

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-56-ES

Date: 10 May 2024

Original: English

THE PRESIDENT OF THE MECHANISM

Before: Judge Graciela Gatti Santana, President

Registrar: Mr. Abubacarr M. Tambaou

Decision of: 10 May 2024

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC REDACTED VERSION

**DECISION ON THE APPLICATION FOR RELEASE
OF RATKO MLADIĆ**

Counsel for Mr. Ratko Mladić:

Mr. Dragan Ivetić
Mr. Branko Lukić

1. I, Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals (“President” and “Mechanism”, respectively), am seized of an urgent request filed by Mr. Ratko Mladić on 26 April 2024 (“Mladić” and “Application”, respectively), seeking provisional release on compassionate/humanitarian grounds, or in the alternative, to continue serving his sentence in the Republic of Serbia (“Serbia”).¹

I. BACKGROUND

2. On 26 May 2011, Mladić was arrested in Serbia and, on 31 May 2011, he was transferred to the United Nations Detention Unit (“UNDU”) in The Hague, Kingdom of the Netherlands (“Netherlands”).²

3. On 22 November 2017, Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia (“Trial Chamber” and “ICTY”, respectively) convicted Mladić, pursuant to Article 7(1) of the Statute of the ICTY, of genocide, persecution, extermination, murder, deportation and inhumane acts (forcible transfer) as crimes against humanity, and murder, terror, unlawful attacks on civilians and taking of hostages as violations of the laws or customs of war, and sentenced him to life imprisonment.³

4. On 8 June 2021, the Appeals Chamber of the Mechanism (“Appeals Chamber”) rendered its judgement and affirmed Mladić’s convictions and his sentence of life imprisonment.⁴

5. Mladić has since remained at the UNDU, awaiting designation of and his transfer to a State where he will serve the remainder of his sentence. Mladić has served approximately 13 years of his life sentence.

II. APPLICATION AND RELEVANT MATERIAL

6. Regular reports on the state of Mladić’s health have been prepared by the UNDU Medical Service throughout Mladić’s detention at the UNDU. Even after all proceedings against Mladić were complete, my predecessor and I implemented a strict monitoring regime in relation to Mladić’s health, given the President’s supervisory role over the conditions of detention of the persons under the

¹ Urgent Defence Motion for Provisional Release of Ratko Mladić Based on Compassionate and Humanitarian Grounds or in the Alternative, Allowing him to Serve the Remainder of his Sentence in Serbia, 26 April 2024 (confidential), paras. 1, 2, 33-34.

² *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Judgement, 22 November 2017 (public with confidential Annex) (“Trial Judgement”), para. 5222.

³ Trial Judgement, paras. 5214-5215.

⁴ *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Judgement, 8 June 2021 (public redacted) (“Appeal Judgement”), para. 592.

authority of the Mechanism at the UNDU. On 18 January 2022, my predecessor ordered the Registrar of the Mechanism (“Registrar”) to request and file on the record such reports, as well as those of independent medical experts.⁵ On 15 September 2022, I, *inter alia*: (i) amended the frequency of the reporting to ensure that I receive reports on Mladić’s health from the UNDU Medical Service every month, or more frequently if deemed necessary by the UNDU Medical Service; and (ii) instructed the Registrar to appoint on an urgent basis two independent medical experts in the fields of [REDACTED] and [REDACTED], who shall each examine Mladić once every two months and promptly prepare reports on his health to be filed before me.⁶

7. On 22 April 2024, I received a report from the UNDU informing me that Mladić had been referred to a civilian hospital due to a “progressively deteriorating general condition”.⁷ At the hospital, Mladić was diagnosed as having experienced “acute and potentially life-threatening [REDACTED]”.⁸

8. On 26 April 2024, Mladić filed the Application, requesting release to Serbia on compassionate/humanitarian grounds, or alternatively that he serve the remainder of his sentence there, on the grounds that: (i) his [REDACTED] is a potentially terminal illness if not treated; (ii) receiving care in Serbia would have health benefits, as opposed to the conditions at the UNDU, including the fact that it would alleviate the language barrier he currently faces in trying to adequately convey his ailments; and (iii) in Serbia he can receive [REDACTED] treatment, which he cannot at the UNDU.⁹

9. On 28 April 2024, considering the need for more comprehensive information before determining whether compelling circumstances exist that may warrant granting release with extreme urgency, I instructed the Registrar to file a further report of the UNDU Medical Officer, setting out the latest available information regarding Mladić’s health condition, including detailed information on: (i) the diagnostic testing that has been carried out; (ii) the confirmed diagnosis and related prognosis; (iii) the treatment options that may be available in the Netherlands; and (iv) any potential ramifications on Mladić’s care at the UNDU.¹⁰

⁵ Order on Medical Reports, 18 January 2022 (confidential).

⁶ See Public Redacted Version of “Third Order on Medical Reports” of 15 September 2022, 19 October 2023. See also Further Order on Medical Reports, 3 August 2022 (confidential).

⁷ Registrar’s Submission in Relation to the “Third Order on Medical Reports” of 15 September 2022, 26 April 2024 (confidential), Annex (“UNDU Report of 22 April 2024”).

⁸ UNDU Report of 22 April 2024.

⁹ Application, paras. 1, 10-12, 24-28, 30-31, 34.

¹⁰ Order for Submissions, 28 April 2024 (confidential) (“Order of 28 April 2024”), p. 2.

10. On 29 April 2024, the Registrar filed the requested report.¹¹
11. On 30 April 2024, I ordered Mladić to file a public redacted version of the Application no later than 2 May 2024.¹²
12. On 1 May 2024, Mladić filed a submission arguing that the UNDU Report of 29 April 2024 fails to provide the “detailed information” sought by the Order of 28 April 2024¹³ and confirms the “serious and dire nature” of Mladić’s current health condition, which is incompatible with his continued detention at the UNDU.¹⁴ Mladić also submits that he, his family and his Defence Counsel have sought immediate access to the relevant medical documentation to understand his current condition, diagnosis, prognosis and treatment and that such information has not been provided.¹⁵
13. On the same day, Mladić also filed the public redacted version of his Application.¹⁶
14. On 2 May 2024, the Registrar submitted a medical report in accordance with the regular monitoring regime of Mladić’s health.¹⁷
15. On the same day, the Office of the Prosecutor of the Mechanism (“Prosecution”) filed a request for access to the confidential version of the Application and the relevant medical reports to enable it to respond.¹⁸
16. On 3 May 2024, the Prosecution filed a supplement to the Prosecution Request in order to clarify that, even if the Application were to be considered as an application for early release, it is still in the interests of justice to be given the opportunity to respond.¹⁹

¹¹ Registrar’s Submission in Relation to the “Order for Submissions” of 28 April 2024, 29 April 2024 (confidential), Annex (“UNDU Report of 29 April 2024”).

¹² Order for Public Redacted Version of Ratko Mladić’s Urgent Motion, 30 April 2024, p. 2.

¹³ Defence Submission in Response to Registrar’s Submission in Relation to the “Order for Submissions” of 28 April 2024, 1 May 2024 (confidential) (“Defence Submission of 1 May 2024”), paras. 4, 7-9, 19.

¹⁴ Defence Submission of 1 May 2024, paras. 17-19.

¹⁵ Defence Submission of 1 May 2024, paras. 6, 12-16.

¹⁶ Urgent Defence Motion for Provisional Release of Ratko Mladić Based on Compassionate and Humanitarian Grounds or in the Alternative, Allowing Him to Serve the Remainder of His Sentence in Serbia, 1 May 2024 (public redacted).

¹⁷ Registrar’s Submission in Relation to the “Third Order on Medical Reports” of 15 September 2022, 2 May 2024 (confidential), Annex (“UNDU Report of 2 May 2024”).

¹⁸ Urgent Prosecution Request for Access to Confidential Version of Mladić’s Motion of 26 April 2024, 2 May 2024 (“Prosecution Request”), paras. 1-3.

¹⁹ Supplement to Urgent Prosecution Request for Access to Confidential Version of Mladić’s Motion of 26 April 2024, 3 May 2024, paras. 1-2.

III. PRELIMINARY ISSUES

17. At the outset, I note that Mladić is requesting “provisional release” or, alternatively, to continue serving his sentence in Serbia.²⁰ I will first address Mladić’s alternative request to continue serving his sentence in Serbia. I note that the Statute of the Mechanism (“Statute”) stipulates that imprisonment shall be served in a State with which the United Nations has agreements for this purpose.²¹ In his report on the establishment of the ICTY, the then-United Nations Secretary-General expressed the view, that “given the nature of the crimes in question and the international character of the tribunal, the enforcement of sentences should take place outside the territory of the former Yugoslavia”.²² Indeed from the very beginning of their establishment, the ICTY would only enter such agreements with States other than those where crimes within the tribunals’ jurisdiction were alleged to have been committed.²³ These policy considerations and practice have since remained in place. Accordingly, Serbia would not be a viable option for the enforcement of a sentence entered by the Mechanism.

18. Turning to Mladić’s request for provisional release, I recall my earlier ruling that Rule 68 of the Rules of Procedure and Evidence of the Mechanism (“Rules”) does not apply to release following a final conviction, because, *inter alia*, issuing a final conviction concludes the competence of the Appeals Chamber with respect to a convicted person, and that any requests for the release of such persons are exclusively for the President to determine.²⁴ Nevertheless, taking into account the nature of Mladić’s submissions, the alleged seriousness of the medical condition and the need to adjudicate the matter in a timely fashion,²⁵ I consider that, in the present circumstances, it is in the interest of justice to treat the Application as a request for early release on compelling humanitarian grounds.²⁶

²⁰ Application, paras. 1, 30-31, 34.

²¹ Statute, Article 25(1).

²² Report of the Secretary-General Pursuant to paragraph 2 of Security Council Resolution 808 (1993), S/25704, 3 May 1993, para. 121.

²³ *See Prosecutor v. Drago Nikolić*, Case No. MICT-15-85-ES.4, Public Redacted Version of the 20 July 2015 Decision of the President on the Application for Early Release or Other Relief of Drago Nikolić, 13 October 2015 (“*Nikolić Decision*”), para. 36. *See also* Security Council Resolution 1966 (2010), 22 December 2010, para. 4 (“[T]he Mechanism shall continue the jurisdiction, rights and obligations and essential functions of the ICTY and the [International Criminal Tribunal for Rwanda “ICTR”], respectively, subject to the provisions of this resolution and the Statute of the Mechanism, and all contracts and international agreements concluded by the United Nations in relation to the ICTY and the ICTR, and still in force as of the relevant commencement date, shall continue in force *mutatis mutandis* in relation to the Mechanism”).

²⁴ *Prosecutor v. Franko Simatović*, Case No. MICT-15-96-ES.1, Decision on Franko Simatović’s Applications for Provisional Release and Legal Aid, 29 September 2023 (“*Simatović Decision on Provisional Release*”), p. 2.

²⁵ *See* Application, paras. 1-2, 34; Defence Submission of 1 May 2024, paras. 19.

²⁶ Fundamentally, it is immaterial as to whether this request is considered under the legal framework for provisional release pursuant to Rule 68 of the Rules or for early release pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules. First, Mladić is asking me, in my capacity as President, to decide on his request for provisional release and the Appeals Chamber has approvingly noted that the President can adjudicate such requests. *See Prosecutor v. Zdravko Tolimir*, Case No. MICT-15-95-ES, Public Redacted Version of the “Decision on Motion for Provisional Release” Filed

19. In the context of early release applications, the applicable Practice Direction provides for my discretion in deciding which information may be relevant for my determination.²⁷ Considering that the sole basis for the Application is the existence of compelling humanitarian grounds, which if proven would override any eligibility concerns,²⁸ I do not find it necessary, in the present circumstances, to receive any submissions from the Prosecution. Accordingly, I dismiss the Prosecution Request.

20. In reaching my conclusion with regard to the Application, I have consulted with Judge Alphons Orié as a Judge of the Trial Chamber and Judge Prisca Matimba Nyambe, Judge Aminatta Lois Runeni N’gum, Judge Seymour Panton, and Judge Mustapha El Baaj as Judges of the Appeals Chamber,²⁹ in accordance with Rule 150 of the Rules and paragraph 16 of the Practice Direction.

IV. APPLICABLE LAW

21. Pursuant to Article 26 of the Statute, there shall only be pardon or commutation of sentence if the President so decides on the basis of the interests of justice and the general principles of law. While Article 26 of the Statute, like the equivalent provisions in the Statutes of the ICTR and the ICTY before it, does not specifically mention requests for early release of convicted persons, the Rules reflect the President’s power to deal with such requests and the longstanding practice of the ICTR, the ICTY, and the Mechanism in this regard.

22. Rule 150 of the Rules provides that the President shall, upon receipt of a direct petition from the convicted person, determine, in consultation with any Judges of the sentencing Chamber who are Judges of the Mechanism, whether pardon, commutation of sentence, or early release is appropriate.

on 28 January 2016, 23 February 2016, fn 28, *referring to Nikolić* Decision, paras. 4, 39. Furthermore, the President of the Mechanism has adjudicated provisional release requests that have been filed post-conviction. *See Simatović* Decision on Provisional Release, p. 2; *Prosecutor v. Sreten Lukić*, Case No. MICT-14-67-ES.4, Public Redacted Version of the “Decision on Motion for Immediate Provisional Release or Early Release” of 1 May 2020, 14 August 2020, pp. 3-4; *Prosecutor v. Laurent Semanza*, Case No. MICT-13-36-ES.2, Decision on Motion for Provisional Release, 21 April 2020, pp. 4, 6; *Nikolić* Decision, paras. 38, 43. In addition, and as detailed below, the critical considerations in this case turn on Mladić’s failure to substantiate that his health condition demonstrates the existence of either “special circumstances” that would warrant provisional release or “compelling humanitarian grounds” that would satisfy the requirements for early release.

²⁷ Practice Direction on the Procedure for the Determination of Applications for Pardon, Commutation of Sentence, or Early Release of Persons Convicted by the ICTR, the ICTY, or the Mechanism, MICT/3/Rev.3, 15 May 2020 (“Practice Direction”), Article 10.

²⁸ *See infra* paras. 28-29.

²⁹ *See generally* Trial Judgement; Appeal Judgement.

If none of the Judges who imposed the sentence are Judges of the Mechanism, the President shall consult with at least two other Judges.

23. The general standards for granting early release are set out in Rule 151 of the Rules, which provides that in making a determination on pardon, commutation of sentence, or early release, the President shall take into account, *inter alia*, the gravity of the crime or crimes for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner's demonstration of rehabilitation, and any substantial cooperation of the prisoner with the Prosecution.

24. Paragraph 5 of the Practice Direction provides that a convicted person may apply directly to the President for pardon, commutation of sentence, or early release, if he or she believes that he or she is eligible. Paragraph 10 of the Practice Direction indicates that the President may direct the Registry of the Mechanism to collect information which he or she considers may be relevant to the determination of whether pardon, commutation of sentence, or early release is appropriate. Paragraph 13 of the Practice Direction states that the convicted person shall be given 14 days to examine the information received by the Registrar, following which he or she may provide any written submissions in response.

25. Paragraph 19 of the Practice Direction specifies that the President shall determine whether early release is to be granted on the basis of the interests of justice and the general principles of law, having regard to the criteria specified in Rule 151 of the Rules, and any other information, as well as the views of the Judges consulted in accordance with Rule 150 of the Rules. If early release is granted, it may be subject to conditions.³⁰

26. Paragraph 21 of the Practice Direction states, *inter alia*, that in cases of extreme urgency, the President may dispense with the procedural steps set forth in the Practice Direction to the extent required to meet the urgency, accelerate the consultation with other Judges, and if necessary issue a decision with reasons to follow.

V. ANALYSIS

A. Standards for Granting Early Release

27. In the context of an early release application, serving two-thirds of a sentence has been described by the Mechanism's jurisprudence as being "in essence, an admissibility threshold".³¹

³⁰ See Practice Direction, para. 20.

³¹ *Prosecutor v. Stojan Župljanin*, Case No. MICT-13-53-ES.1, Decision on the Application for Early Release of Stojan Župljanin, 18 January 2024 (public redacted), para. 26; *Prosecutor v. Radivoje Miletić*, Case No. MICT-15-85-ES.5,

Having served only approximately 13 years of his life sentence,³² Mladić has not yet reached the eligibility threshold for early release.

28. However, the Mechanism’s jurisprudence provides that compelling or exceptional circumstances could arise in specific instances prior to the two-thirds threshold having been reached, which, in the exercise of my discretion as President, may overcome any eligibility concerns.³³ In addition, previous decisions on early release determined that the state of the convicted person’s health may be taken into account in the context of an application for early release, especially when the seriousness of the condition makes it inappropriate for the convicted person to remain in prison any longer.³⁴

29. In this regard, I recall that if a particular situation requires the release of a convicted person based on compelling humanitarian grounds, it is immaterial whether any of the factors set out in Rule 151 of the Rules weigh in favour of or against the convicted person’s early release.³⁵ Indeed, while any early release based on the existence of compelling humanitarian grounds will necessarily require that a very high threshold be met, due to its inherent nature, it will not be dependent on the convicted person’s demonstration of rehabilitation or an assessment of the gravity of his or her crimes, for example.³⁶ In such a scenario it is not the behaviour of the convicted person, but rather the specific and prevailing circumstances, often due to his or her health condition, that will dictate whether the person should be released in accordance with the Mechanism’s legal framework.³⁷

30. As Mladić’s submissions are exclusively based on compelling humanitarian grounds, my determination of the Application is solely guided by whether the information before me indicates that the allegations about Mladić’s health are sufficient to overcome any eligibility concerns that must otherwise be considered for early release.

Decision on the Application for Early Release of Radivoje Miletić, 18 January 2024, para. 25; *Prosecutor v. Paul Bisengimana*, Case No. MICT-12-07, Decision of the President on the Early Release of Paul Bisengimana and on Motion to File a Public Redacted Application, 11 December 2012 (public redacted), para. 19.

³² See *supra* para. 5.

³³ *Prosecutor v. Stanislav Galić*, Case No. MICT-14-83-ES, Decision on the Application for Early Release of Stanislav Galić, 6 November 2023 (“*Galić Decision*”), p. 5; *Prosecutor v. Franko Simatović*, Case No. MICT-15-96-ES.1, Reasons for the 29 August 2023 Decision on the Application for Early Release of Franko Simatović, 11 September 2023 (public redacted) (“*Reasons for Simatović Decision*”), para. 37; *Prosecutor v. Laurent Semanza*, Case No. MICT-13-36-ES, Decision of the President on the Early Release of Laurent Semanza, 9 June 2016 (public redacted), para. 18.

³⁴ *Galić Decision*, p. 5; Reasons for *Simatović Decision*, para. 37; *Prosecutor v. Ljubiša Beara*, Case No. MICT-15-85-ES.3, Public Redacted Version of 7 February 2017 Decision of the President on the Early Release of Ljubiša Beara, 16 June 2017, paras. 47-49.

³⁵ Reasons for *Simatović Decision*, para. 38; *Prosecutor v. Radoslav Brđanin*, Case No. MICT-13-48-ES, Reasons for the 3 September 2022 Decision on the Application for Early Release of Radoslav Brđanin, 26 September 2022 (public redacted) (“*Reasons for Brđanin Decision*”), para. 37.

³⁶ Reasons for *Simatović Decision*, para. 38; Reasons for *Brđanin Decision*, para. 37.

³⁷ Reasons for *Simatović Decision*, para. 38; Reasons for *Brđanin Decision*, para. 37.

B. Humanitarian Considerations

1. Submissions

31. Mladić submits that his release is “necessitated by and will accommodate [his] health needs in light of ‘acute and potentially life-threatening [REDACTED]’ and need for, among other things, [REDACTED] therapy (i.e. [REDACTED] [REDACTED] or [REDACTED])”, which he cannot receive at the UNDU or in the Netherlands, but he could receive in Serbia.³⁸ He avers that the physicians he chose to examine him pursuant to Rule 48 of the Rules of Detention,³⁹ and the UNDU Medical Officer, agree that his “cognitive decline [...] limits his ability to communicate with care-givers as to multiple ‘potentially life-threatening’ ailments”.⁴⁰ He also claims that his chosen physicians suggested that the “language barrier further limits his ability to communicate with care-givers”.⁴¹

32. With respect to the UNDU Report of 29 April 2024, Mladić submits that it fails to provide the “detailed information” sought by the Order of 28 April 2024, and rather highlights the continued uncertainty as to the cause of the [REDACTED], the prognosis, the treatment currently being provided, and the available treatment options⁴² and confirms the “serious and dire nature” of his current health condition.⁴³ According to Mladić, his medical condition is incompatible with his continued detention at the UNDU.⁴⁴

2. Assessment

33. In the UNDU Report of 22 April 2024, which prompted the filing of the Application, the UNDU Medical Officer stated that a few days earlier, Mladić was referred to a civilian hospital after experiencing an “acute and potentially life-threatening [REDACTED]” (“acute medical incident”), the cause of which was unclear.⁴⁵ The UNDU Medical Officer subsequently visited Mladić twice and was advised by the treating physicians that, at that time, Mladić was stable.⁴⁶ It was also anticipated

³⁸ Application, paras. 1, 10-12, 17-23, 26-27, 30, 34; Defence Submission of 1 May 2024, paras. 17, 19. *See also* Defence Submission of 1 May 2024, paras. 9-11.

³⁹ Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Mechanism or Otherwise Detained on the Authority of the Mechanism, 5 November 2018 (“Rules of Detention”).

⁴⁰ Application, para. 12. *See also* Application, paras. 4-6, 10, 24.

⁴¹ Application, para. 12. *See also* Application, paras. 4(c), 5(d), 24-25.

⁴² Defence Submission of 1 May 2024, paras. 4, 7-9, 14, 19.

⁴³ Defence Submission of 1 May 2024, para. 18.

⁴⁴ Application, paras. 1, 14, 28, 34; Defence Submission of 1 May 2024, paras. 17-19.

⁴⁵ UNDU Report of 22 April 2024, p. 1.

⁴⁶ UNDU Report of 22 April 2024, p. 1.

that Mladić would return to the prison hospital “in the coming days”.⁴⁷ The UNDU Medical Officer opined that “Mladić’s [REDACTED] could jeopardise his overall treatment”.⁴⁸

34. On 29 April 2024, I received information that Mladić was recovering in the prison hospital, to which he had been transferred on 23 April 2024.⁴⁹ The UNDU Medical Officer informed me that the acute medical incident was “probably multicausal”, and referred *inter alia*, to the intake of food, fluids, other prescribed medications, as well as age and another pre-existing medical condition.⁵⁰ According to the UNDU Medical Officer, although at that point the prognosis remained unclear, it “look[ed] less pessimistic” than during Mladić’s initial hospital admission since both his [REDACTED] and his general wellbeing had shown “significant improvement”.⁵¹ I was informed that as Mladić’s condition was evolving, a “‘watchful waiting’ policy [was] the best option [...], in combination with encouraging Mr. Mladić to eat and drink sufficiently and to mobilize out of bed”.⁵²

35. In relation to the availability of treatment options in the Netherlands, the UNDU Medical Officer stated in the UNDU Report of 29 April 2024 that treatment for Mladić’s diagnosed condition is available and already being provided.⁵³ I note in this regard that following the acute medical incident, Mladić has been receiving treatment for both his physical and mental health, including, *inter alia*, [REDACTED] medication selected to avoid further damage to [REDACTED], adjustments to previously prescribed medications to reduce strain on [REDACTED], as well as [REDACTED] and [REDACTED].⁵⁴ I was further informed that the treatment options that Mladić raises as one of the bases in support of the Application, namely the [REDACTED],⁵⁵ are indeed also available in the Netherlands, but currently not indicated as medically advisable for Mladić.⁵⁶ I recall in this regard that, pursuant to Rule 47 of the Rules of Detention, a detainee at the UNDU is expected to enjoy the same standard of healthcare as in the community, namely the Netherlands.⁵⁷ In response to my question regarding any potential ramifications Mladić’s medical condition may have on his care at the UNDU, the UNDU Medical Officer informed me that Mladić is currently being cared at the prison

⁴⁷ UNDU Report of 22 April 2024, p. 1.

⁴⁸ UNDU Report of 22 April 2024, p. 1.

⁴⁹ UNDU Report of 29 April 2024, p. 1.

⁵⁰ UNDU Report of 29 April 2024, p. 1.

⁵¹ UNDU Report of 29 April 2024, p. 1.

⁵² UNDU Report of 29 April 2024, p. 1.

⁵³ UNDU Report of 29 April 2024, p. 1.

⁵⁴ UNDU Report of 29 April 2024, pp. 1-2.

⁵⁵ See Application, paras. 1, 11-12, 17-23, 26, 34; Defence Submission of 1 May 2024, paras. 9-11. See also Defence Submission of 1 May 2024, paras. 7(c), 19.

⁵⁶ UNDU Report of 29 April 2024, p. 1. See also UNDU Report of 2 May 2024, para. 7.

⁵⁷ See Decision on Request for Judicial Review of Registrar’s Decision on Detention Complaint, 30 November 2023 (public redacted) (“Mladić Decision on Detention Complaint”), para. 39.

hospital and his ability to take care of himself and whether he is able to return to his room at the UNDU is regularly being assessed.⁵⁸

36. On 2 May 2024, within the framework of the regular regime monitoring Mladić's health, I received updated information on his health status and his treatment plan for the acute medical incident as well as his various other medical conditions.⁵⁹ The UNDU Report of 2 May 2024 indicates that "Mladić's current [REDACTED] measurements have shown a steady and significant improvement since the onset of [the acute medical incident]".⁶⁰ I note that since his admission to the prison hospital, "Mladić's condition has been monitored regularly and his treatment plan has been reviewed daily" and that, as of the day of the report, he was considered to be ready to return to the UNDU on a visiting basis.⁶¹ The UNDU Medical Service expresses the view that it remains "cautiously optimistic" and continues to plan Mladić's full-time return to the UNDU "in the not too distant future".⁶²

37. I consider that the information in the UNDU Report of 29 April 2024, which was supplemented by the UNDU Report of 2 May 2024, responds to the questions posed in my Order of 28 April 2024 and provides sufficient detail for me to assess whether circumstances exist that would warrant Mladić's release. In this context, Mladić's challenge that the UNDU Report of 29 April 2024 fails to provide detailed information, as instructed with my order, is neither substantiated nor accounts for the complete and timely medical reporting of his condition that allows for full consideration of his request.

38. Having carefully considered the totality of the information before me, I am satisfied that the condition that led to Mladić's hospitalisation stabilised shortly after his admission to hospital, and he has since clearly improved significantly. While the acute medical incident gives rise to some concern, especially in combination with Mladić's generally vulnerable medical condition,⁶³ I am also satisfied that the UNDU Medical Service responded to it appropriately and in a timely manner, and that Mladić continues to receive comprehensive follow-up medical care. Moreover, the "lifesaving or life-sustaining" treatment cited in Mladić's submissions is available in the Netherlands should it be medically advised. Given the above, I am not persuaded that Mladić's current medical condition is incompatible with his continued detention at the UNDU.

⁵⁸ UNDU Report of 29 April 2024, p. 2.

⁵⁹ UNDU Report of 2 May 2024, paras. 3-9.

⁶⁰ UNDU Report of 2 May 2024, para. 3.

⁶¹ UNDU Report of 2 May 2024, para. 7.

⁶² UNDU Report of 2 May 2024, para. 10.

⁶³ See UNDU Report of 2 May 2024, paras. 9-10; UNDU Report of 29 April 2024, p. 2.

39. This latest incident, however, underlines the importance of maintaining a regular and strict reporting regime, so that I can continue to be fully informed about Mladić's health condition and take appropriate actions within my authority regarding the supervision of the enforcement of sentences entered by the Mechanism.

40. As for Mladić's ability to exchange information about his health in his native language, nothing in the reports suggest that this contributed to making triage of his health issues a challenge.⁶⁴ Further, I note that efforts are being made for Mladić to have access to translation services⁶⁵ and that he appears to have expressed his gratitude for the medical care and attention that is being given to him.⁶⁶ Nevertheless, I acknowledge the importance of any patient being able to discuss health issues in their own native language. I therefore encourage the Registrar to maintain his efforts to ensure that Mladić continues to have access to translation services in his own language.

3. Consultation

41. In coming to my decision on whether to grant the Application, I consulted with five other Judges of the Mechanism.⁶⁷ Judge Orié, Judge N'gum, Judge Panton, and Judge El Baaj were of the view that the Application should be dismissed on the basis that the compelling humanitarian circumstances invoked by Mladić are not substantiated at this stage. Judge Orié additionally emphasised the need for comprehensive reporting on Mladić's health, considering the multiple medical conditions from which he suffers, and highlighted the genuine concern of Mechanism Judges for the fate of those who have been sentenced to long periods of imprisonment by the Mechanism. Judge Nyambe concluded that she would be in favour of granting the Application, possibly under appropriate conditions, on the basis of the seriousness of the medical condition as outlined in the UNDU Report of 22 April 2024.

42. I am very grateful for my colleagues' views on these matters, which I took into account in my ultimate assessment of the Application, and for providing them on short notice in view of the urgent motion pending before me. I have considered carefully Judge Nyambe's different opinion. However, I am of the view that, although the initial information conveyed in the UNDU Report of 22 April 2024 referred to a "potentially life-threatening" medical incident, the more recent information from the UNDU Medical Service, received on 29 April and 2 May 2024, clearly indicates that Mladić's response to the acute medical incident has significantly improved, and suggests that appropriate

⁶⁴ UNDU Report of 22 April 2024, p. 1. The UNDU Medical Service refers to Mladić's [REDACTED].

⁶⁵ See e.g. UNDU Report of 2 May 2024, para. 1.

⁶⁶ UNDU Report of 2 May 2024, para. 2.

⁶⁷ See *supra* para. 20.

treatment continues to be offered at the prison hospital, following Mladić's discharge from the civilian hospital. With regard to Judge Orić's remark, I agree on the importance of a strict monitoring regime of Mladić's health, and I will consider the details of his proposal in the event that future developments give rise to the need for adjustments to the existing regime.

C. Access to medical records

1. Submissions

43. Mladić submits that he, his family, and his Defence Counsel have sought access to the medical records related to his [REDACTED] so as to permit his condition to be reviewed by "Serbian specialist physicians", which have not yet been received, despite Mladić's written consent for their provision to him, his son and Defence Counsel.⁶⁸ He accordingly asks that the requested medical records be shared with: (i) him, his family, and Defence Counsel; and (ii) me as per the Order of 28 April 2024.⁶⁹

2. Assessment

44. As mentioned above, I am satisfied with the information I have received from the UNDU for the purpose of considering the Application.⁷⁰ Accordingly, I do not find it necessary to receive additional medical records.

45. However, I wish to emphasise that the right of persons detained at the UNDU to have access to all information on their medical file upon request is fundamental.⁷¹ I recall in this regard that according to Rule 54 of the Rules of Detention, a detainee shall have the right to access all information in his or her medical file upon request, except in two limited circumstances, and that in case the Medical Officer decides to refuse or restrict access to particular information, the detainee shall be informed of this decision and of the reasons. I also recall that such requests for access of third parties, including a detainee's family and Defence Counsel, must be made in accordance with the Guidelines on Requesting Medical Records of Detainees. I therefore urge the Registrar to ensure, if this has not already occurred, that Mladić, and any other persons authorised by him in accordance with the applicable procedure, receive as soon as possible any medical records he has requested.

⁶⁸ Defence Submission of 1 May 2024, paras. 5-6, 12-13, 15.

⁶⁹ Defence Submission of 1 May 2024, para. 16.

⁷⁰ See *supra* para. 37.

⁷¹ *Mladić* Decision on Detention Complaint, para. 41.

VI. CONCLUSION

46. Based on the information before me, I am of the view that the compelling humanitarian circumstances invoked by Mladić are not substantiated at this stage, and that Mladić receives all necessary care at the UNDU. Accordingly, I consider that the Application should be denied. I would, however: (i) urge the Registrar to ensure, if this has not already occurred, that Mladić, and any other persons authorised by him in accordance with the applicable procedure, receive as soon as possible any medical records he has requested; and (ii) encourage the Registrar to maintain his efforts to ensure that Mladić continues to have access to translation services in his own language in relation to his ailments and treatments.

VII. DISPOSITION

47. For the foregoing reasons, and pursuant to Article 26 of the Statute and Rules 150 and 151 of the Rules, I hereby **DENY** the Application.

48. The Registrar is: (i) **URGED** to ensure, if this has not already occurred, that Mladić, and any other persons authorised by him in accordance with the applicable procedure, receive as soon as possible any medical records he has requested; (ii) **ENCOURAGED** to maintain his efforts to ensure that Mladić continues to have access to translation services in his own language in relation to his ailments and treatments; and (iii) **DIRECTED** to provide the authorities of Serbia with a copy of the public redacted version of this decision as soon as practicable.

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

Done this 10th day of May 2024,
At The Hague,
The Netherlands.



Judge Graciela Gatti Santana
President

[Seal of the Mechanism]



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Date Created/ Daté du :	10 May 2024	Date transmitted/ Transmis le :	10 May 2024
		Number of Pages/ Nombre de pages :	14
Original Language/ Langue de l'original :	<input checked="" type="checkbox"/> English/ Anglais	<input type="checkbox"/> French/ Français	<input type="checkbox"/> Kinyarwanda
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