

**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-98-32/1-
AR11bis.1
Date: 4 May 2007
Original: English

IN THE APPEALS CHAMBER

Before: Judge Wolfgang Schomburg, Presiding
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Liu Daqun
Judge Andréia Vaz

Registrar: Mr. Hans Holthuis

Decision of: 4 May 2007

PROSECUTOR

v.

**MILAN LUKIĆ &
SREDOJE LUKIĆ**

**DECISION ON 'MOTION TO DISQUALIFY PRESIDENT AND
VICE-PRESIDENT FROM APPOINTING APPEALS
CHAMBER AND TO DISQUALIFY PRESIDENT JUDGE AND
JUDGE MERON FROM SITTING ON APPEALS CHAMBER'**

The Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Mark B. Harmon
Ms. Susan Somers

Counsel for Milan Lukić:

Mr. Alan L. Yatvin
Ms. Jelena Đ. Lopičić Jančić

Counsel for Sredoje Lukić:

Mr. Đuro Čepić
Mr. Jens Dieckmann

THE APPEALS CHAMBER 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 (“Appeals Chamber” and “International Tribunal,” respectively);

BEING SEIZED of the “Motion to Disqualify President and Vice-President From Appointing Appeals Chamber and to Disqualify President Judge [*sic*] and Judge Meron from Sitting on Appeals Chamber” filed by Counsel for Milan Lukić (“Appellant”) on 18 April 2007 (“Motion”);

NOTING that the Prosecution has not filed a response;

NOTING the “Decision on Referral of Case Pursuant to Rule 11*bis* with Confidential Annex A and Annex B” rendered by the Referral Bench on 5 April 2007;¹

NOTING the “Notice of Appeal of Milan Lukić from 5 April 2007 Decision on Referral of Case Pursuant to Rule 11*bis*” filed by the Appellant on 18 April 2007;

NOTING the “Order Assigning Judges to a Case Before the Appeals Chamber” issued by the President of the International Tribunal (“President”) on 24 April 2007;

NOTING that in the Motion the Appellant requests “that the President Judge [*sic*] be disqualified from appointing the Appeals Chamber and further that both he and former President Judge Meron be disqualified from sitting on the Appeal [*sic*] Chamber in this case,” and “that Vice-President Judge Parker be disqualified from deciding this motion to disqualify or selecting the Appeals Chamber if the motion is granted”;²

CONSIDERING that neither the President nor the Vice-President nor Judge Meron is on the bench in this case, and that therefore the Motion is moot with regard to their potential disqualification;

CONSIDERING that pursuant to Article 12(3) of the Statute of the International Tribunal each appeal bench is composed of five members of the Appeals Chamber;

CONSIDERING that an order determining the composition of a bench of the Appeals Chamber in a particular case is rendered by the President pursuant to his authority to “coordinate the work of the Chambers”³ and is thus in essence an administrative matter;

¹ Decision on Referral of Case Pursuant to Rule 11*bis* with Confidential Annex A and Annex B, Case No. IT-98-32/1-PT, 5 April 2007.

² Motion, para. 22.

³ Rule 19(A) of the Rules of Procedure and Evidence of the International Tribunal.

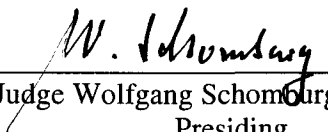
CONSIDERING that Rule 15 of the Rules of Procedure and Evidence of the International Tribunal provides that “a Judge may not sit on a trial or appeal in any case in which the Judge has personal interest or concerning which the Judge has or has had any association which might affect his or her impartiality” but does not address the assignment of Judges to a bench;

CONSIDERING therefore that neither the President nor the Vice-President can be disqualified from appointing the members of a bench of the Appeals Chamber;

DISMISSES the Motion in its entirety.

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

Dated this 4th day of May 2007,
At The Hague, The Netherlands.


Judge Wolfgang Schomburg
Presiding

[Seal of the International Tribunal]