



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-04-74-T
Date: 4 October 2010
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President
Registrar: Mr. John Hocking
Decision: 4 October 2010

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ČORIĆ
BERISLAV PUŠIĆ**

PUBLIC

**DECISION OF THE PRESIDENT ON
JADRANKO PRLIĆ'S MOTION TO DISQUALIFY
JUDGE ÁRPÁD PRANDLER**

Office of the Prosecutor:

Mr. Kenneth Scott
Mr. Douglas Stringer

Counsel for the Accused:

Mr. Michael G. Karnavas and Ms. Suzana Tomanović for Jadranko Prlić
Ms. Senka Nožica and Mr. Karim Khan for Bruno Stojić
Mr. Božidar Kovačić and Ms. Nika Pinter for Slobodan Praljak
Ms. Vesna Alaburić and Mr. Nicholas Stewart for Milivoj Petković
Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Valentin Čorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Berislav Pušić

I, Patrick Robinson, 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”) am seised of “Jadranko Prlić’s Motion for Disqualification of Judge Prandler”, filed publicly with a confidential annex on 16 September 2010 (“Motion”), and “Slobodan Praljak’s Joinder to Jadranko Prlić’s 16 September 2010 Motion for Disqualification of Judge Prandler”, filed confidentially on 16 September 2010 (“Joinder Motion”).

A. Background

1. Following my denial based upon procedural grounds of a motion for the disqualification of Judge Árpád Prandler,¹ the Prlić Defence filed the Motion before the Presiding Judge of Trial Chamber III, Judge O-Gon Kwon, seeking the disqualification of Judge Prandler from the trial of *Prosecutor v. Prlić et al.* on the basis of an alleged appearance of bias resulting from Judge Prandler’s previous association with Victor Andreev, the Head of the United Nations Civil Affairs in Bosnia and Herzegovina.²

2. On 16 September 2010, the Praljak Defence joined the Motion, emphasising that only an appearance of bias was being alleged against Judge Prandler, and not an actual bias.³ According to the Praljak Defence, Judge Prandler’s “long and profound association with the United Nations” is not itself sufficient to merit disqualification, but that, when combined with other factors, creates “a reasonable apprehension that [he] might not bring an impartial and unprejudiced mind to issues arising in the case”.⁴

3. On 24 September 2010, the Prosecution filed a response to the Motion, arguing that it “is procedurally flawed and utterly baseless.”⁵ On 27 September 2010, the Prlić Defence filed a request for leave to file a reply to the Prosecution Response, along with the substantive reply.⁶ On the same day, the Praljak Defence filed a similar request.⁷

¹ Decision of the President on Jadranko Prlić’s Motion to Disqualify Judge Árpád Prandler, 16 September 2010.

² Motion, p. 1, paras 14–15, 19, 21.

³ Confidential Slobodan Praljak’s Joinder to Jadranko Prlić’s 16 September 2010 Motion for Disqualification of Judge Prandler, 16 September 2010 (“Joinder Motion”), para. 2.

⁴ Joinder Motion, para. 3 (footnote and internal quotation marks omitted).

⁵ Prosecution Response to Prlić Motion for Disqualification of Judge Prandler, 24 September 2010 (“Response”).

⁶ Confidential Jadranko Prlić’s Request for Leave to Reply & Jadranko Prlić’s Reply to Prosecution Response to Prlić Motion for Disqualification of Judge Prandler, 27 September 2010 (“Prlić Reply”).

⁷ Confidential Slobodan Praljak’s Request for Leave to Reply to the Prosecution’s 24 September 2010 Filing Regarding the Disqualification of Judge Prandler & Slobodan Praljak’s Reply to the Prosecution’s Filing, 27 September 2010 (“Praljak Reply”).

4. On 29 September 2010, the Presiding Judge of Trial Chamber III, Judge O-Gon Kwon, denied as moot a motion by the Prlić Defence, joined by the Praljak Defence, for the disclosure of certain material that had pertained to the first, procedurally flawed motion for disqualification and that had been filed in an *ex parte* manner (“Decision on Disclosure”).⁸ On 30 September 2010, the Prosecution filed a request for clarification of this decision.⁹ On 1 October 2010, the Prlić Defence responded to the request.¹⁰ On the same day, Judge Kwon denied the Prosecution’s request for clarification (“Decision on Clarification”).¹¹

5. On 1 October 2010, the Presiding Judge of Trial Chamber III, Judge O-Gon Kwon, filed his report in relation to the Motion, pursuant to Rule 15(B)(i) of the Rules.¹²

B. Applicable Law

6. Rule 15(A) of the Rules provides that:

A Judge may not sit on a trial or appeal in any case in which the Judge has a personal interest or concerning which the Judge has or has had any association which might affect his or her impartiality. The Judge shall in any such circumstance withdraw, and the President shall assign another Judge to the case.

The Appeals Chamber has held that:

A. A Judge is not impartial if it is shown that actual bias exists.

B. There is an unacceptable appearance of bias if:

i) a Judge is a party to the case, or has 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

ii) the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.¹³

⁸ Confidential Decision on Motion for Disclosure of *Ex Parte* Correspondence and on Requests for Leave to Reply, 29 September 2010 (“Decision on Disclosure”), paras 1, 10.

⁹ Confidential Prosecution’s Motion for Clarification, 30 September 2010.

¹⁰ Confidential Jadranko Prlić’s Response to Prosecution Motion for Clarification, 1 October 2010.

¹¹ Confidential Decision on Motion for Clarification of the Decision of 29 September 2010, 1 October 2010 (“Decision on Clarification”).

¹² Confidential Report to the President by Presiding Judge of Trial Chamber III on Motion to Disqualify Judge Prandler, 1 October 2010 (“Presiding Judge’s Report”).

¹³ *Prosecutor v. Anton Furundžija*, Case No. IT-95-17/1-A, Judgement, 21 July 2000 (“*Furundžija* Appeal Judgement”), para. 189; *see also Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Decision on Motion for Disqualification, 12 January 2009 (“*Lukić* Decision”), para. 2; *Prosecutor v. Vidoje Blagojević*, Case No. IT-02-60-R, Decision on Motion for Disqualification, 2 July 2008 (“*Blagojević* Decision”), para. 2; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision on Motion for Disqualification, 16 February 2007 (“*Šešelj* Decision”), para. 4.

With respect to the reasonable observer prong of this test, the Appeals Chamber has held that the “reasonable person must be an informed person, with knowledge of all the relevant circumstances, including the traditions of judicial integrity and impartiality that form a part of the background and apprised also of the fact that impartiality is one of the duties that Judges swear to uphold.”¹⁴

7. The Appeals Chamber has also emphasised that there is an assumption of impartiality that attaches to a Judge.¹⁵ Accordingly, the party who seeks the disqualification of a Judge bears the burden of adducing sufficient evidence that the Judge is not impartial, and there is a high threshold to rebut the presumption of impartiality.¹⁶ The party must demonstrate “a reasonable apprehension of bias by reason of prejudgement” which is “firmly established”.¹⁷ The Appeals Chamber has explained that this high threshold is required because “it is as much a threat to the interests of the impartial and fair administration of justice for judges to disqualify themselves on the basis of unfounded and unsupported allegations of apparent bias as is the real appearance of bias itself.”¹⁸

8. Furthermore, Rule 15(B) of the Rules provides that:

- (i) Any party may apply to the Presiding Judge of a Chamber for the disqualification and withdrawal of a Judge of that Chamber from a trial or appeal upon the above grounds. The Presiding Judge shall confer with the Judge in question and report to the President.
- (ii) Following the report of the Presiding Judge, the President shall, if necessary, appoint a panel of three Judges drawn from other Chambers to report to him its decision on the merits of the application. If the decision is to uphold the application, the President shall assign another Judge to sit in the place of the Judge in question.
- (iii) The decision of the panel of three Judges shall not be subject to interlocutory appeal.
- (iv) If the Judge in question is the President, the responsibility of the President in accordance with this paragraph shall be assumed by the Vice-President or, if he or she is not able to act in the application, by the permanent Judge most senior in precedence who is able to act.

C. Discussion

9. I note that, in paragraph 1 of the Motion, the Prlić Defence alleges perceived bias on the part of Judge Prandler, but in paragraph 21 of the Motion alleges both actual and perceived bias. I therefore have construed the Motion as a challenge to Judge Prandler on the basis of both actual and

¹⁴ *Lukić* Decision, para. 2; *Blagojević* Decision, para. 2; *Šešelj* Decision, para. 5; *Furundžija* Appeal Judgement, para. 190.

¹⁵ *Lukić* Decision, para. 3; *Blagojević* Decision, para. 3; *Šešelj* Decision, para. 5; *Furundžija* Appeal Judgement, para. 196.

¹⁶ *Lukić* Decision, para. 3; *Blagojević* Decision, para. 3; *Šešelj* Decision, para. 5; *Furundžija* Appeal Judgement, para. 197.

¹⁷ *Lukić* Decision, para. 3; *Blagojević* Decision, para. 3; *Furundžija* Appeal Judgement, para. 197; *Prosecutor v. Delalić et al.*, Case No. IT-96-21-A, Judgement, 20 February 2001 (“*Čelebići* Appeal Judgement”), para. 707.

¹⁸ *Lukić* Decision, para. 3; *Blagojević* Decision, para. 3; *Čelebići* Appeal Judgement, para. 707.

perceived bias. The Praljak Defence makes it clear in the Joinder Motion that it is only alleging perceived bias.

10. I consider that the Prlić Defence has provided no substantiation for its claim that Judge Prandler has any actual bias and will now consider the allegations of perceived bias.

1. Disclosure of the report of the Presiding Judge of the case and the Prlić and Praljak Defences' requests to file a reply

11. In his Decision on Disclosure, Judge Kwon denied as moot a motion by the Prlić Defence, which was joined by the Praljak Defence, for the disclosure of certain material filed in an *ex parte* manner by the Presiding Judge of the case, Judge Jean-Claude Antonetti. Judge Kwon explained that, in preparing his report to me, he had independently conferred with Judge Prandler and in his consultations had fully canvassed the same questions raised in the *ex parte* correspondence to ensure a complete consideration of the relevant issues. Judge Kwon also stated that the answers provided by Judge Prandler would be disclosed in his report in the interests of maintaining the transparency of the process and to allay concerns expressed by the Prlić and Praljak Defences. It was finally observed by Judge Kwon that, having reviewed the nature and content of the *ex parte* correspondence, the contents thereof, which would be reflected in his report, did not require any additional submissions by the parties.¹⁹

12. On 1 October 2010, Judge Kwon, in his Decision on Clarification, denied the Prosecution's request for clarification of the Decision on Disclosure and its request for an opportunity to respond to the arguments in the Prlić Reply. In doing so, Judge Kwon stated that "it is clear from the [Decision on Disclosure] that neither Judge Antonetti's report, nor any submissions made in relation to it, will be taken into account in the preparation of my report" to the President.²⁰

13. I simply note here that the above decisions were fully within the competence of the Presiding Judge of Trial Chamber III to make and that I agree with his disposition of them, including his decision to grant leave to file the replies.

2. Report of the Presiding Judge of Trial Chamber III

14. On 1 October 2010, the Presiding Judge of Trial Chamber III, Judge O-Gon Kwon, reported to me on this matter, pursuant to Rule 15(B)(i) of the Rules. In his report, Judge Kwon points out

¹⁹ Decision on Disclosure, paras 1, 10–11.

²⁰ Decision on Clarification, p. 3.

that the *Prlić et al.* Trial Chamber originally denied the request for further clarification of the nature of Judge Prandler's relationship with Andreev on the basis that the more appropriate course of action was for the Prlić Defence to file a motion for disqualification pursuant to Rule 15(B) of the Rules to allow the issue to be explored through proper channels envisaged by the Rules. It is noted by Judge Kwon that the reasoned decision of the Trial Chamber does not in any way suggest that Judge Prandler was independently attempting to hide anything about his association with Andreev.²¹

15. Judge Kwon attaches to his report a memorandum from Judge Prandler to him, dated 30 September 2010, in which Judge Prandler comments upon the issues raised in the Motion. I note that Judge Kwon, in attaching this memorandum to his report, has provided the parties with copies of Judge Prandler's memorandum. Based upon his consultations with Judge Prandler, Judge Kwon reports that the full details of the association of Judge Prandler with Andreev—including how, when, and in what capacity they met—are now available to the parties and that it is clear from Judge Prandler's written response and from Judge Kwon's consultations with Judge Prandler that there was no intention by Judge Prandler to deliberately conceal any information that was relevant to the issue.²²

16. Judge Kwon further reports that, in his consultations with Judge Prandler, in which the issues raised in the Motion were fully discussed, he has confirmed that Andreev was nothing more than a distant acquaintance of Judge Prandler whom he met at the United Nations in New York in the second half of the 1980s. They worked in separate departments, never participated in common projects or activities, and did not form any kind of personal relationship.²³ Judge Kwon found it significant that Judge Prandler left the United Nations in New York in October 1990, has not met or spoken to Andreev since then, and was not even aware that he was a United Nations observer in Bosnia and Herzegovina until the *Prlić et al.* trial.²⁴ It is also observed by Judge Kwon that the question put to Petković during the 8 March 2010 proceedings was intended to clarify the basis upon which the United Nations reports, which had been authored by Andreev, were being challenged.²⁵

²¹ Presiding Judge's Report, para. 10.

²² Presiding Judge's Report, para. 11.

²³ Presiding Judge's Report, para. 12.

²⁴ Presiding Judge's Report, para. 12.

²⁵ Presiding Judge's Report, para. 13.

17. Judge Kwon therefore concludes that he has been unable to identify a basis upon which a reasonable observer, properly informed, would reasonably apprehend bias on the part of Judge Prandler in his role as a Judge in the *Prlić et al.* trial and that the Motion is without merit.²⁶

3. Association with Andreev

18. The Prlić Defence points out that it has been concerned about the conduct and objectivity of United Nations personnel throughout the proceedings, but that it was not until the disclosure of the Mladić diaries that it “was able to surmise Andreev’s dark character and questionable pro-Bosnian Serb / anti-Bosnian Croat activities”.²⁷ According to the Prlić Defence, four United Nations reports authored by Andreev were admitted into evidence in the trial, and two witnesses commented upon Andreev during their testimony before the Trial Chamber. The Prlić Defence argues that, when Cedric Thornberry—the former Deputy Chief of Mission for UNPROFOR—praised Andreev, Judge Prandler was silent; but, when Petković testified that Andreev had been “playing games”, Judge Prandler “found [his testimony] disquieting”.²⁸ Moreover, it is submitted that this situation has “contaminated” at least 630 documents and 37 witnesses in the trial.²⁹ It is argued that “Judge Prandler, due to his previous association with Andreev and work at the [United Nations] ... *may* give undue weight to (unreliable) evidence *just* because it is generated by or associated with Andreev.”³⁰ The Prlić Defence finally argues that Judge Prandler had an ethical obligation to disclose, promptly and in detail, his previous association with Andreev and that his failure to do so “magnifies the perception of bias.”³¹

19. The Praljak Defence submits that Judges of the Tribunal “should treat with special concern, and without special privilege, relationships and associations within the United Nations.”³²

20. The Prosecution responds that the Motion provides no basis for the argument that Judge Prandler’s prior acquaintance with Andreev at the United Nations in New York creates a reasonable appearance of bias.³³ The Prosecution discusses prior disqualification decisions wherein various relationships between a Judge and a witness in a case were not held to give rise to an appearance of

²⁶ Presiding Judge’s Report, para. 14.

²⁷ Motion, paras 15–16.

²⁸ Motion, para. 15.

²⁹ Motion, para. 18.

³⁰ Motion, para. 19 (emphasis in original).

³¹ Motion, paras 14, 21; *see also* Prlić Reply, paras 10–15. I hereby note—and reject—the Prlić Defence’s contention that the Prosecution Response does not conform to the Rules because Rule 15(B) of the Rules does not contemplate parties filing a response to a motion to disqualify. Prlić Reply, para. 1.

³² Joinder Motion, paras 4–5; *see also* Praljak Reply, paras 11–12.

³³ Response, para. 15.

bias and makes the point that here, in the present case, Andreev is not even a witness testifying before the Chamber.³⁴ It is further argued that the Prlić Defence's assertion that hundreds of documents in the case have been "contaminated" is unsupported and speculative at best.³⁵ In relation to the allegations that Judge Prandler's prior service to the United Nations causes an appearance of bias, the Prosecution responds that just as a Judge's nationality is patently insufficient to rebut the presumption of impartiality—even when a Judge is considering the actions of his own government—a Judge's prior UN experience cannot be an adequate basis for a challenge to his impartiality in respect of evidence from or concerning the United Nations.³⁶ The Prosecution further argues that Judge Prandler's prior experience with the United Nations is part of his qualifications under Article 13 of the Statute to be a Judge at the Tribunal and that it would be an odd result if the operation of an eligibility requirement were to lead to an inference of bias.³⁷ Finally, the Prosecution attempts to rebut the Prlić Defence's claim that Judge Prandler has refused to disclose information about his association with Andreev by arguing that it was Judge Prandler himself who voluntarily disclosed his prior association with Andreev and by pointing out that the Trial Chamber seized of the case dismissed the Prlić Defence's motion for additional information on this matter as untimely.³⁸

21. In relation to the argument that Judge Prandler's prior association with Andreev leads to an alleged appearance of bias, I consider the exchange in court that is at the heart of the Motion. During the cross-examination of Petković by the Prosecution, the contents of a document authored by Andreev were put to Petković, who stated:

A. No, I don't accept what he wrote. Those are his assessments and his games.

Q. Sir, you knew that the HVO soldiers, the troops, the units that were going to Vares around the 23rd of October, you know that these units had been notorious bad actors in the past, hadn't they? The Maturice and the Apostoli were problem units. They had been involved in a number of incidents of misbehaviour before that, hadn't they?

JUDGE PRANDLER: Excuse me. Mr. Scott, I would like only to ask Mr. Petkovic about the following: It happened to me that I knew Mr. Andreev from the United Nations work and from New York, so when you said that, No, I do not accept what he wrote, and then you continued, "Those are his assessments and his games," end of quotation, I would like to ask you if you have anything—a kind of opinion or concrete events which you base your position on him, as far as when you say that those are his assessments and his games, and what do you mean by "games"?

THE WITNESS: [Interpretation] Your Honour, Mr. Viktor Andreev was informed by me and others regarding the position of Croats in Travnik, Kakanj, Fojnica, and he never reacted in this way. But he said, as did others, that many Croats had left. So you cannot accept, when he says

³⁴ Response, para. 16.

³⁵ Response, para. 17.

³⁶ Response, paras 20–21.

³⁷ Response, para. 23.

³⁸ Response, paras 25–26.

with respect to such events which had happened before Vares, that the Croats had left, and he didn't take any steps. We asked him to go to Catici. There was a thermal power-plant in Kakanj. There were 200-odd Croats there, and Mr. Viktor Andreev did not want to go to Catici to see what was happening to those Croats. Therefore, I have the right to conclude that Mr. Andreev has a double standard. And, after all, I did meet with that gentleman several times during talks in Sarajevo and Kiseljak when these things happened. And when a man says on one occasion that the Croats had left, and in a second -- on a second event that the Croats had been expelled, these are not small towns, these are not minor events that were happening, then I have the right to say, of this man, that he has double standards.

MS. TOMANOVIĆ: [Interpretation] I apologise. I need to correct the transcript. I think it is important. On page 103, line 22, the general said that Mr. Victor Andreev said that the Croats had left, and for Muslims, he always said that he had been expelled or forced out. I think the General can confirm that that is what he said.

THE WITNESS: [Interpretation] Yes, quite so. And this is evident in all their documents. That is what they resort to. The Croats had left, and when it comes to Muslims, then they had been expelled. And it is very hard to say of such people that they are right. I had contacts with them, and I know very well what they were doing, and it wasn't correct for them to behave in that way, you see. Because for more than 100.000 Croats from Central Bosnia, to say of them that they had left, and as for Muslims somewhere else, that they had been expelled, I think that is not appropriate, even if his name is Mr. Viktor Andreev, or his right-hand man, Mr. Benabou. We had encounters with these people, and I know and we saw what they wrote in their reports and what they said.

JUDGE PRANDLER: Thank you for your answer.³⁹

During this cross-examination, the Prosecution was putting a document authored by Andreev to Petković and attempting to rely upon the truth of its contents. Petković was giving evidence that the contents of the document were not accurate based upon his first-hand experience with the author of the document. It is therefore clear that the reliability of the contents of the document was an issue that was contended between the parties.

22. I note that Judge Prandler, before asking the question, disclosed his previous association with the author of the document. Although it was not strictly necessary for Judge Prandler to do so, the fact that he did dispels any possible appearance of bias that could have existed in relation to his previous association with the author of the document. Following this voluntary disclosure, Judge Prandler put a question to Petković in order to probe further the basis upon which he based his opinion that the contents of the document were not accurate. A question aimed at ascertaining the basis for a witness's opinion that the author of a document did not record events accurately is well within a Judge's discretion in the exercise of his judicial mandate as the primary trier of fact in a trial. Indeed, one of a Judge's basic functions, as a trier of fact, is to assess the reliability of documentary evidence tendered during the trial, and questioning witnesses in relation to a document's reliability is one of the ways in which this assessment can be made.

³⁹ T. 50599-50601 (8 March 2010).

23. I also note that Petković readily answered Judge Prandler's question, thus exercising the opportunity that Judge Prandler afforded him to further explain the basis upon which he doubted the veracity of the contents of the document authored by Andreev. Although it is of course for the Trial Chamber to decide what weight to give to Petković's testimony, I observe that this testimony has the potential to assist the Trial Chamber when it decides what weight to ascribe to the document during its final deliberations in the case. Therefore, not only was Judge Prandler's questioning of the witness permissible, it was also potentially helpful to the trier of fact.

4. Alleged deference to United Nations documents

24. The Praljak Defence argues that comments made by Judge Prandler during the trial proceedings allegedly show his deference to official documents of the United Nations and his emphasis upon the importance of accusations against the United Nations.⁴⁰ As support for his contention that it could be perceived that Judge Prandler gives special deference to documents generated by the United Nations, the Praljak Defence quotes a portion of the transcript wherein the Plić Defence objected to a question asked by the Prosecution during the cross-examination of Praljak.

25. The Prosecution responds that, in the portion of the transcript referred to by the Praljak Defence, Judge Prandler's comments focused upon the dissemination of the United Nations report, which was an issue among the parties.⁴¹

26. I will consider the portion of the transcript that is quoted to substantiate the argument that there is an appearance of bias in relation to Judge Prandler's alleged deference to United Nations documents. During the arguments pertaining to this objection, Judge Prandler expressed the view that

[the United Nations] reports are of public domain, and they have been distributed and used and acknowledged as official documents of the United Nations and of the Security Council, and therefore they have standing. Now, of course I do recognise that here in this case the Prosecution spoke about an article reporting about [the] report itself, so from this point of view, it is true that it has a certain—certain standing which is not only so official as the documents [that] I mentioned. But anyway, those issues which were raised by [the author of the document] are—have been well-known within the UN, within the General Assembly of the UN, and of the Security Council itself.⁴²

⁴⁰ Joinder Motion, para. 3.

⁴¹ Response, para. 24.

⁴² T. 44299 (2 September 2009).

During this intervention, Judge Prandler was expressing the view that the fact that a document is an official report of the United Nations is relevant to that document's reliability. The source of a document—as well as whether it is signed, bears a seal, or is dated—are all factors that are relevant to its reliability.⁴³ There is no suggestion in Judge Prandler's comment that the contents of an official document of the United Nations are to be automatically taken as an accurate portrayal of the facts therein simply because it was generated by the United Nations.

5. Alleged emphasis upon accusations against the United Nations

27. As support for its contention that it could be perceived that Judge Prandler places an undue emphasis upon accusations against the United Nations, the Praljak Defence quotes a portion of the transcript in which the Prosecution is objecting to a line of direct examination that was not heralded in the Prlić Defence's Rule 65 *ter* summary.⁴⁴

28. The Prosecution responds that, in the portion of the transcript referred to by the Praljak Defence, Judge Prandler simply was addressing whether this topic of examination should have been included in the witness's Rule 65 *ter* summary, which was the focus of the parties' discussion in court.⁴⁵

29. I note that, during the hearing of the Prosecution's objection on this matter, Judge Prandler stated that accusations that the United Nations was impermissibly cooperating with individuals during the events of the case was an important issue in the case and that therefore it should have been included in the Rule 65 *ter* summary of the witness.⁴⁶ Judge Prandler's opinion that the information pertaining to this issue should have been included within the Rule 65 *ter* summary deals with a very specific procedural issue, upon which it is well within the discretion of a trial Judge to comment. Having reviewed the relevant transcript pages, I am of the view that Judge Prandler's comment indicates nothing more than a responsible exercise of his judicial functions and in no way indicates any actual or perceived bias.

⁴³ See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.16, Decision on Jadranko Prlić's Interlocutory Appeal Against the Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence, 3 November 2009, para. 34 (holding that "whether a document bears basic features indicative of *prima facie* authenticity may, in the individual circumstances facing a Trial Chamber, be relevant to the underlying factor of *prima facie* reliability").

⁴⁴ T. 33047–33050 (13 October 2008) (private session).

⁴⁵ Response, para. 24.

⁴⁶ T. 33050 (13 October 2008) (private session).

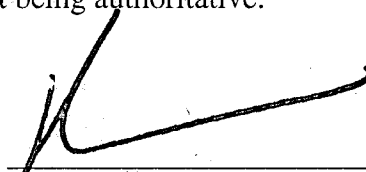
6. Conclusion

30. Rule 15(B)(ii) of the Rules provides that, following the report of the Presiding Judge, if necessary, a panel of three-Judges shall be appointed to report on the merits of an application for disqualification. I find that the Prlić and Praljak Defences have failed to substantiate any of their claims and therefore that it is not warranted to appoint a panel to consider the Motion. The Prlić and Praljak Defences have not established any actual bias or the appearance of bias on the part of Judge Prandler and have not rebutted the strong presumption of his impartiality. The Motion and Joinder Motion are without any merit whatsoever, and there is no need to appoint a panel of three Judges.

D. Disposition

31. For the foregoing reasons and pursuant to Rule 15(B) and 126 *bis* of the Rules, I hereby DENY the Motion and the Joinder Motion.

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



Judge Patrick Robinson
President

Dated this fourth day of October 2010
At The Hague
The Netherlands

[Seal of the Tribunal]