



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 Nos. IT-09-92-AR73.6  
IT-09-92-AR73.7  
Date: 26 October 2016  
Original: English

**THE PRESIDENT OF THE TRIBUNAL**

**Before:** Judge Liu Daqun, Acting President

**Registrar:** Mr. John Hocking

**Decision of:** 26 October 2016

**PROSECUTOR**

v.

**RATKO MLADIĆ**

*PUBLIC*

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**DECISION ON RATKO MLADIĆ'S MOTION FOR  
DISQUALIFICATION OF JUDGE FAUSTO POCAR**

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**Counsel for Ratko Mladić:**

Mr. Branko Lukić  
Mr. Miodrag Stojanović

**The Office of the Prosecutor:**

Mr. Peter McCloskey  
Mr. Alan Tieger

1. **I, Liu Daqun**, 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”), am seised of the “Appellant’s Motion Pursuant to Rule 15(B) Seeking Disqualification of Judge Fausto Pocar from the Appeals Chamber”, filed by Ratko Mladić (“Mladić”) in Cases Nos. IT-09-92-AR73.6 & IT-09-92-AR73.7, on 10 October 2016 (“Motion”).

## I. BACKGROUND

2. On 4 July 2016, Trial Chamber I of the Tribunal (“Trial Chamber”), issued a decision rejecting Mladić’s allegations that his fair trial rights have been violated by the integration of Chambers staff who previously worked for the trial chamber seized of the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T (“*Karadžić case*”), and denying his request for information or materials related to Chambers personnel or, alternatively, for a declaration of mistrial.<sup>1</sup>

3. On 9 September 2016, the Trial Chamber issued a scheduling order setting 25 October 2016 as the date for the filing of final trial briefs by Mladić and the Office of the Prosecutor (“Prosecution”).<sup>2</sup>

4. The Trial Chamber granted certification to appeal the Decision of 4 July 2016 and the Scheduling Order on 27 September 2016<sup>3</sup> and 28 September 2016,<sup>4</sup> respectively. On 4 October 2016, Mladić filed the “Interlocutory Appeal Brief Challenging the Decision of the Trial Chamber on the Defence Motion for a Fair Trial and Presumption of Innocence”, and on 5 October 2016, Mladić filed the “Interlocutory Appeal Brief Challenging the Decision of the Trial Chamber on the Defence Motion Regarding Scheduling Order” (together, “Mladić’s Interlocutory Appeals”).<sup>5</sup>

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<sup>1</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Decision on Defence Motion for a Fair Trial and the Presumption of Innocence or, in the Alternative, a Mistrial, 4 July 2016 (“Decision of 4 July 2016”), paras 1, 26-27.

<sup>2</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Scheduling Order, 9 September 2016 (“Scheduling Order”), p. 4.

<sup>3</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Decision on Defence Motion for Reconsideration or Certification to Appeal Decision on Motion for a Fair Trial or a Mistrial, 27 September 2016, para. 16.

<sup>4</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Decision on Defence Motion Seeking Reconsideration of or Certification to Appeal Scheduling Order, 28 September 2016, para. 13.

<sup>5</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.6, Interlocutory Appeal Brief Challenging the Decision of the Trial Chamber on the Defence Motion for a Fair Trial and Presumption of Innocence, 4 October 2016 (“Interlocutory Appeal Brief on the Trial Chamber’s Decision on Motion for a Fair Trial and Presumption of Innocence”); *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.7, Interlocutory Appeal Brief Challenging the Decision of the Trial Chamber on the Defence Motion Regarding Scheduling Order, 5 October 2016 (“Interlocutory Appeal Brief on Scheduling Order”).

5. On 6 October 2016, the President of the Tribunal assigned a bench of the Appeals Chamber of the Tribunal (“Appeals Chamber”) to hear each of Mladić’s Interlocutory Appeals, both benches including Judge Fausto Pocar (“Judge Pocar”).<sup>6</sup>

6. On 13 October 2016, following the filing of the Motion, the President of the Tribunal withdrew, pursuant to Rule 15(A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), from considering the Motion and assigned me to consider it in his place both as Presiding Judge and President of the Tribunal for the purpose of Rule 15(B) of the Rules.<sup>7</sup>

7. The Motion seeks the voluntary withdrawal or the disqualification of Judge Pocar from Mladić’s Interlocutory Appeals on the grounds of an alleged appearance of bias by reason of prejudgement.<sup>8</sup> On 11 October 2016, the Prosecution filed a response arguing that the Motion should be dismissed.<sup>9</sup> On 17 October 2016, Mladić requested leave to file a reply and attached his reply to the request.<sup>10</sup>

## II. APPLICABLE LAW

8. Article 21(3) of the Statute of the Tribunal (“Statute”) guarantees that an accused shall be presumed innocent until proven guilty. In addition, the Statute and the Rules guarantee an accused’s right to be tried by impartial judges.<sup>11</sup> Rule 15(A) of the Rules specifically 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.

<sup>6</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.6, Order Assigning Judges to a Case before the Appeals Chamber, 6 October 2016, p.1; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.7, Order Assigning Judges to a Case before the Appeals Chamber, 6 October 2016, p. 1.

<sup>7</sup> *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.6, Order Assigning Motions to a Judge, 13 October 2016, p. 2; *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-AR73.7, Order Assigning Motions to a Judge, 13 October 2016, p. 2.

<sup>8</sup> Motion, paras 1, 17-28.

<sup>9</sup> *Prosecutor v. Ratko Mladić*, Case Nos. IT-09-92-AR73.6 & IT-09-92-AR73.7, Consolidated Prosecution Response to Mladić’s Motions pursuant to Rule 15(B) Seeking disqualification of Judges Carmel Agius, Theodor Meron and Fausto Pocar, 11 October 2016 (“Response”), paras 1, 7.

<sup>10</sup> *Prosecutor v. Ratko Mladić*, Case Nos. IT-09-92-AR73.6 & IT-09-92-AR73.7, Appellant’s Motion for Leave to Reply in Support of Motions Pursuant to Rule 15(B) seeking disqualification of Judges Carmel Agius, Theodor Meron, and Fausto Pocar, 17 October 2016 (“Motion for Leave to Reply”); Annex A, Appellant’s Reply in Support of Motions Pursuant to Rule 15(B) Seeking Disqualification of Judges Carmel Agius, Theodor Meron, and Fausto Pocar, 17 October 2016 (“Reply”).

<sup>11</sup> See Article 13 of the Statute; Rule 14(A) of the Rules. See also *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 16 May 2008 (original French version filed on 28 November 2007) (“*Nahimana et al. Appeal Judgement*”), para. 47; *Édouard Karemera et al.*, Case No. ICTR-98-44-AR75.15, Decision on Joseph Nzirorera’s Appeal Against a Decision of Trial Chamber III Denying the Disclosure of a Copy of the Presiding Judge’s Written Assessment of a Member of the Prosecution Team, 5 May 2009 (“*Karemera et al. Appeal Decision*”), para. 9; *Ildephonse Hategekimana v. The Prosecutor*, Case No. ICTR-00-55B-A, Judgement, 8 May 2012 (“*Hategekimana Appeal Judgement*”), para. 16.

9. The Appeals Chamber has held that “there is a general rule that a Judge should not only be subjectively free from bias, but also that there should be nothing in the surrounding circumstances which objectively gives rise to an appearance of bias.”<sup>12</sup> On this basis, the Appeals Chamber has considered that the following principles should direct it in interpreting and applying the impartiality requirement of the Statute:

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.<sup>13</sup>

10. 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 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.”<sup>14</sup>

11. The Appeals Chamber has also emphasised that there is a presumption of impartiality that attaches to any judge of the Tribunal and considered that, in the absence of evidence to the contrary, it must be assumed that the judges of the Tribunal “can disabuse their minds of any irrelevant personal beliefs or predispositions.”<sup>15</sup> Accordingly, the party who seeks the disqualification of a judge bears the burden of adducing sufficient evidence that the judge is not impartial.<sup>16</sup> In this respect, the Appeals Chamber has consistently held that there is a high threshold to reach to rebut the presumption of impartiality.<sup>17</sup> The party must demonstrate that “there is a reasonable

<sup>12</sup> *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-A, Judgement, 21 July 2000 (“*Furundžija* Appeal Judgement”), para. 189.

<sup>13</sup> *Furundžija* Appeal Judgement, para. 189. See also, e.g., *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, Judgement, 20 February 2001 (“*Čelebići* Appeal Judgement”), paras 682-683; *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgment, 23 November 2001 (original French version filed on 1 June 2001) (“*Akayesu* Appeal Judgement”), para. 203; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006 (“*Galić* Appeal Judgement”), para. 39; *Nahimana et al.* Appeal Judgement, para. 49.

<sup>14</sup> *Furundžija* Appeal Judgement, para. 190. See also, e.g., *Čelebići* Appeal Judgement, para. 683; *Galić* Appeal Judgement, para. 40; *Nahimana et al.* Appeal Judgement, para. 50.

<sup>15</sup> *Furundžija* Appeal Judgement, paras 196-197. See also, e.g., *Akayesu* Appeal Judgement, paras. 91, 269; *Galić* Appeal Judgement, para. 41; *Nahimana et al.* Appeal Judgement, para. 48; *Karempera et al.* Appeal Decision, para. 11; *Hategekimana* Appeal Judgement, para. 16.

<sup>16</sup> *Furundžija* Appeal Judgement, para. 197. See also, e.g., *Akayesu* Appeal Judgement, para. 91; *Galić* Appeal Judgement, para. 41; *Nahimana et al.* Appeal Judgement, para. 48; *Hategekimana* Appeal Judgement, para. 16.

<sup>17</sup> *Furundžija* Appeal Judgement, para. 197. See also, e.g., *Čelebići* Appeal Judgement, para. 707; *Galić* Appeal Judgement, para. 41.

apprehension of bias by reason of prejudgement” that is “firmly established”.<sup>18</sup> The Appeals Chamber has explained that this high threshold is required because, “just as any real appearance of bias o[n] the part of a judge undermines confidence in the administration of justice, it would be as much of a potential threat to the interests of the impartial and fair administration of justice if judges were to disqualify themselves on the basis of unfounded and unsupported allegations of apparent bias”.<sup>19</sup>

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

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 prepare a report which shall include any comments or material provided by the challenged Judge. The Presiding Judge shall present this report to the President.

### III. DISCUSSION

#### A. Submissions of the parties

13. Mladić submits that Judge Pocar should withdraw or be disqualified from the benches appointed to determine Mladić’s Interlocutory Appeals since a reasonable observer would conclude that Judge Pocar has pre-judged the merits of this case and that this reasonable apprehension of bias has been firmly established.<sup>20</sup> Mladić contends that, as a member of the Appeals Chamber seized of the *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, (“*Popović et al.* Appeals Chamber”), Judge Pocar made prejudicial findings about Mladić which are sufficient to establish Mladić’s individual criminal responsibility pursuant to Articles 7(1) and 7(3) of the Statute.<sup>21</sup>

14. Specifically, Mladić points to findings made by the *Popović et al.* Appeals Chamber repeating certain findings of the Trial Chamber seized of the same case (“*Popović et al.* Trial Chamber”), and the *Popović et al.* Appeals Chamber’s conclusion that it was “satisfied that the only reasonable inference [...] [was] that Mladić was also a member of the JCE to Murder.”<sup>22</sup> Mladić also points to other findings from the *Popović et al.* Appeal Judgement related to the link between the principal perpetrators of crimes and Mladić as a member of a joint criminal enterprise to murder.<sup>23</sup> Mladić adds that Judge Pocar further prejudged his participation in a joint criminal

<sup>18</sup> *Furundžija* Appeal Judgement, para. 197. See also, e.g., *Čelebići* Appeal Judgement, para. 707.

<sup>19</sup> *Čelebići* Appeal Judgement, para. 707.

<sup>20</sup> Motion, paras 17, 28.

<sup>21</sup> Motion, para. 19, referring to *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Judgement, 30 January 2015 (“*Popović et al.* Appeal Judgement”). Mladić adds that as Judge Pocar signed his name to the *Popović et al.* Appeal Judgement, it considers these findings to be his own. Motion, para. 19.

<sup>22</sup> Motion, para. 20, referring to *Popović et al.* Appeal Judgement, para. 1052. See also Motion, para. 25, referring to *Popović et al.* Appeal Judgement, para. 1426.

<sup>23</sup> Motion, paras 21-24, referring to *Popović et al.* Appeal Judgement, paras 1056-1057, 1386, 1416, 1418.

enterprise to forcibly remove by repeating the *Popović et al.* Trial Chamber's findings concerning his participation and by concluding on this basis that a "reasonable trier of fact could have considered that the only reasonable inference to be drawn is that Mladić was a member of the JCE to Forcibly Remove."<sup>24</sup> He adds that the *Popović et al.* Appeals Chamber further found in relation to a particular incident that "a reasonable trier of fact could have concluded that a link was established between the [perpetrators of the killings] and Mladić, a member of the JCE to Forcibly Remove".<sup>25</sup>

15. As relief, Mladić requests the voluntarily withdrawal or the disqualification of Judge Pocar and the appointment of another Judge to hear Mladić's Interlocutory Appeals, or in the alternative, the assignment of the Motion to the Bureau for resolution under Rule 15(B) of the Rules.<sup>26</sup>

16. The Prosecution responds that the Motion should be dismissed since Mladić does not demonstrate that a reasonable observer would reasonably apprehend bias in Judge Pocar's involvement in the *Popović et al.* case.<sup>27</sup> According to the Prosecution, it is well established that in criminal trials arising out of the same series of events, a reasonable observer would presume that judges decide each case exclusively on the basis of the evidence heard by the chamber in relation to each particular case.<sup>28</sup> In the Prosecution's view, Mladić has not raised any indication that Judge Pocar is unable to act in a manner consistent with this expectation and has failed to rebut the presumption of impartiality.<sup>29</sup> The Prosecution contends that the fact that Judge Pocar was involved in making findings on the criminal responsibility of Mladić in the *Popović et al.* Appeal Judgement on the basis of the evidence adduced in that case does not indicate that Judge Pocar would bring a partial or prejudiced mind to Mladić's Interlocutory Appeals.<sup>30</sup>

17. Mladić replies that the Prosecution provides no support for its assertion that the factual and legal findings made by Judge Pocar in the *Popović et al.* case relating to Mladić's guilt would not continue to influence the judge's decision-making.<sup>31</sup>

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<sup>24</sup> Motion, para. 26, referring to *Popović et al.* Appeal Judgement, paras 1680, 1682.

<sup>25</sup> Motion, para. 27, referring to *Popović et al.* Appeal Judgement, para. 1683.

<sup>26</sup> Motion, p. 11.

<sup>27</sup> Response, paras. 1, 7.

<sup>28</sup> Response, para. 2 referring to *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision on Motion for Disqualification, 16 February 2007, para. 24; *Nahimana et al.* Appeal Judgement, para. 78.

<sup>29</sup> Response, para. 2.

<sup>30</sup> Response, para. 3.

<sup>31</sup> Reply, para. 4. See also Reply, para. 3. I consider that I would benefit from submissions in reply on the issue to adjudicate the Motion. Therefore, pursuant to Rule 126bis of the Rules, I grant the Motion for Leave to Reply and accept the Reply attached as an annex to the Motion for Leave to Reply as validly filed.

## B. Analysis

18. On 17 October 2016, pursuant to Rule 15(B) of the Rules, I conferred with Judge Pocar regarding the Motion.<sup>32</sup> Judge Pocar has indicated that he can deal with the issues raised in Mladić's Interlocutory Appeals independently, impartially, and conscientiously. Judge Pocar also stated that he fully leave it to my appreciation to make a decision on whether his participation on the appeal benches may give rise to an appearance of bias.

19. At the outset, I observe that the request for disqualification of Judge Pocar is directed to his participation in the benches appointed by the President of the Tribunal to determine Mladić's Interlocutory Appeals.<sup>33</sup> I recall that the Appeals Chamber has held that determinations of actual bias or unacceptable appearance of bias under Rule 15 of the Rules should be made on a case-by-case basis.<sup>34</sup> The issue I must therefore address in this case, is whether the involvement of Judge Pocar in another case, the *Popović et al.* case on appeal, and in particular the findings pointed out by Mladić, would lead a reasonable observer, properly informed, to reasonably apprehend bias on the part of Judge Pocar when adjudicating Mladić's Interlocutory Appeals. I consider that any apprehension of bias by reason of prejudgement must not only be firmly established,<sup>35</sup> but also cannot be assessed in the abstract as it will depend on the issues that require adjudication in the particular case.

20. Accordingly, in order to determine whether a reasonable observer, properly informed, would reasonably apprehend bias on the part of Judge Pocar when adjudicating Mladić's Interlocutory Appeals, I consider that in this case, it is necessary for Mladić to adduce sufficient evidence showing that the substantive issues arising from the *Popović et al.* Appeal Judgement

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<sup>32</sup> I recall that when the Presiding Judge and the President of the Tribunal is the same person, the requirement of Rule 15(B)(i) of the Rules that the Presiding Judge report to the President of the Tribunal becomes inapplicable. See *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, IT-08-91-A, Decision on Motion Requesting Recusal, 3 December 2013, para. 21; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.2-A, Decision on Motion for Disqualification of Judges Fausto Pocar and Theodor Meron from the Appeals Proceedings, 2 December 2009, para. 3; *Prosecutor v. Vojislav Šešelj*, IT-03-67-R77.2-A, Decision on Motion for Disqualification, 6 November 2009 ("Decision of 6 November 2009"), para. 5.

<sup>33</sup> See Motion, paras. 1, 18-19, 28-29.

<sup>34</sup> *Prosecutor v. Mićo Stanišić & Stojan Župljanin*, Case No. IT-08-91-A, Judgement, 30 June 2016 ("*Stanišić and Župljanin* Appeal Judgement"), para. 32 and references cited therein. In the *Stanišić and Župljanin* Appeal Judgement, the Appeals Chamber also noted that a Judge who has not met the requirements of this Rule in a specific case has otherwise been entitled to continue to exercise the functions of a Judge of the Tribunal and sit in other cases when he fulfils the requirements of Rule 15 of the Rules in those other cases. See *Stanišić and Župljanin* Appeal Judgement, para. 32, fn. 126.

<sup>35</sup> See *supra*, para. 11.

pointed out by Mladić's are so closely linked to the substantive issues in Mladić's Interlocutory Appeals so as to cast doubt on the impartiality of Judge Pocar.<sup>36</sup>

21. As evidence of an appearance of bias, Mladić points to findings from the *Popović et al.* Appeal Judgement arguing that they show a prejudgement from Judge Pocar on Mladić's guilt. These findings, which all expressly mention Mladić, relate to his role and involvement in two discrete joint criminal enterprises (to murder and to forcibly remove).<sup>37</sup>

22. In Mladić's Interlocutory Appeals, however, the Appeals Chamber will have to address allegations of violations of Mladić's fair trial rights and presumption of innocence related to: (i) the integration in his case of Chambers staff who previously worked for the trial chamber seized of the *Karadžić* case; and (ii) the date of the filing of Mladić's final trial brief.<sup>38</sup> Having carefully reviewed Mladić's Interlocutory Appeals, I observe that the issues raised therein will not require any consideration by the Appeals Chamber of Mladić's individual criminal responsibility. Rather, the subject matter of the Mladić's Interlocutory Appeals is procedural and Mladić's Interlocutory Appeals only requires rulings on some specific allegations of violations of fair trial rights in the ongoing Mladić's trial proceedings.

23. Based on these considerations, I find that the substantive issues arising from *Popović et al.* Appeal Judgement to which Mladić points cannot be said to be so closely related to the fair trial issues at the centre of Mladić's Interlocutory Appeals so as to cast doubt on the impartiality of Judge Pocar. I am therefore not convinced that any of the relevant findings from the *Popović et al.* Appeal Judgement, would lead a reasonable observer, properly informed, to reasonably apprehend bias on

<sup>36</sup> See Decision of 6 November 2009, para. 6. I observe that such approach finds support in the jurisprudence of the European Court of Human Rights ("ECHR"). The ECHR has found that it is not "*prima facie* incompatible with the requirements of impartiality if the same judge is involved, first, in a decision on the merits of a case and, subsequently, in proceedings in which the admissibility of an appeal against that decision is examined." See *Warsicka v. Poland*, ECtHR, No. 2065/03, Judgment, 16 January 2007 ("*Warsicka* ECtHR Judgement"), para. 40. It also found that "the assessment of whether the participation of the same judge in different stages of a civil case complies with the requirement of impartiality laid down by Article 6 § 1 is to be made on a case-to-case basis, regard being had to the circumstances of the individual case and, importantly, to the characteristics of the relevant rules of civil procedure applied to the case. In particular, it is necessary to consider whether the link between substantive issues determined in a decision on the merits and the admissibility of an appeal against that decision is so close as to cast doubt on the impartiality of the judge." See *Warsicka* ECtHR Judgement, para. 40. See also *Case of Central Mediterranean Development Corporation Limited v. Malta*, ECtHR, No. 18544/08, Judgment, 22 November 2011, paras 33-37. I observe that the above-mentioned ECHR cases relates to situations where the judges exercised judicial functions in two successive stages of the same proceedings. The same principles should *a fortiori*, hold true when the question, like in this case, is not related to two successive stages of the same proceedings but between two distinct proceedings.

<sup>37</sup> Motion, paras. 19-28, referring to *Popović et al.* Appeal Judgement, paras. 1052, 1056-1057, 1386, 1416, 1418, 1426, 1680, 1682-1683. I note that the *Popović et al.* Appeal Judgement's findings Mladić points to reflect repetition of conclusions from the *Popović et al.* Trial Chamber or conclusions on the assessment of the reasonableness of some of the *Popović et al.* Trial Chamber's findings. Moreover, Mladić also refers to paragraphs of the *Popović et al.* Appeals Judgement where the Appeals Chamber reached conclusions beyond reasonable doubt. See Motion, paras. 19-28, referring to *Popović et al.* Appeal Judgement, paras. 1052, 1056-1057, 1386, 1416, 1418, 1426, 1680, 1682-1683.

<sup>38</sup> Interlocutory Appeal Brief on the Trial Chamber's Decision on Motion for a Fair Trial and Presumption of Innocence, paras. 1, 16, 43; Interlocutory Appeal Brief on Scheduling Order, paras. 1, 25, 55.



the part of Judge Pocar when adjudicating Mladić's Interlocutory Appeals. I consider that Mladić's argument that the findings from the *Popović et al.* Appeal Judgement which in his view show prejudgement on Mladić's guilt, is insufficient to rebut the presumption of impartiality of Judge Pocar to adjudicate Mladić's Interlocutory Appeals.


24. In light of the foregoing, I consider that Mladić has not rebutted the strong presumption of impartiality of Judge Pocar and that the Motion is without merit. For the reasons explained above, I also consider that it is not necessary to appoint a panel of three judges pursuant to Rule 15(B) of the Rules to consider the Motion.

#### IV. DISPOSITION

25. For the foregoing reasons and pursuant to Rule 15 of the Rules, I hereby **DENY** the Motion.

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

Dated this twenty sixth day of October 2016,  
at The Hague,  
The Netherlands.



Judge Liu Daqun

[Seal of the Tribunal]