

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-55-A

Date: 27 September 2018

Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding

Registrar: Mr. Olufemi Elias

Decision of: 27 September 2018

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig
Ms. Barbara Goy
Ms. Katrina Gustafson

Counsel for Radovan Karadžić:

Mr. Peter Robinson
Ms. Kate Gibson

I, THEODOR MERON, Judge of the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively) and Presiding Judge in this case;¹

NOTING the judgement issued in this case by the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia on 24 March 2016² and the appeals against the trial judgement filed before the Mechanism by Mr. Radovan Karadžić (“Karadžić”) and the Office of the Prosecutor of the Mechanism (“*Karadžić Case*”);³

NOTING the “Motion to Disqualify Judge Theodor Meron” filed on 25 September 2018 by Karadžić before Judge Jean-Claude Antonetti (“*Karadžić Disqualification Motion*”) pursuant to Rule 18 of the Rules of Procedure and Evidence of the Mechanism (“Rules”) seeking to disqualify me from the appeal proceedings in this case on the basis of an appearance of bias resulting from my “cumulative participation in judgements where [I] was extensively confronted with evidence and findings concerning disputed facts and issues that are the subject of [Karadžić’s] appeal, and by the conclusions that [I] drew in those cases in which [I] affirmed the convictions of [Karadžić’s] subordinates”;⁴

RECALLING the “Decision on Defence Motions for Disqualification of Judges Theodor Meron, Carmel Agius and Liu Daqun” issued on 3 September 2018 by Judge Antonetti in the case of *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A (“*Mladić Case*”), which disqualified me from the *Mladić Case* for reasons of apparent bias (“*Mladić Disqualification Decision*”);⁵

OBSERVING that the *Mladić Disqualification Decision* clearly contradicts established jurisprudence⁶ and, in my view, harms the interests of the Mechanism by wrongly suggesting that

¹ Order Assigning Judges to a Case Before the Appeals Chamber, 20 April 2016, p. 2.

² *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Public Redacted Version of Judgement Issued on 24 March 2016, 24 March 2016.

³ See Radovan Karadžić’s Notice of Appeal, 22 July 2016 (public with a confidential annex); Radovan Karadžić’s Appeal Brief, 5 December 2016 (confidential; public redacted version filed on 23 December 2016); Prosecution Response Brief, 15 March 2017 (confidential; public redacted version filed on 16 May 2017); Radovan Karadžić’s Reply Brief, 6 April 2017 (confidential; public redacted version filed on 19 April 2017). See also Prosecution’s Notice of Appeal, 22 July 2016; Prosecution Appeal Brief, 5 December 2016 (confidential; public redacted version filed on 11 January 2017); Radovan Karadžić’s Response Brief, 15 March 2017 (confidential; public redacted version filed on 15 March 2017); Prosecution Reply Brief, 6 April 2017 (confidential; public redacted version filed on 16 May 2017).

⁴ *Karadžić Disqualification Motion*, para. 1.

⁵ *Mladić Disqualification Decision*, para. 87.

⁶ See, e.g., *Tharcisse Renzaho v. The Prosecutor*, Case No. ICTR-97-31-A, Judgement, 1 April 2011, para. 22; *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgement, 2 February 2009, para. 378; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, para. 78. See also *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A, Decision on Motion for Disqualification of

“there is a risk in terms of appearance where the superior officer [...] is being tried, even on appeal, by the judge who found his subordinates guilty”;⁷

RECALLING that the Rules do not allow for an appeal of the *Mladić* Disqualification Decision;⁸

OBSERVING that the *Karadžić* Disqualification Motion is based on the *Mladić* Disqualification Decision;⁹

CONSIDERING that, in these circumstances, allowing Judge Antonetti to adjudicate yet another motion brought under Rule 18 of the Rules is, in my view, liable to delay the proceedings in this case¹⁰ and further harm the interests of the Mechanism;

OBSERVING that Karadžić “has appreciated [my] procedural fairness during the appeal and [my] extraordinary concern for his health and detention conditions” and that Karadžić expressly “does not contend that [I] am actually biased against him”;¹¹

HIGHLIGHTING the excellent progress of the appeal proceedings in this case in which, despite the extensions of time in the briefing process amounting to 217 days, the Bench aimed to deliver the Appeal Judgement before the end of this year;¹²

EMPHASIZING that I would continue to adjudicate the *Karadžić* Case with an impartial mind;

CONSIDERING, however, that in order not to allow disqualification proceedings to impede the progress of the appeals in this case, it is in the interests of justice that I withdraw from this case;

Judge Fausto Pocar, 2 October 2012, para. 20; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006, para. 44.

⁷ *Mladić* Disqualification Decision, para. 51.

⁸ See Rule 18(B)(iii) of the Rules; *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Decision on the Prosecution's Request for the Appointment of a Panel of Three Judges to Determine Mladić's Disqualification Applications, 13 September 2018 (“*Mladić* Decision of 13 September 2018”), para. 3.

⁹ See, e.g., *Karadžić* Disqualification Motion, paras. 30, 37, 38, 40, 42.

¹⁰ In this respect I note the length of the disqualification proceedings in the *Mladić* case which have not yet reached a final conclusion. See, e.g., *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Defence Motion Respectfully Seeking the Disqualification of Judge Theodor Meron for Actual or Apparent Bias, 12 June 2018; *Mladić* Disqualification Decision; *Mladić* Decision of 13 September 2018; *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Prosecution's Appeal of Acting President's Decision Denying Request to Appoint a Panel of Three Judges to Determine Mladić's Disqualification Applications, 19 September 2018; *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Order Assigning Prosecution Appeal of Acting President's Decision Denying Request to Appoint a Three-Judge Panel, 25 September 2018.

¹¹ *Karadžić* Disqualification Motion, para. 29. I also recall that in the last Status Conference in this case Karadžić's Counsel stated to me: “I would like to also thank you for your fairness to us throughout the appeal proceedings, and we feel that the appeal proceedings, however they come out, have been conducted fairly.” T. 15 August 2018 p. 329.


¹² See, e.g., T. 15 August 2018 pp. 327, 328.

FOR THE FOREGOING REASONS,

DECIDE to WITHDRAW from the *Karadžić* Case with immediate effect.

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

Done this 27th day of September 2018,
At The Hague,
The Netherlands


Judge Theodor Meron
Presiding Judge

[Seal of the Mechanism]



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