



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-00-39-AR73.2
Date: 16 August 2006
Original: English

THE VICE-PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Kevin Parker, Vice-President
Registrar: Mr. Hans Holthuis
Decision: 16 August 2006

PROSECUTOR

v.

MOMČILO KRAJIŠNIK

ORDER PURSUANT TO RULE 15

The Office of the Prosecutor:

Mr. Mark B. Harmon
Mr. Alan Tieger

Counsel for the Accused:

Mr. Nicholas Stewart QC
Mr. David Josse

I, Kevin Parker, Vice-President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”),

NOTING that on 13 July 2006, Momčilo Krajišnik (“Krajišnik”) filed a Motion before Judge Shahabuddeen requesting that Judge Meron be disqualified from sitting on Krajišnik’s interlocutory appeal from the Trial Chamber’s Decision of 16 June 2006 dismissing Krajišnik’s motion for a ruling that His Honour Judge Canivell is unable to continue sitting in this case (“Motion”);

NOTING that, pursuant to Rule 15(B) of the Rules, the Motion was referred to the President, Judge Pocar, as the Presiding Judge of the Appeals Chamber who in accordance with Rule 15(B)(i) consulted with Judge Meron and on 15 August 2006 submitted to me a report pursuant to that Rule, because the President, having consulted with Judge Meron as required by Rule 15(B)(i), was thereafter unable to act in furtherance of his own report;

CONSIDERING that pursuant to Rule 15(A) a Judge may not sit in any case in which he or she “has a personal interest or concerning which the Judge has or has had any association which might affect his or her impartiality;”

CONSIDERING further the Appeals Chamber has observed in respect of this Rule that:

- (i) A Judge is not impartial if it is shown that actual bias exists.
- (ii) There is an unacceptable appearance of bias if:

a Judge is a party to the case, or has a financial or proprietary interest in the outcome of a case, or if the Judge’s decision will lead to the promotion of a cause in which he or she is involved, together with one of the parties. Under these circumstances, a Judge’s disqualification from the case is automatic; or

the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.¹

NOTING that it appears that it is contended by Krajišnik in the appeal to the effect that, without amendment to the Statute of the Tribunal, it was not open to the Security Council or the General Assembly to effectively extend the term of Judge Canivell as an *ad litem* Judge beyond the period provided by Article 13 *ter* (2) of the Statute;

NOTING further that it appears to be the effect of contentions of Krajišnik that in communications in his then capacity as President, to the Secretary-General, Judge Meron has expressed views or

¹ *Prosecutor v. Furundžija*, Case No: IT-95-17/1-A, Judgement, 21 July 2000, para 189. See also *Prosecutor v. Brđanin*, Case No: IT-99-36-R77, “Decision on Application for Disqualification”, 11 June 2004, para 6.

advocated action contrary to the primary contention referred to above such that in these circumstances a reasonable observer, properly informed, would be led to apprehend bias;

NOTING that in his report of 15 August 2006 President Pocar observes that Judge Meron does not accept that there is merit in the motion or that there are grounds by which he should recuse himself from the hearing of the appeal;

CONSIDERING that in these circumstances, it is necessary and appropriate that a panel of three Judges drawn from other Chambers should consider the merits of the application that Judge Meron not sit on the hearing of the appeal and report its decision on those merits to me pursuant to Rule 15(B)(ii) of the Rules.

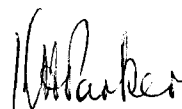
For the foregoing reasons, pursuant to Rules 15 and 21 of the Rules, I hereby **APPOINT** a panel of three Judges to consider the merits of the application, composed as follow:

Judge Iain Bonomy, Presiding

Judge Christine Van Den Wyngaert

Judge Bakone Justice Moloto

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



Judge Parker
Vice-President

Dated this sixteenth day of August 2006
At The Hague
The Netherlands

[Seal of the Tribunal]