5-09-92-T
D 74247 - D 74240
15 November 2013

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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:	15 November 2013
		Original:	English

IN TRIAL CHAMBER I

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

Registrar: **Mr John Hocking**

Order of: **15 November 2013**

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

ORDER FOR MEDICAL EXAMINATION OF THE ACCUSED PURSUANT TO RULE 74 *BIS*

Office of the Prosecutor
Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić
Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 6 December 2011, pursuant to the Chamber's Order dated 16 November 2011,[1] the Registrar of the Tribunal filed a report by a medical expert ("2011 Medical Report") who, after noting that Mr Ratko Mladić ("Accused") had suffered several medical issues before his arrival and during his first period at the United Nations Detention Unit ("UNDU"), concluded that "in his current state, he is deemed to be perfectly capable of being present during Tribunal activity involving him".[2] Following the Chamber's standing request to the Registry of 29 August 2012, the Chamber received reports on, *inter alia*, steps taken in each instance that the Accused expressed a complaint about his medical condition while on the premises of the Tribunal's Main Building.[3] The measurements of the Accused's blood pressure indicated that his values were always within an acceptable range, and they never resulted in a recommendation by the Reporting Medical Officer ("RMO") that the Accused would not be able to attend a hearing.[4]

2. On 15 January 2013, the Defence filed a motion ("First Motion") requesting an adjustment in the trial sitting schedule from five to four days per week on account of health concerns of the Accused, and provided the Chamber with a medical expert report by psychology specialist Professor Bojana Dimitrijević and neuropsychiatrist Professor Ratko Kovacević.[5] According to this report, during trial the Accused "can fall into a state of heightened emotional tension", accompanied by "a sharp rise in blood pressure, which could lead to a Transient Ischemic Attack ("TIA"), i.e. an interruption of the flow of blood to the brain".[6] The defence experts held that "[t]his could be the first phase of a new brain stroke that would certainly have more serious consequences than the previous one and possibly result in death".[7] On 13 March 2013, the Chamber denied the First Motion ("First Decision") on the grounds that "an assessment of the risk of the Accused suffering from a TIA can only be made by an appropriately qualified medical specialist such as a cardiologist or arteriologist, and does not lie within the realm of expertise of Profs. Dimitrijević and Kovacević" and that "the Defence [had not] demonstrated that an order to change the trial sitting schedule [was] necessary for the conduct of the trial".[8] Following the First Decision, the Chamber was kept informed of the Accused's medical situation by means of UNDU medical staff's reports submitted

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1 Order for a Medical Examination of the Accused Pursuant to Rule 74 *bis*, 16 November 2011.
2 Registrar's submission of Medical Report, 6 December 2011 (confidential), p. 6. An English translation of this report was filed on 8 December 2011.
3 Registrar's Submssion of the Internal Memoranda, 15 March 2013 (Confidential), with Confidential Annex.
4 *Ibid.*
5 Defence Motion Seeking Adjustment of the Trial Sitting Schedule Due to the Health Concerns of the Accused, 15 January 2013 (Confidential), with Confidential Annexes A, B and C.
6 First Motion, Confidential Annex C, p. 9.
7 *Ibid.*
8 Decision on Defence Motion Seeking Adjustment of Modalities of Trial, 13 March 2013 (Confidential), para. 12.

regularly by the Registry.[9] As of 20 March 2013, the RMO pointed out in these reports that the Accused had been showing increasing symptoms of fatigue and exhaustion and, even though the Accused's blood pressure remained under control, the RMO recommended a reduction of the trial sitting schedule by one day in order to prevent exhaustion.[10]

3. On 16 April 2013, the Defence filed another motion ("Second Motion") requesting that the trial sitting schedule be reduced from five to four days per week, in light of the fact that such a reduction was recommended in the reports submitted by the Registry.[11] On 4 June 2013, the UNDU Medical Officer ("MO") appeared in court and answered questions with regard to the medical reasoning behind the recommendation for a reduced sitting schedule; the MO affirmed that the risk of TIA was an unlikely, worst-case scenario, and that the only real risk to the Accused was burnout due to fatigue.[12] Following this hearing, on 12 July 2013, the Chamber denied the Second Motion ("Second Decision").[13] On 22 October 2013, the Appeals Chamber reversed the Second Decision ("Appeal Decision").[14] The Appeals Chamber held that "had the Trial Chamber found the medical opinion provided insufficient 'so as to be dispositive of the matter', the Trial Chamber should have ordered an independent medical examination, as requested by the Prosecution".[15] The Appeals Chamber considered that the Chamber had erred by failing to attribute sufficient weight to the information contained in the relevant reports and submissions in support of the reduced sitting schedule, ordered the Chamber to adopt a four-day sitting schedule for the remainder of the Prosecution's case, and directed it to reassess the matter at the beginning of the Defence case.[16] In compliance with the Appeal Decision, and following agreement with the parties, on 25 October 2013 the Chamber informed them of the modified sitting schedule and respective non-sitting days.[17]

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9 Registrar's Submissions of Medical Report, filed confidentially on 2, 8, 12 April 2013; 3, 10 June 2013; 11, 25 July 2013; 9, 22, 23, 29 August 2013; 5, 9, 10 September 2013; 4, 10, 25, 31 October 2013; 6, 14 November 2013.

10 Registrar's Submission of Medical Report, 2 April 2013 (Confidential), Confidential Annex, p. 1.

11 Defence Second Motion Seeking Adjustment of the Trial Sitting Schedule Due to the Health Concerns of the Accused, 16 April 2013 (Confidential).

12 T. 12030, 12032-12035, 12037-12038, 12065.

13 Decision on Second Defence Motion Seeking Adjustment of the Trial Sitting Schedule Due to the Health Concerns of the Accused, 12 July 2013, paras 14-15, 17.

14 Decision on Mladić's Interlocutory Appeal Regarding Modification of Trial Sitting Schedule Due to Health Concerns, 22 October 2013.

15 Appeal Decision, para. 13.

16 Appeal Decision, para. 16 and Disposition.

17 T. 18299-18300; the non-sitting days being 30 October, 6, 15, 20, and 29 November 2013. Additional non-sitting days, respectively 4 and 11 December 2013, were indicated on 4 November 2013, in the event that the Chamber needs to sit during the first weeks of December (T. 18772).

II. APPLICABLE LAW

4. Rule 74 *bis* of the Rules provides:

> A Trial Chamber may, *proprio motu* or at the request of a party, order a medical, psychiatric or psychological examination of the accused. In such a case, unless the Trial Chamber otherwise orders, the Registrar shall entrust this task to one or several experts whose names appear on a list previously drawn up by the Registry and approved by the Bureau.

III. DISCUSSION

5. In compliance with the Appeal Decision, the Chamber will reassess the trial-sitting schedule before the commencement of the Defence case, if any. It recalls in this respect that on 21 October 2013, it indicated in court that, should there be a Defence case, the Defence would be expected to start presenting its evidence in February or March 2014.[18] For the purposes of reviewing the trial-sitting schedule, the Chamber considers it appropriate to order that medical examinations of the Accused be conducted.

6. Firstly, the medical examinations should provide the Chamber with an updated report on the Accused's overall health situation. Therefore, the Chamber requires that a medical specialist, if possible the same medical specialist who drafted the 2011 Medical Report, compile an updated medical report of a similar nature.

7. Secondly, considering that the most serious risk referred to by the Defence in support of a reduced trial sitting schedule involves a possible stroke triggered by TIA, the Chamber requests that a second, specific report be compiled by a cardiologist and a neurologist. This report should focus on the risk, if any, to the Accused's health arising from a five-day sitting schedule (9.30 am to 2.15 pm including three breaks of 20 minutes), with particular regard to the potential onset of a TIA. The medical experts should include in their analysis how the risk would compare with the risks on average incurred for men of his age group, whether a break of approximately two to three months of court hearings within the next 4 months would influence the risk incurred and whether a delay in the conclusion of the trial by a period of half a year in 2016 would be medically preferable to maintaining a weekly court schedule of hearings during 5 days a week resulting in an earlier conclusion of the case.

[18] T. 18200.

8. In order to enable the experts to perform their assessment, the Chamber considers it necessary that they are provided with all the relevant information pertaining to the Accused's health condition. The Registry is therefore instructed to provide them with access to the Accused's medical records, as well as to the following: (i) the 2011 Medical Report; (ii) the First Motion and its confidential annexes; (iii) all the UNDU medical staff's reports filed by the Registry;[19] (iv) the transcript of the hearing of the MO dated 4 June 2013;[20] (v) the Chamber's First and Second Decisions; and (vi) the Appeal Decision.

IV. DISPOSITION

9. For the foregoing reasons, pursuant to Rule 74 *bis* of the Rules, the Chamber

ORDERS the Registry to have medical examinations of the Accused conducted and to have reports on the Accused's medical condition compiled;

INSTRUCTS the Registry to arrange for the medical examination of the Accused by the medical experts mentioned in paragraphs 6 and 7 ("Experts"), and to give them access to the documents listed in paragraph 8 of this order;

INSTRUCTS the expert mentioned in paragraph 6 to submit a general report on the Accused's overall health situation;

INSTRUCTS the experts mentioned in paragraph 7 to prepare their individual reports in consultation with each other and to submit a consolidated report on the risk of TIA and related questions, as set out in paragraph 7 of this order;

INSTRUCTS the Experts, should they come across any matter which is not within their expertise, to clearly indicate so in their reports;

ORDERS the Registry to notify the Chamber when it has appointed the Experts pursuant to Rule 74 *bis*;

ORDERS the Registry to file the expert reports confidentially as soon as they are compiled, but in any case, no later than 24 January 2014; and

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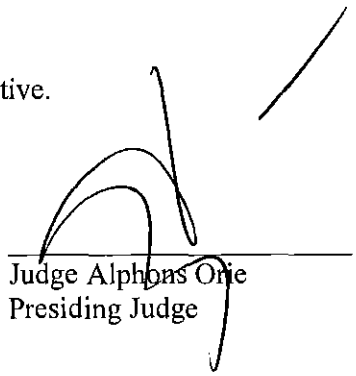
[19] See *supra*, notes 3, 8.
[20] T. 12017-12073.

INSTRUCTS the Registry to lift the confidentiality of the First Decision within four weeks, unless the Registrar or the parties file a request to keep it confidential.

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



Judge Alphons Orie
Presiding Judge

Dated this fifteenth day of November 2013
At The Hague
The Netherlands

[Seal of the Tribunal]