

IT-98-32/1-AR 11bis.1
A143-A140
11 MAY 2007

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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-98-32/1-AR11bis.1

Date: 11 May 2007

Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Fausto Pocar, President

Registrar: Mr. Hans Holthuis

Order of: 11 May 2007

PROSECUTOR

v.

**MILAN LUKIĆ &
SREDOJE LUKIĆ**

**ORDER ON SECOND MOTION TO DISQUALIFY PRESIDENT AND VICE-PRESIDENT
FROM APPOINTING JUDGES TO APPEAL BENCH AND TO DISQUALIFY
PRESIDENT AND JUDGE MERON FROM SITTING ON APPEAL**

The Office of the Prosecutor

Carla Del Ponte
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Susan Somers

Counsel for Milan Lukić

Alan L. Yatvin
Jelena Đ. Lopičić Jančić

Counsel for Sredoje Lukić

Đuro Čepić
Jens Dieckmann

A handwritten signature in black ink, appearing to be 'JL' or similar initials.

1. On 18 April 2007, Counsel for Milan Lukić (“Appellant”) filed a Motion¹ requesting my disqualification as President from appointing a bench of the Appeals Chamber to consider his pending *11bis* referral Appeal,² and my disqualification, as President of the International Tribunal, and that of Judge Meron as former President of the International Tribunal, from sitting on that Appeal. The Appellant further requested the disqualification of Vice-President Judge Parker from hearing the Motion and from assigning a bench of the Appeals Chamber should the Motion be granted.³

2. On 24 April 2007, I assigned a bench of the Appeals Chamber to determine the Appellant’s Motion.⁴ On 4 May 2007, the Appeals Chamber issued its Decision.⁵ In that Decision, the Appeals Chamber found the Motion moot with respect to the request for the disqualification of Judge Meron and me from the Appeal as we were not assigned to that Appeal.⁶ The Decision also held that as Rule 15 of the Rules of Procedure and Evidence (“Rules”) did not address the assignment of Judges to a bench, and as this was essentially an administrative matter carried out by the President pursuant to his authority “to coordinate the work of the Chambers”, neither myself as President, nor the Vice-President, could be disqualified from appointing a bench of the Appeals Chamber.⁷

3. Following the issuance of the Decision on 8 May 2004, I issued an order assigning a bench of the Appeals Chamber to the Appellant’s Appeal which included Judge Meron as a member.⁸ On 9 May 2007, the Appellant filed a Second Motion⁹ for disqualification once again seeking my disqualification as President from appointing a bench to the Appeal and requesting that I, as President, and Judge Meron be disqualified from hearing the Appeal.

4. As the Appeals Chamber has already ruled on my disqualification from appointing members of the Appeals Chamber to the Appeal, I will not address it any further. With respect to the Appellant’s request that I be disqualified from hearing his Appeal, as I am not a member of the bench assigned to that Appeal, there is no merit to that request. The Appellant’s request that Judge Meron be disqualified from his Appeal is addressed below.

¹ 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, 18 April 2007 (“Motion”).

² Notice of Appeal of Milan Lukić from 5 April 2007 Decision on Referral of Case Pursuant to Rule 11*bis*, 18 April 2007 (“Appeal”).

³ Motion, para. 22.

⁴ Order Assigning Judges to a Case Before the Appeals Chamber, 24 April 2007.

⁵ 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, 4 May 2007 (“Decision”).

⁶ Decision, p.1.

⁷ *Ibid.*, pp. 1-2.

⁸ Order Assigning Judges to a Case Before the Appeals Chambers, 8 May 2007.

⁹ Second Motion to Disqualify President and Vice-President From Appointing Judges to Appeal Bench and to Disqualify President and Judge Meron from Sitting on Appeal, 9 May 2007 (“Second Motion”).

6. When an Appellant requests the disqualification of a Judge from sitting on a bench assigned to his proceedings the applicable procedure is found in Rule 15 of the Rules. Rule 15(B) provides that the Presiding Judge of the relevant Chamber is to consult with the Judge in question and confer with the President. Following that procedure, I have consulted with Judge Meron, as the Presiding Judge of the Appeals Chamber for this Appeal.

7. Judge Meron has advised that he does not consider there to be any merit to the request nor are there any grounds which support his recusal from the Appellant's Appeal. He does not consider that the fact that he visited Sarajevo and spoke in support of the War Crimes Chamber of the State Court of Bosnia and Herzegovina,¹⁰ or that he addressed the United Nations Security Council in support of this court and that it be adequately funded,¹¹ can rebut the presumption of impartiality that he enjoys as a Judge of the International Tribunal.¹² Judge Meron states that in both of these instances he was acting in his administrative and representative capacity as the then President of the International Tribunal, and that a reasonable observer properly informed, could not reasonably consider him unable to bring an impartial and unprejudiced mind to the specific judicial issues raised in the Appellant's Appeal.

8. Having considered the view of Judge Meron, I am persuaded that there is no merit in the Motion for his disqualification from this Appeal. I am satisfied that Judge Meron's expressions of support for the War Crimes Chamber of the State Court of Bosnia and Herzegovina were made pursuant to his administrative capacity as the then President of the International Tribunal. Having been made in that capacity, and considering the contents of the statements, they cannot give rise to a reasonable apprehension of bias on the part of Judge Meron in determining the merits of the Appellant's Appeal. The fact that statements made by the President in his administrative capacity will rarely be capable of impugning his impartiality as a Judge of this Tribunal has already been settled by the jurisprudence of this Tribunal.¹³

9. On the basis of the foregoing, I do not consider it necessary to evoke the procedure of Rule 15(B) (ii) and appoint a panel of three Judges drawn from other Chambers to report to me on the

¹⁰ Second Motion, para. 12.

¹¹ *Ibid.*, para. 8.

¹² *Prosecutor v Anto Furundžija*, Case No. IT-95-17/1-A, Judgement, 21 July 2000, para. 197; *Prosecutor v Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgement, 1 June 2001, para. 91; *Prosecutor v Georges Anderson Nderubunwe Rutaganda*, Case No. ICTR096-3-A, Judgement, 26 May 2003, para. 42; *Prosecutor v Stanislav Galić*, Case No. IT-98-29-A, para. 41.

¹³ *Prosecutor v Krajišnik*, Order on Defence Motion That his Honour Judge Meron Not Sit on an Appeal, 1 September 2006.

merits of the Appellant's request for Judge Meron's disqualification. Accordingly, the Appellant's Second Motion is **DISMISSED**.

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

Done this 11th day of May 2007,
At The Hague,
The Netherlands.



Judge Fausto Pocar
President

[Seal of the International Tribunal]