See, Annex F, Report of Dr. Ristic dated 12 March 2017, page 8 English

³³ See, Annex F, Report of Dr. Ristic dated 12 March 2017, page 8 English

risk of onset of fatal complications, that not all the necessary diagnostic tests and methods (non-invasive and invasive) were utilised for this patient, that there are significant deficiencies of the medicinal therapy, that an assessment was not done of the potential benefits of intravenous therapeutic methods [REDACTED]

[REDACTED] I believe that it is necessary to do away with these irregularities and shortcomings as soon as possible and prevent a fatal outcome.³⁴

b) **Dr. Djokic report and conclusions**

30. Attached at **annex G** is a copy of the CV of the doctor who is a court appointed medical expert.

31. A copy of her report is attached as **Confidential Annex D**.³⁵ Upon review of available medical documentation of the Accused from treatments in UNDU (and Bronovo), and as well upon review of Dr. Kovacevic medical report³⁶, Expert Dr. Gorica Djokic, reached conclusion in her report that *further tests of* [REDACTED] *of Accused are required*, as well as that tests and treatments of current medical condition of the Accused could be performed in *appropriate Clinic centre*.³⁷

32. As Dr. Ristic, Dr. Djokic had also underlined the serious health condition of the Accused, underlining that [REDACTED] risk as per UCLA criterion with respect to General Mladic [REDACTED] which is significantly higher than per average person of his age.³⁸

33. Furthermore, Dr. Gorica Djokic has noted in her report [REDACTED] [REDACTED] which had been also confirmed in Prof. Cras report dated 3 January 2015. She has also recommended *introducing of a*

³⁴ See, Annex F, Report of Dr. Ristic dated 12 March 2017, page 11 English

³⁵ Insofar as the English translation is not yet ready, only the original is attached and the following section is based on rough translation of the original BCS. We will supplement with an official translation when it becomes available, via a separate filing.

³⁶ See Annex D

³⁷ See Annex D Report of Dr. Gorica Djokic, dated 3 March 2017, page 7 BCS;

³⁸ See Annex D Report of Dr. Gorica Djokic, dated 3 March 2017, page 8 BCS;

*different therapy than the current one, as noted in her report.*³⁹ Likewise, Dr. Djokic recommended that the patient is perhaps built up a resistance to the [REDACTED] that is given as part of his therapy, and should be tested for same, since such a resistance would render said therapy without effect. This has not been done. She further opined that a crucial test that was lacking in the past 6 years was a diagnostic testing of [REDACTED]. Such an examination was mandatory at the commencement of his treatment by Bronovo but appears not to have been performed. These are critical lapses in treatment that deviate from the medically accepted standard of care for a patient with Mr. Mladic's condition.

c) Dr. Kovacevic report and conclusions

34. Attached at **Annex H** hereto is a copy of the CV of Dr. Kovacevic.

35. Attached at **Confidential Annex C** is a copy of the Medical Report of Dr. Kovacevic.

36. The expert Prof. Kovacevic revealed that the Accused neurological status is as follows:

[REDACTED]

[REDACTED]

[REDACTED] Neck mobility is limited, with presence of increased muscle tone, especially on the right side. Increased muscle tone of the right arm; arm is in an unnatural position, fingers are stiff. [REDACTED] Reduced gross motor strength of right arm. Increased muscle tone of right leg, limited movement and reduced gross motor muscle strength, positive pronator drift test. [REDACTED]

Attenuated superficial sensitivity on the right side of the body. [REDACTED]

b. Furthermore, "[REDACTED] is diminished. [REDACTED]

c. [REDACTED]

³⁹ See Annex D Report of Dr. Gorica Djokic, dated 3 March 2017, page 8 BCS;

⁴⁰ See Annex C Report of Dr. Ratko Kovacevic, dated 6 March 2017, page 2 English;

⁴¹ See Annex C Report of Dr. Ratko Kovacevic, dated 6 March 2017, page 2-3 English;

[REDACTED]⁴²

d. The expert found that the [REDACTED]

[REDACTED]⁴³

e. He displays slight emotional oscillation and overall [REDACTED]

[REDACTED]⁴⁴

37. The forensic psychologist concluded that the Accused [REDACTED] functions are diminished and that he shows signs of damage [REDACTED]

[REDACTED]⁴⁵

38. The Report further points out that despite the recommendations of the experts to the Trial Chamber to held a 4 days schedule with a break on Wednesdays, they were informed by the Defence that the schedule was of 4 consecutive days and a day of rest. As a consequence, the patient suffered of "[REDACTED] [REDACTED]. This state would last for a short or long spell, and subsequent to it, the accused was not usually able to participate in the trial. The following day he would feel tired and would also be unfit to attend trial. This system of work and the aforementioned poor health of the accused have in fact resulted in him not being able to follow the court proceedings or being able to participate actively in the trial. This puts the accused in a bad mood and causes him to become morose, tense and to have occasional aggressive verbal outbursts, which the Tribunal failed to understand and punished instead."⁴⁶

39. The Report also delivers the expert opinion of Professor Kovacevic, which highlights various issues on the bad conditions of the Accused health:

a. "the subject Ratko Mladić is a person of above average intellectual ability with [REDACTED]

[REDACTED]⁴⁷

⁴² See Annex C Report of Dr. Ratko Kovacevic, dated 6 March 2017, page 3 English;

⁴³ See Annex C Report of Dr. Ratko Kovacevic, dated 6 March 2017, page 3 English;

⁴⁴ See Annex C Report of Dr. Ratko Kovacevic, dated 6 March 2017, page 3 English;

⁴⁵ See Annex C Report of Dr. Ratko Kovacevic, dated 6 March 2017, page 4 English;

⁴⁶ See Annex C Report of Dr. Ratko Kovacevic, dated 6 March 2017, page 4 English;

⁴⁷ See Annex C Report of Dr. Ratko Kovacevic, dated 6 March 2017, page 5 English;

b. "There is clear evidence of excesses in key areas of [REDACTED]
[REDACTED]
[REDACTED] 48

c. The subject's mental health is worsening.⁴⁹

d. "Has manifested as severe headaches accompanied by [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] it becomes clear that these cases were transient ischemic attacks (TIA)."⁵⁰

e. "These attacks, individually and as a whole, caused further deterioration of the subject's nervous system. [REDACTED]
The consequence of such a process is the further deconstruction of [REDACTED] especially of [REDACTED] 51

40. Finally, the Report suggests various specific examinations to be carried out; namely, [REDACTED]
[REDACTED]
[REDACTED] 52

41. In conclusion, the Report highlights the very bad conditions of the health of the Accused, which are "significantly worse than it was in November 2012. This is precisely why it is necessary to carry out a through diagnostic examination of the subject".⁵³

VI. Additional Details for Ground 2 of the Provisional Release Sought.

42. The Report of the Russian Medical Delegation that visited Mr. Mladić is attached as **Confidential Annex A**. The Report, agreed by three different experts of the Centre (the Director, a cardiologist and a neurologist) identifies 9 different problems within the healthcare given to the Accused.

⁴⁸ See Annex C Report of Dr. Ratko Kovacevic, dated 6 March 2017, page 5 English;

⁴⁹ See Annex C Report of Dr. Ratko Kovacevic, dated 6 March 2017, page 5 English;

⁵⁰ See Annex C Report of Dr. Ratko Kovacevic, dated 6 March 2017, page 5 English;

⁵¹ See Annex C Report of Dr. Ratko Kovacevic, dated 6 March 2017, page 5 English;

⁵² See Annex C Report of Dr. Ratko Kovacevic, dated 6 March 2017, page 5 English;

⁵³ See Annex C Report of Dr. Ratko Kovacevic, dated 6 March 2017, page 5 English;

43. The Report has concluded, inter alia, that:

a) There is a lack of proper [REDACTED] tests, with [REDACTED] data of 3 years old and do not contain specific information about the level of [REDACTED]
[REDACTED]
[REDACTED]. Therefore, Mr. Mladić should be transferred in order to conduct proper relevant tests.

b) The [REDACTED] shows significant changes, namely the information of [REDACTED] [REDACTED] as a consequence the diagnostic reliability [REDACTED] [REDACTED] is extremely low. Nevertheless, the doctor selecting this type of treatment, provided an undetermined conclusion, since the patient, due [REDACTED] [REDACTED] was not able to reach [REDACTED]. Besides, similar attempts were made more than 2 years before. In order to conduct proper tests on this issue, the patient needs to be transferred.

c) The doctor that have been curing the Accused have failed to properly [REDACTED] therefore the [REDACTED] therapy needs to be optimized. Because of this, he should be transferred to the structure facility indicated.

d) [REDACTED] scans made in 2011-2013 are missing and because of this, a proper assessment of the volume of the existing impairments and process dynamics cannot be done.

e) More, the grade of [REDACTED] is not clear.

f) Due to the [REDACTED] of General Mladic, there is need to carry out testing of glycosylated [REDACTED] something that has never been done by his current doctors. This is another reason pending in favour of his transfer to the indicated facility. More on this issue, it is not possible to adjust the [REDACTED] therapy, since there is no proper control of [REDACTED] [REDACTED] parameters.

g) As a consequence, [REDACTED] which may intensify [REDACTED] symptoms worsening the Accused conditions, cannot be clinically ruled out.

h) Despite the previous clinical history of the patient of [REDACTED] with [REDACTED] levels dropping down below normal levels, the last [REDACTED] examinations were performed in 2011-12.

i) In addition to this, no [REDACTED] levels have ever been determined. Because of this, the Accused should be transferred in order to carry out the relevant exams.

j) [REDACTED] should not be ruled out.

44. Additionally, the Report suggests a number of medical recommendations and tests to be done to the patient:

a) Due to the failure to properly [REDACTED] therapy needs to be optimized.

b) [REDACTED] is recommended, due to high risk of development of [REDACTED] and the lack of understanding of the grade of [REDACTED]

c) Repeat [REDACTED] is recommended.

d) Due to [REDACTED] in order to specify the compensation ratio it is necessary to carry out the testing of [REDACTED]
[REDACTED]

e) The [REDACTED] dropping down below normal levels suggest [REDACTED]

45. For years the Accused has been treated by medics and doctors of UNDU and Bronovo hospital. However, the Report indicates a high number of risks for the current conditions of him. The exams and cures given to the Accused have shown a staggering number of gaps, missing and lack of exams and as a consequence, the health of the patient has worsened. As outlined and specified previously, a number of exams and specific cures are in absolute need to be carried out in order, if not to ameliorate, at least not to worsen further the health of the Accused. As stressed out by the Report more than once, the risk of [REDACTED] complications is very high. Because of these reasons, the Accused should be hospitalized and transferred to the [REDACTED]

VII. Additional Submissions

46. The foregoing makes it clear provisional release is necessary and warranted under the circumstances. Under the Jurisprudence, provisional release does not pose risk of disruption of trial considering procedural phase, since it has been concluded pending judgment.⁵⁴
47. While it is not in dispute that the Trial Chambers exercise discretion in determining provisional release⁵⁵ the grave medical condition of the Accused, along with medical reasons as set forth in the expert reports attached and as in this Motion, can be a salient and relevant factor in assessing whether to grant the discretion to order provisional release.⁵⁶ Defense would kindly request that the consideration of this Motion (including the time period for the OTP to respond) be expedited and the motion decided as a matter of urgency. The Defence respectfully submits that given the progressive nature of the grave health condition of Mr. Mladić, the Trial Chamber should exercise its discretion in granting provisional release. The Trial Chamber is urged to exercise its power of discretion in a compassionate and reasonable manner in order to uphold fairness and the interests of justice.

⁵⁴ *Prosecutor v Stanasic & Simatovic*, No. IT-03-69-T, *Decision on the Stanasic Defence Request for Provisional Release* (16 July 2012)

⁵⁵ *Prosecutor v Popovic et al*, No. IT-05-86-73.1, *Decision on Vinko Pandurevic's Interlocutory Appeal Against the Trial Chamber Decision on Joinder of the Accused* (24 January 2006) at para. 4

⁵⁶ See *Prosecutor v Stanasic & Simatovic*, No. IT-03-69-PT, *Decision on Provisional Release* (26 May 2008) at para. 41

VI RELIEF REQUESTED

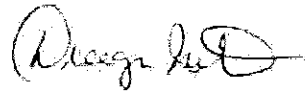
48. It is respectfully submitted that due to the emergent nature of Mr. Mladić's current symptoms, and overall recommendations of the medical professionals in the attached confidential annexes, in conjunction with the foregoing factors, the basis for provisional release have been sufficiently met. Provisional release of Mr. Mladić at this time is the only just, humane, and medically sound course of action that can ensure he will live to see the trial judgment. Based on the foregoing, Mr. Mladić requests that the Trial Chamber grant him temporary provisional release during the period necessary for medical treatment [REDACTED] [REDACTED] or in the alternative, under such conditions as the Chamber deems appropriate to impose pursuant to Rule 65(C).

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