

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-56-A

Date: 25 August 2020

Original: English

IN THE APPEALS CHAMBER

Before: Judge Prisca Matimba Nyambe, Presiding
Judge Aminatta Lois Runeni N’gum
Judge Gberdao Gustave Kam
Judge Seymour Panton
Judge Elizabeth Ibanda-Nahamya

Registrar: Mr. Abubacarr Tambadou

Opinion of: 25 August 2020

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

**PUBLIC VERSION OF “DISSENTING OPINION OF JUDGE PRISCA
MATIMBA NYAMBE TO THE ‘DECISION ON MOTIONS FOR
HOSPITALIZATION’
FILED ON 20 AUGUST 2020”**

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig
Ms. Barbara Goy

Counsel for Mr. Ratko Mladić:

Mr. Branko Lukić
Mr. Dragan Ivetić

1. The goings on at the United Nations Detention Unit (“UNDU”) regarding the management of Mr. Ratko Mladić (“Mr. Mladić”) is a matter of serious concern, given the history of the management of the health care of Mr. Mladić. This is well documented, but more specifically regarding the treatment of his anemia leading to hospitalization and surgery. There is also the matter regarding what transpired after the last status conference, held on 24 July 2020, where Mr. Mladić complained about the treatment he was getting from the UNDU followed by my dissenting opinion to the “Decision on Defence Submissions”, issued by the Majority on 14 August 2020.¹

2. Now we have before us two motions seeking urgent hospitalization coupled with a complaint to the Registrar pursuant to Regulations 3, 4, and 7 of the International Residual Mechanism for Criminal Tribunals Regulations on the Complaints Procedure for Detainees.²

3. Noting that since then, Mr. Mladić was taken to a civilian hospital where he had an intravenous infusion, among unknown treatments, which was described by the UNDU Medical Officer and Commanding Officer as a precautionary measure, and allegedly declared fit and returned to the UNDU. At the time of hospitalization, Mr. Mladić had a fever of 38.3 degrees Celsius.³ He was told that *maybe* he had a “heat stress/stroke”.⁴

4. The very following day, Mr. Mladić cut short his telephone call with Co-Counsel, during which he was not able to meaningfully communicate with counsel. He complained that he was unwell, coughing, and unable to breathe.⁵ Since that time, Mr. Mladić’s temperature has been measured multiple days and it has always been consistently between 37.4 and 38.3 degrees Celsius.⁶ He reports lack of energy, lack of being able to engage counsel in telephone conversation, and not being well.⁷

5. The response from the UNDU Commanding Officer was to downplay these very serious symptoms as being due to heat and has neglected to have Mr. Mladić hospitalized, denying that Mr. Mladić’s temperature as being a fever and of being any danger to Mr. Mladić’s conditions. The UNDU Commanding Officer provided three ventilating fans to Mr. Mladić, but neglected to send

¹ See Dissenting Opinion of Judge Prisca Matimba Nyambe to the “Decision on Defence Submissions” Filed on 14 August 2020, 14 August 2020.

² Defence Urgent Motion to Hospitalize Mr. Mladić, 14 August 2020 (confidential) (“Motion”); Second Defence Urgent Motion to Hospitalize Mr. Mladić; and Simultaneous Complaint to the Registrar Regulations 2, 3 and 7(C) of the International Residual Mechanism for Criminal Tribunals Regulations on the Complaints Procedure for Detainees, 18 August 2020 (confidential) (“Second Motion”).

³ Motion, paras. 2, 3; Second Motion, paras. 3, 4.

⁴ Second Motion, para. 2.

⁵ Motion, para. 3; Second Motion, para. 3.

⁶ Second Motion, para. 4.

⁷ Second Motion, para. 4.

him to the hospital for necessary investigations as to the cause of the symptoms that he presented.⁸ Mr. Mladić reports that these fans do nothing to help him.⁹

6. It is common knowledge from the World Health Organization health protocols that the conditions that Mr. Mladić presents, coupled with a high temperature of 38.3 degrees Celsius fever is indicative of Covid-19. Normally, such a patient needs immediate hospitalization to manage the infection. In any event, if these symptoms are not Covid-19-related, it is without a doubt another serious ailment requiring hospitalization and further investigation.

7. The hospitalization of Mr. Mladić for investigation as to what is causing the high temperatures is urgent, is time sensitive, and cannot wait for the onerous procedures found in the Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Mechanism or Otherwise Detained on the Authority of the Mechanism (“Detention Rules”) for the complaints.

8. The Motion and the Second Motion demonstrate that the issues before the Appeals Chamber are closely related to the fairness of the appeal proceedings in this case. The issue of the hospitalization of a Detainee appearing before it is closely related to the fairness of the appeal proceedings and therefore calls for the intervention of the Appeals Chamber.

9. According to Rule 51 of the Detention Rules, the relationship between the UNDU Medical Officer and/or other health-care professionals and Detainees shall be governed by the same ethical principles and professional standards as those applicable to relationships between doctors and patients in the community. The goings on between the UNDU Medical Officer and Mr. Mladić point to the fact that the relationship between the UNDU Medical Officer and the patient under his care has broken down.

10. Pursuant to Rules 47(1) and 47(2) of the Detention Rules, “Detainees shall enjoy at least the same standard of health care as is available in the community” and “shall have access to all medical services [...] including mental health, [...] and specialist services and urgent medical attention”.

11. Pursuant to Rules 10(1) and 10(2) of the Detention Rules, “[a]ll Detainees shall be treated with humanity and with respect for the inherent dignity of the human person” and that “[n]o Detainee shall be subjected to [...] cruel, inhuman, or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification”. Furthermore, there shall be no discrimination against a Detainee on the grounds of “the type of offence alleged to have been

⁸ Motion, para. 5; Second Motion, para. 5.

⁹ Second Motion, para. 5.

committed” by the Detainee,¹⁰ and “[i]n order for the principle of non-discrimination to be effectively put into practice, the individual needs of Detainees, particularly the most vulnerable, shall be taken into account”.¹¹ In addition, the “detention regime and the application of these [Detention] Rules shall not necessarily aggravate the suffering inherent in deprivation of liberty and separation from the public at large”.¹²

12. Given my views above, I respectfully dissent from the position of the Majority in the “Decision on Motions for Hospitalization”, issued on 20 August 2020. As indicated above, I would grant the requests in the Motion and Second Motion in their entirety and immediately hospitalize Mr. Mladić.

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

Done this 25th day of August 2020,
At The Hague,
The Netherlands



Judge Prisca Matimba Nyambe
Presiding Judge

[Seal of the Mechanism]

¹⁰ Rule 11(1) of the Detention Rules.

¹¹ Rule 11(2) of the Detention Rules.

¹² Rule 12 of the Detention Rules.



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