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-08-91-A
		Date:	24 July 2014
		Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Carmel Agius, Presiding**
Judge William H. Sekule
Judge Patrick Robinson
Judge Arlette Ramaroson
Judge Koffi Kumelio A. Afanđe

Registrar: **Mr. John Hocking**

Decision of: **24 July 2014**

PROSECUTOR

v.

MIĆO STANIŠIĆ
STOJAN ŽUPLJANIN

PUBLIC

DECISION ON MIĆO STANIŠIĆ'S MOTION SEEKING RECONSIDERATION OF DECISION ON STANIŠIĆ'S MOTION FOR DECLARATION OF MISTRIAL AND ŽUPLJANIN'S MOTION TO VACATE TRIAL JUDGEMENT

The Office of the Prosecutor
Ms. Laurel Baig

Counsel for Mićo Stanišić
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1. 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 "Tribunal", respectively) is seised of the "Motion on Behalf of Mićo Stanišić Seeking Reconsideration of Decision on Stanišić's Motion for a Declaration of Mistrial and Župljanin's Motion to Vacate Trial Judgement", filed by Mićo Stanišić ("Stanišić") on 10 April 2014 ("Motion").

I. BACKGROUND

2. On 27 March 2013, Trial Chamber II of the Tribunal ("Trial Chamber"), composed of Judges Burton Hall (presiding), Guy Delvoie and Frederik Harhoff ("Judge Harhoff"), issued its judgement in the case of *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-T ("Trial Judgement"). On 23 October 2013, Stanišić filed a motion requesting that the Appeals Chamber declare a mistrial and vacate the Trial Judgement, on the basis of the finding of a specially constituted panel in the case of *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, that the presumption of impartiality attaching to Judge Frederik Harhoff had been rebutted.[1]

3. On 2 April 2014, the Appeals Chamber issued its "Decision on Mićo Stanišić's Motion Requesting a Declaration of Mistrial and Stojan Župljanin's Motion to Vacate Trial Judgement", in which it dismissed the Motion for Mistrial ("Impugned Decision").[2]

4. On 10 April 2014, Stanišić filed the present Motion requesting reconsideration of the Impugned Decision.[3] The Office of the Prosecutor ("Prosecution") filed a response to the Motion on 17 April 2014, in which it opposes Stanisić's request for reconsideration.[4] Stanišić filed his reply on 22 April 2014.[5]

[1] *See* Motion on Behalf of Mićo Stanišić Requesting a Declaration of Mistrial, 23 October 2013 ("Motion for Mistrial"), paras 1, 3, 6, 8, p. 10. *See also Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on Defence Motion for Disqualification of Judge Frederik Harhoff and Report to the Vice-President, 28 August 2013 ("*Šešelj* Decision"), para. 14; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on Prosecution Motion for Reconsideration of Decision on Disqualification, Requests for Clarification, and Motion on Behalf of Stanišić and Župljanin, 7 October 2013 ("*Šešelj* Reconsideration Decision"), paras 21-22 (together, "*Šešelj* Decisions"). Stojan Župljanin ("Župljanin") also filed a motion requesting the Appeals Chamber to vacate the Trial Judgement on the basis of the finding in the *Šešelj* Decisions. *See* Stojan [Ž]upljanin's Motion to Vacate Trial Judgement, 21 October 2013, paras 1, 10-17, 26.
[2] *See* Impugned Decision, para. 36.
[3] *See* Motion, paras 1, 36-37.
[4] *See* Prosecution Response to Motion on Behalf of Mićo Stanišić Seeking Reconsideration of Decision on Stanišić's Motion for a Declaration of Mistrial and Župljanin's Motion to Vacate Trial Judgement, 17 April 2014 ("Response").
[5] Reply on Behalf of Mićo Stanišić to Prosecution Response to Stanišić Reconsideration Motion, 22 April 2014 ("Reply").

II. SUBMISSIONS OF THE PARTIES

1. Motion

5. Stanišić requests that the Appeals Chamber reconsider the Impugned Decision on the bases that the Appeals Chamber made a clear error of reasoning in two respects, and that reconsideration is necessary to prevent an injustice.[6] First, Stanišić submits that the Appeals Chamber erred because it failed to address his "core claim" regarding the effect of the *Šešelj* Decision on this case.[7] In particular, Stanišić argues that, in the Impugned Decision, the Appeals Chamber erroneously refers to an "allegation" of partiality being made against Judge Harhoff, when in fact Judge Harhoff "has been found to have an appearance of bias in favour of convicting accused persons".[8] Stanišić contends that the finding of an appearance of bias in the *Šešelj* Decision was directed at Judge Harhoff in his capacity as a Judge of the Tribunal, and was therefore not limited to the *Šešelj* proceedings as found by the Appeals Chamber.[9] According to Stanišić, the *Šešelj* Decision therefore "necessarily and unquestionably affects the present proceedings"[10] and his fair trial rights.[11]

6. Second, Stanišić submits that the Appeals Chamber erred because, without having addressed his core claim regarding the impact of the *Šešelj* Decision on his case, it "could not then go on" to determine whether interlocutory relief was appropriate.[12] He further submits that the Appeals Chamber "denie[d] the necessity of interlocutory relief" without assessing his claim "that such immediate relief is the only appropriate means by which to defend, protect and remedy the gross violation of his fair trial rights".[13] In particular, Stanišić contends that the Appeals Chamber focused "exclusively" on the jurisprudence which he raised in support of his submissions, but failed to address the substance of the submissions themselves.[14] He argues that the *Šešelj* Decision vitiates the appellate process in this case *ab initio*, as there is no valid trial judgement upon which to base or continue with an appeal,[15] and that for the same reason, the Appeals Chamber cannot postpone the assessment of the violation of his rights.[16]

[6] Motion, paras 1-3, 36-37. *See also* Motion, paras 6-28.
[7] Motion, paras 2, 9, 16, 19. *See also* Motion, paras 6-8, 10-15, 17-18.
[8] Motion, para. 6 (emphasis omitted). *See also* Motion, paras 7, 10-14.
[9] Motion, paras 7-8, 10-14.
[10] Motion, para. 10. *See also* Motion, paras 7-8, 11-17.
[11] Motion, paras 11, 16.
[12] Motion, paras 20-21.
[13] Motion, paras 3, 27. *See also* Motion, paras 20-22, 24-26, 28.
[14] Motion, para. 27. *See also* Motion, para. 26.
[15] Motion, para. 23. *See also* Motion, paras 24-25.
[16] Motion, para. 25.

7. Stanišić finally submits that reconsideration of the Impugned Decision is necessary to prevent an injustice.[17] He argues that the matter should be adjudicated now because the extremely serious violation of his fair trial rights – amounting to a nullification of the trial process and judgement – is a distinct issue from the merits of the judgement".[18] According to Stanišić, denial of interlocutory relief means that he is "forced" to undergo an appellate process which is "void *ab initio* as a result of the serious violation of his fair trial rights".[19] He argues that the Appeals Chamber's delay in adjudicating the abrogation of his fair trial rights serves to prolong the unlawful detention to which he is currently subject, as a result of not being tried by an independent and impartial tribunal.[20] This, Stanišić submits, amounts to a flagrant denial of an effective remedy, and an injustice.[21]

2. Response

8. The Prosecution responds that Stanišić fails to demonstrate either a clear error of reasoning in the Impugned Decision, or that reconsideration is necessary to prevent an injustice since the Appeals Chamber considered Stanišić's argument concerning the impact of the *Šešelj* Decisions.[22] It further responds that the Appeals Chamber found that the *Šešelj* Decisions were not binding upon it and rightly concluded that Judge Harhoff's alleged partiality has not been established in the present case.[23] According to the Prosecution, Stanišić contradicts his Motion for Mistrial when he "misleadingly contends" that he never argued that the *Šešelj* Decisions were binding on the Appeals Chamber.[24]

9. The Prosecution also responds that the issue of violation of fair trial rights will be resolved through the normal appellate process, as the Appeals Chamber has granted the requests of Stanišić and Župljanin to vary their notices of appeal in order to challenge Judge Harhoff's impartiality.[25] In the Prosecution's view, immediate interlocutory relief is therefore not necessary, and proceeding along the normal appellate process does not amount to a denial of an effective remedy.[26] Finally,

[17] Motion, paras 1, 4.
[18] Motion, paras 4, 29.
[19] Motion, para. 29.
[20] Motion, paras 29-30, 32-33, 35.
[21] Motion, paras 4, 29-31, 33-36.
[22] Response, paras 1-2, 4. The Appeals Chamber notes that the Prosecution refers to the *Šešelj* Decisions (plural) in its Response, whereas Stanišić refers to the *Šešelj* Decision (singular) throughout his Motion.
[23] Response, paras 1-2.
[24] Response, para. 2 *referring* to Motion for Mistrial, paras 2, 7-8, 10, 13, 16, 18, 34.
[25] Response, para. 3.
[26] Response, para. 3.

the Prosecution submits that Stanišić repeats his arguments with respect to the *Šešelj* Decisions and the need to halt these proceedings [27] In its view, such repetition does not justify reconsideration.[28]

3. Reply

10. Stanišić replies that the Prosecution fails to address his core submissions regarding the impact and effect of the *Šešelj* Decision on his case, which is an "abrogation of its responsibility to respect and uphold due process rights".[29] In particular, he contends that the Prosecution's assertion that the Appeals Chamber considered the impact of the *Šešelj* Decision on his case is incorrect, and based solely on the Impugned Decision's reliance on jurisprudence that decisions in one case are not binding in another.[30] According to Stanišić, this constitutes neither a reasoned consideration of, nor response to, the most serious of fair trial violations.[31] Stanišić further asserts that, contrary to the Prosecution's submission, he did not submit that the *Šešelj* Decision was binding upon the Appeals Chamber, but rather that it has an "inescapable impact and effect on" the current proceedings.[32] Additionally, Stanišić replies that the Prosecution fails to address his argument that the Impugned Decision deprives him of his right to an effective remedy[33] and ignores the absence in the Impugned Decision of any assessment of his need for interlocutory relief.[34]

III. APPLICABLE LAW

11. The Appeals Chamber recalls that a chamber has inherent discretionary power to reconsider its previous decisions.[35] In order to succeed in a request for reconsideration, the requesting party must demonstrate to the chamber that the impugned decision contains a clear error of reasoning or

[27] Response, para. 1.
[28] Response, para. 1.
[29] Reply, para. 15. *See also* Reply, paras 1-3, 6-14.
[30] Reply, para. 8.
[31] Reply, para. 8.
[32] Reply, para. 12.
[33] Reply, paras 5, 22-26.
[34] Reply, paras 4, 6, 16-21.
[35] *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Prosecution Motion for Reconsideration of Filing Status of the Appeals Chamber's Decision on Vinko Pandurević's Provisional Release of 11 January 2012, 17 January 2012 ("*Popović* Reconsideration Decision"), p. 2; *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Decision on Motion on Behalf of Veselin Šljivančanin Seeking Reconsideration of the Appeals Chamber's Decision of 8 December 2009, 22 January 2010, p. 2; *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 ("*Prlić* Interlocutory Appeal Decision"), paras 6, 18. *See Jean Uwinkindi v. Prosecutor*, ICTR-01-75-AR11*bis*, Decision on Uwinkindi's Motion for Review or Reconsideration of the Decision on Referral to Rwanda and the Related Prosecution Motion, 23 February 2012 ("*Uwinkindi* Reconsideration Decision"), para. 11. *See also Šešelj* Reconsideration Decision, para. 9; *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-T, Decision on Prosecution Motion for Reconsideration of Majority Decision Denying Admission of Document Rule 65 *ter* Number 03003 or in the Alternative Certification of the Majority Decision with Partly Dissenting Opinion of Judge Delvoie, 27 February 2012 ("*Haradinaj* Reconsideration Decision"), para. 11; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on *Prlić* Defence Motion for

that "particular circumstances", which can be new facts or arguments, justify its reconsideration in order to avoid injustice.[36] The party seeking reconsideration bears the burden of showing that the chamber clearly erred or that reconsideration is necessary in order to avoid injustice.[37]

12. The Appeals Chamber also notes, and agrees, that the principle of finality dictates that the power to reconsider previous decisions should be exercised sparingly, and a party must therefore meet a high threshold in order to succeed in its motion for reconsideration.[38]

IV. DISCUSSION

13. The Appeals Chamber notes that Stanišić makes three main submissions, namely, that: (i) the Appeals Chamber failed to address the impact of the *Šešelj* Decision on his case;[39] (ii) the Appeals Chamber erred in denying the requested interlocutory relief without having addressed the impact of the *Šešelj* Decision on his case;[40] and (iii) the Appeals Chamber's failure to grant the interlocutory relief amounts to an injustice.[41] The Appeals Chamber will address these issues in turn.

14. In relation to Stanišić's first submission, the Appeals Chamber acknowledges that indeed the Impugned Decision did not address the impact on the present case of the finding made in the *Šešelj* Decisions regarding Judge Harhoff's partiality. In the Impugned Decision, the Appeals Chamber instead considered whether the *Šešelj* Decisions were binding upon it, and concluded that they were not.[42] It further considered that allegations of partiality are dealt with in the course of the normal appellate process,[43] and that there has been no "general finding" or "final determination" regarding Judge Harhoff's alleged partiality in this case.[44] For these reasons, the Appeals Chamber concluded

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Reconsideration of Order to Admit Evidence Regarding Witness Josip Juričević, 3 November 2009 ("*Prlić* Reconsideration Decision"), p. 3.

[36] *Popović* Reconsideration Decision, p. 2; *Prlić* Interlocutory Appeal Decision, paras 6, 18. *See Uwinkindi* Reconsideration Decision, para. 11; *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Appeal Judgement, 23 May 2005, para. 204. *See also Šešelj* Reconsideration Decision, para. 9; *Haradinaj* Reconsideration Decision, para. 11; *Prlić* Reconsideration Decision, p. 3; *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-04-84-R77.4, Decision on Astrit Haraqija and Bajrush Morina's Joint Request for Reconsideration of the Trial Chamber's Decision of 4 September 2008, 24 September 2008, para. 8; *Prosecutor v. Rasim Delić*, Case No. IT-04-83-PT, Decision on the Prosecution Motion for Reconsideration, 23 August 2006, pp. 3-4.

[37] *Prlić* Interlocutory Appeal Decision, para. 18. *See also Šešelj* Reconsideration Decision, para. 9; *Haradinaj* Reconsideration Decision, para. 11.

[38] *See Šešelj* Reconsideration Decision, para. 10. *See also Haradinaj* Reconsideration Decision, para. 12 *referring to Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Decision on Defence Motion to Reconsider Decision Denying Leave to Call Rejoinder Witnesses, 9 May 2001, para. 8.

[39] *See* Motion, paras 1-2, 6-19, 36; Reply paras 1-3, 6-15. *See also supra*, para. 5.

[40] *See* Motion, paras 1, 3, 20-28, 36; Reply, paras 4, 6, 16-21, 27-29. *See also supra*, para. 6.

[41] *See* Motion, paras 1, 4, 29-36; Reply, paras 5, 6, 22-29. *See also supra*, para. 7.

[42] Impugned Decision, para. 25.

[43] Impugned Decision, paras 21, 26.

[44] Impugned Decision, paras 16, 25.

that there was "no basis for the claim of 'ongoing prejudice' during the appeal proceedings",[45] and that no interlocutory relief was required.[46]

15. The Appeals Chamber, however, disagrees with Stanišić that its decision not to consider the impact of the *Šešelj* Decisions at this stage constituted an error. Stanišić's argument is based on an incorrect assumption that, notwithstanding the non-binding nature of the *Šešelj* Decisions, the finding of Judge Harhoff's partiality necessarily and automatically applies to all other cases before the Tribunal.[47] Stanišić thus assumes that this finding has *already* had an impact on the present case. However, he fails to appreciate that the factual finding in the *Šešelj* Decisions was limited to the particular circumstances of the *Šešelj* case – as indeed noted by the special panel.[48] The Appeals Chamber emphasises that it will make its *own* assessment of the issues. Indeed, it will consider the arguments of the parties on whether, and to what extent, the finding regarding Judge Harhoff's partiality in the *Šešelj* Decisions has an impact on the present case. However, the Appeals Chamber will do so as part of the normal appellate process, and only after the parties have fully litigated the matter.[49] In these circumstances, the Appeals Chamber considers that it was neither necessary nor appropriate to assess any impact of the *Šešelj* Decisions in the Impugned Decision. Stanišić has therefore failed to demonstrate any clear error of reasoning in the Impugned Decision warranting reconsideration in this respect.

16. The Appeals Chamber notes that Stanišić's second submission is also based on the same premise that the finding of partiality in the *Šešelj* Decisions necessarily and automatically has an impact on the present case.[50] However, as set out above, this premise is incorrect as the Appeals Chamber is yet to make its *own* assessment of any such impact on appeal.[51] Therefore, in the absence of any determination of Judge Harhoff's partiality in the present case, the Appeals Chamber rejects Stanišić's submission that there is "no valid trial judgement upon which to base or continue with the appellate process".[52] Consequently, the Appeals Chamber cannot discern any

[45] Impugned Decision, para. 25.
[46] Impugned Decision, para. 25. *See also* Impugned Decision, para. 26.
[47] *See* Motion, paras 7-8, 10-12, 14. *See also* Reply, paras 10-14.
[48] Impugned Decision, para. 25. *See Šešelj* Reconsideration Decision, para. 5.
[49] The Appeals Chamber notes in this respect that the parties have been given an opportunity to fully litigate this matter in their additions to their appeal briefs. *See* Decision on Mićo Stanišić's Motion Seeking Admission of Additional Evidence Pursuant to Rule 115, 14 April 2014, paras 22-23, 27; Decision on Župljanin's Second Request to Amend his Notice of Appeal and Supplement his Appeal Brief, 14 April 2014, paras 16-19; Decision on Mićo Stanišić's Motion Seeking Leave to Amend Notice of Appeal, 14 April 2014, paras 23-24; Decision on Urgent Prosecution Motion for Variation of Supplemental Briefing Schedule, 2 May 2014, pp 2-3; Decision on Prosecution Motion to Admit Rebuttal Material, 11 June 2014, paras 12-16. The Appeals Chamber notes that Stanišić and Župljanin have since filed additions to their appeal briefs on 26 June 2014. *See* Additional Appellant's Brief on Behalf of Mićo Stanišić, 26 June 2014; Stojan Župljanin's Supplement to Appeal Brief (Ground Six), 26 June 2014.
[50] *See supra*, para. 6. *See also supra* para. 5.
[51] *See supra*, para. 15.
[52] Motion, para. 23.

error in its denial of the request for interlocutory relief. Stanišić thus fails to demonstrate a clear error of reasoning warranting reconsideration in this regard.

17. For the same reasons, the Appeals Chamber is also not persuaded by Stanišić's final submission that, in order to prevent an injustice, reconsideration of the Impugned Decision is warranted and the alleged violation of his fair trial rights must be adjudicated now. In particular, the Appeals Chamber does not agree with Stanišić that the appellate process is "void *ab initio*"[53] as the allegations of partiality against Judge Harhoff are yet to be determined in this case. Further, given that the parties requested and were granted the opportunity to fully litigate these matters on appeal, the Appeals Chamber disagrees that the Impugned Decision denies Stanišić's right to an effective remedy.[54] Stanišić has therefore not demonstrated that addressing the allegations of partiality against Judge Harhoff in the course of normal appellate proceedings amounts to an injustice.

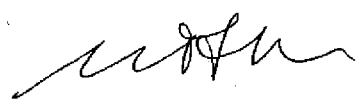
18. For the reasons set out above, the Appeals Chamber finds that Stanišić has failed to demonstrate either that the Impugned Decision contains a clear error of reasoning or that particular circumstances justify reconsideration of the Impugned Decision in order to avoid an injustice.

V. DISPOSITION

19. In view of the foregoing, the Appeals Chamber **DISMISSES** the Motion.

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

Dated this twenty fourth day of July 2014,
At The Hague,
The Netherlands.



Judge Carmel Agius
Presiding Judge

[Seal of the Tribunal]

[53] Motion, para. 29.
[54] *See supra*, fn. 50.

SEPARATE OPINION OF JUDGE KOFFI KUMELIO A. AFANDE

1. Whilst I agree with the decision, I find it necessary to clarify my position in light of the Šešelj case, extensively relied on in the motion, in which I filed a dissenting opinion to a decision dated 6 June 2014.[1] At the outset, I would like to make clear that I am of the view that the present case is strikingly different from the *Šešelj* case. In *Šešelj*, a Specially Convened Chamber ("Special Chamber"), Judge Liu dissenting, had already issued a decision establishing an apprehension of bias on the part of Judge Frederick Harhoff ("Judge Harhoff") and disqualifying him from the *Šešelj* Bench. Therefore the issue was to determine the consequences of that decision as to whether the Trial Proceedings should continue with a replacement judge, or should start *de novo* or whether the charges should be dismissed. On the other hand, in the present case there is no decision on the presumption of partiality of Judge Harhoff. Instead, the question is whether the Appeals Chamber should issue an interlocutory decision to vacate the convictions entered against Stanisić and Župljanin by the Trial Chamber, which Judge Harhoff was part of, and declare the Appeals Proceedings void, on the basis of the apprehension of bias established against Judge Harhoff in the *Šešelj* case.

2. In my opinion, the *Stanisić and Župljanin* case reveals a double paradox, firstly in relation to the procedure that should lead to the disqualification of a judge from a case in general (A) and secondly with regards to the apparent similarity between some elements of this case with certain aspects of the Majority's reasoning in the Special Chamber's decision on apprehension of bias on the part of Judge Harhoff in the *Šešelj* case (B).

3. The first paradox in relation to the procedure for disqualifying a judge in a case is that, the presumption of impartiality of judges is so strong that, not only has it to be established and not assumed, but there should be a final decision materialising it. Rebutting that presumption of impartiality necessitates a fact-based assessment that should be made on a case-by-case basis and mere similarities between two cases should not warrant the decision in one case being automatically transposed to the other. No inference should be drawn from a disqualification decision against a judge in one case to vacate a conviction in another one, as long as there is no such decision rebutting the presumption of impartiality of the same judge in that other case.

[1] *Prosecutor v. Šešelj*, IT-03-67-AR15*bis*, Decision on Appeal Against Decision on Continuation of Proceedings, 6 June 2014. See also appended Dissenting Opinion of Judge Afande.

4. Rule 15 (B) (i) and (ii) of the ICTY Rules, which I will not quote here *in extenso*, sets a clear and unambiguous procedure in relation to the decision-making process as to whether bias could be apprehended or not towards a Judge in a case. According to that provision, upon application by a party for disqualification of a Judge of a Chamber, the Presiding Judge of that Chamber shall conference with the Judge and report to the President who shall, if necessary, appoint a panel of three judges from another Chamber to consider the merit of the application and decide whether it should be upheld and the judge be disqualified or not. Such a preliminary procedure which was followed and concluded resulting in the disqualification of Judge Harhoff from the *Šešelj* case has not taken place in the *Stanisić and Župljanin* case. The Defence request in the context of the *Šešelj* case, in which it does not have *locus standi*, cannot replace the procedure set out in Rule 15 (B) (i) and (ii) of the Rules.

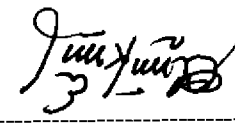
5. It is therefore my humble opinion that until such a time that no autonomous decision is rendered in the *Stanisić and Župljanin* case, the convictions entered by the Trial Chamber, which Judge Harhoff was part of, is to be regarded as absolutely valid, regardless of the fact that Judge Harhoff's impartiality is rebutted in the *Šešelj* case. Indeed, *"dura lex, sed lex"* ("harsh is the law, but it is the law"). Hence, in my view, the Appeals Proceedings in the *Stanisić and Župljanin* case is not void *ab initio*. Instead, given the stage of the case and taking into account the interests of justice, I am of the opinion that the appeal proceedings is the ample opportunity for the very questions raised presently, on the alleged apprehension of bias of Judge Harhoff, to be adequately addressed.

6. The second paradox is that even though the Special Chamber, Judge Liu dissenting, has resorted to general terms in finding an apprehension of bias on the part of Judge Harhoff in the *Šešelj* case, it decided to limit the consequences of its decision to the specific *Šešelj case* only. Indeed, the Majority of the Special Chamber referred, in its decision, to some general sentences in Judge Harhoff's Letter which are so wide but, no reference is made to any specific circumstances in the *Šešelj* case, which could have clarified the limitation of the scope of the decision to that case only. The fact that the Majority of the Special Chamber limits it decision to the *Šešelj* case only makes it even more important for the issue to be addressed at the appropriate forum in the *Stanisić and Župljanin* case. And here again, the Appeals Proceedings offers that opportunity.

7. Nothing in this separate opinion shall be read or interpreted to prejudge my views and opinion on the merits of the case, which I will express at the appropriate time in full independence and impartiality.

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

Dated this twenty fourth day of July 2014,
At The Hague,
The Netherlands



Judge Koffi Kumelio A. Afande

[Seal of the Tribunal]