



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-08-91-A  
Date: 7 February 2014  
Original: English

**THE PRESIDENT OF THE TRIBUNAL**

**Before:** Judge Carmel Agius, Acting President  
**Registrar:** Mr. John Hocking  
**Decision:** 7 February 2014

**PROSECUTOR**

v.

**MIĆO STANIŠIĆ  
STOJAN ŽUPLJANIN**

***PUBLIC***

**DECISION ON ŽUPLJANIN DEFENCE REQUEST FOR  
APPOINTMENT OF A PANEL TO ADJUDICATE THE  
REQUEST FOR DISQUALIFICATION OF JUDGE LIU DAQUN**

**The Office of the Prosecutor:**

Ms. Helen Brady

**Counsel for Mićo Stanišić:**

Mr. Slobodan Zečević and Mr. Stéphane Bourgon

**Counsel for Stojan Župljanin:**

Mr. Dragan Krgović and Ms. Tatjana Čmerić

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”);

BEING SEISED of the “Župljanin Defence Request for Appointment of a Panel to Adjudicate the Request for Disqualification of Judge Liu Daqun” (“Request”), filed on 13 December 2013 by Defence Counsel for Mr. Stojan Župljanin (“Župljanin”);

NOTING that the Request seeks the appointment of a panel of three Judges pursuant to Rule 15(B)(ii) of the Rules of Procedure and Evidence (“Rules”) to conduct a *de novo* determination of “Stojan [Ž]upljanin’s Motion Requesting Recusal of Judge Liu Daqun from Adjudication of Motion to Vacate Trial Judgement” (“Motion Requesting Recusal”),<sup>1</sup> following the Decision on Motion Requesting Recusal;<sup>2</sup>

NOTING that on 20 December 2013, the Office of the Prosecutor (“Prosecution”) filed a response to the Request,<sup>3</sup> submitting that “[i]n light of Rule 15(B)(ii) and the Tribunal’s jurisprudence, the Prosecution does not oppose Župljanin’s request”;<sup>4</sup>

NOTING that Defence Counsel for Mr. Mićo Stanišić (“Stanišić”) filed a motion joining the Request on 23 December 2013;<sup>5</sup>

RECALLING that Rule 15(B)(ii) of the Rules confers discretion on the President to appoint, “if necessary”, a panel of three Judges drawn from other Chambers to consider the merits of an application for disqualification and withdrawal of a Judge;

<sup>1</sup> See Request, paras 1-2. On 3 December 2013, in my capacity as Acting President, I issued a decision denying the Motion Requesting Recusal (*see Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-A, Decision on Motion Requesting Recusal, 3 December 2013 (“Decision on Motion Requesting Recusal”), para. 24). For the procedural history surrounding the Motion Requesting Recusal, *see ibid.*, paras 2-8. For the relevant submissions of the parties, *see ibid.*, paras 9-12. For my reasons for denying the Motion Requesting Recusal, *see ibid.*, paras 18-23.

<sup>2</sup> While the Request does not expressly refer to the Decision on Motion Requesting Recusal, it is apparent that this is the “acting President’s decision” that is the subject of Župljanin challenge (*see* Request, para. 3).

<sup>3</sup> Prosecution Response to Župljanin Request for Appointment of a Panel, 20 December 2013 (“Response”).

<sup>4</sup> Response, para. 1, citing *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR.15.1, Decision on Appeal from Decision on Motion to Disqualify Judge Picard, 26 June 2009 (“Karadžić Decision”).

<sup>5</sup> Motion on Behalf of Mićo Stanišić Joining Župljanin Defence Request for Appointment of a Panel to Adjudicate the Request for Disqualification of Judge Liu Daqun, 23 December 2013 (“Stanišić Joinder”), para. 1. I recall that, in joining and supporting the Motion Requesting Recusal, Stanišić mischaracterised the Motion Requesting Recusal as dealing with all adjudication “on the consequences of the Special Chamber’s final determination on the rebuttal of the presumption of impartiality afforded to Judge Harhoff” (*see* Decision on Motion Requesting Recusal, para. 7, fn. 10). Stanišić repeats this mischaracterisation in joining the Request (*see* Stanišić Joinder, paras 10, 13). As with the Motion Requesting Recusal, the Request is, in fact, limited to Župljanin’s application seeking the disqualification and withdrawal of Judge Liu Daqun from consideration of “Stojan [Ž]upljanin’s Motion to Vacate Trial Judgement” filed by Defence Counsel for Župljanin on 21 October 2013 (*see* Decision on Motion Requesting Recusal, paras 7, 9, 18).

**CONSIDERING** that Rule 15(B) of the Rules does not set out which avenues, if any, are available to a party seeking to challenge a finding of the President under Rule 15(B)(ii) of the Rules;<sup>6</sup>

**CONSIDERING** that, despite my finding that Župljanin and Stanišić failed to adduce any evidence in support of the Motion Requesting Recusal sufficient to rebut the strong assumption of impartiality attached to Judge Liu,<sup>7</sup> the jurisprudence of this Tribunal is clear that when a decision of the President under Rule 15(B) of the Rules is challenged, it becomes “necessary” to appoint a panel of three judges;<sup>8</sup>

**CONSIDERING** that, by way of the Request and the Stanišić Joinder, the parties have challenged the Decision on Motion Requesting Recusal;

**CONSIDERING** that Rule 15(B) of the Rules does not provide any time limit within which a challenge to a decision of the President under Rule 15(B) must be issued, nor provide any criteria for the selection of a panel of three Judges;

#### **FOR THE FOREGOING REASONS**

**CONSIDER** it necessary to appoint a panel of three Judges to consider the merits of the Motion Requesting Recusal; and

<sup>6</sup> *Karadžić* Decision, para. 6. Cf. *Galić* Appeal Judgement, paras 30-32; *Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60-PT, Decision on Vidoje Blagojević’s Motion for Disqualification of the Trial Chamber and Concomitant Request for Certification to Appeal, 31 March 2003, p. 3; *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-AR73.8, Decision on Application for Leave to Appeal Against Judge Schomburg’s Decision on the Disqualification of a Judge dated 3 May 2002, 20 June 2002.

<sup>7</sup> Decision on Motion Requesting Recusal, para. 23.

<sup>8</sup> *Karadžić* Decision, para. 8. In that case, the Appeals Chamber relied upon an earlier determination of similar effect made by the Appeals Chamber in *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Appeal from Refusal of Application for Disqualification and Withdrawal of a Judge, 13 March 2003 (“*Galić* Appeal Decision”), para. 8. See *Karadžić* Decision, paras 7-8 and fn. 17. See *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006 (“*Galić* Appeal Judgement”), paras 30-31. I note that the Appeals Chambers in the *Karadžić* Decision and *Galić* Appeal Decision were not properly seized of the matters before them (see *Karadžić* Decision, paras 6-8; *Galić* Appeal Decision, para. 9). Nonetheless, this authority has been relied upon by my colleagues in considering that it is necessary to appoint a panel, even in instances where the President has determined that the impugned motions for disqualification and withdrawal lack any merit (see *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3, Decision on Motion by Professor Vojislav Šešelj for the Disqualification of Judges O-Gon Kwon and Kevin Parker, 22 June 2010; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Radovan Karadžić’s Motion to Recuse Judge Melville Baird, 30 September 2009). In numerous instances the President has issued decisions and these decisions have been treated as final, however, it is also true that such decisions have not subsequently been challenged by the applicant (see *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.4-A, Decision on Vojislav Šešelj’s Motion to Disqualify Judges Arlette Ramarosan, Mehmet Güney, and Andréia Vaz, 10 January 2013; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3, Decision on Vojislav Šešelj’s Motion to Disqualify Judge Alphons Orić, 7 October 2010; *Prosecutor v. Vidoje Blagojević*, Case No. IT-02-60-R, Decision on Motion for Disqualification, 2 July 2008).

**HEREBY ORDER** that the Bench be composed as follows:

Judge Christoph Flügge

Judge Howard Morrison

Judge Melville Baird

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

Done this seventh day of February 2014,  
At The Hague,  
The Netherlands.



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Judge Carmel Agius  
Acting President