



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-03-67-T
Date: 25 July 2013
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Carmel Agius, Acting President
Registrar: Mr. John Hocking
Order of: 25 July 2013

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

ORDER PURSUANT TO RULE 15

Office of the Prosecutor
Mr. Mathius Marcussen

The Accused
Mr. Vojislav Šešelj

I, CARMEL AGIUS, Acting 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 the motion filed by the Accused on 9 July 2013,¹ in which he seeks, *inter alia*, the disqualification of Judge Frederik Harhoff pursuant to Rule 15(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”);²

NOTING that President Theodor Meron has withdrawn from considering the Motion for Disqualification, and has assigned me to take the steps necessary to ensure that the Motion for Disqualification is appropriately adjudicated;³

NOTING that, pursuant to Rule 21 of the Rules, the Vice-President shall exercise the functions of the President in case of the latter’s absence or inability to act;

NOTING that, pursuant to Rule 15(B) of the Rules, Judge Jean-Claude Antonetti, as Presiding Judge of the relevant Trial Chamber, consulted with Judge Harhoff and submitted a report to President Meron, or a Judge designated by him if appropriate, on 8 July 2013;⁴

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

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

(ii) the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.⁵

¹ Professor Vojislav Šešelj’s Motion for Disqualification of Judge Frederik Harhoff, 9 July 2013 (“Motion for Disqualification”) The original BCS version of the motion was received on 1 July 2013

² Motion for Disqualification, paras 2, 58

³ Order Assigning a Motion to a Judge, 23 July 2013, p. 1

⁴ Internal Memorandum dated 8 July 2013 (“Report of Judge Antonetti”)

⁵ *Prosecutor v Furundžija*, Case No. IT-95-17/1-A, Judgement, 21 July 2000, para. 189. See also Order Pursuant to Rule 15, 9 January 2008, p. 3. *Prosecutor v Krajišnik*, Case No. IT-00-39-AR73.2, Order Pursuant to Rule 15, 17 August 2006

NOTING that the Motion for Disqualification makes various allegations of bias against Judge Harhoff, on the basis of publication of a letter written by him on 6 June 2013 (“Letter”);⁶

NOTING that the Prosecution objects to the Motion for Disqualification on the basis that, *inter alia*, it “fails to adduce any evidence to rebut the presumption of impartiality of Judge Harhoff.”⁷

NOTING from the Report of Judge Antonetti that Judge Harhoff has indicated that he does not consider the contents of the Letter to cast any doubt on his impartiality, and that Judge Antonetti concurs with this view;⁸

CONSIDERING that, in these circumstances, I find it necessary and appropriate to appoint a panel of three Judges drawn from other Chambers to consider the Motion for Disqualification and to report to me its decision on those merits, pursuant to Rule 15(B)(ii) of the Rules, bearing in mind that the Judgement in this case is scheduled to be delivered on 30 October 2013;⁹

CONSIDERING that Rule 19 of the Rules allows the President to coordinate the work of the Chambers;

For the foregoing reasons, pursuant to Rules 15, 19 and 21 of the Rules,

HEREBY APPOINT a panel of three Judges to consider the merits of the Motion for Disqualification, composed as follows:

Judge Liu Daqun

Judge Justice Bakone Moloto

Judge Burton Hall

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

Done this twenty-fifth day of July 2013,
At The Hague,
The Netherlands.



Judge Carmel Agius
Acting President

[Seal of the Tribunal]

⁶ See, e.g., Motion for Disqualification, paras 3, 5, 6, 8, 23, 25, 26, 28, 43, 53, 54.

⁷ Prosecution’s Response to Motion for Disqualification of Judge Frederik Harhoff, 17 July 2013 (“Response to Motion for Disqualification”), para 7 See also Response to Motion for Disqualification, paras 2-6

⁸ Report of Judge Antonetti

⁹ Scheduling Order, 15 April 2013