



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: 9 January 2008
Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Fausto Pocar, President

Registrar: Mr. Hans Holthuis

Order of: 9 January 2008

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

ORDER PURSUANT TO RULE 15

The Office of the Prosecutor:

Ms. Christine Dahl

The Accused:

Vojislav Šešelj

I, FAUSTO POCAR, 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 oral application made in Court on 8 January 2008, by the Office of the Prosecutor (“Prosecution”) for the disqualification and withdrawal of Judge Frederik Harhoff (“Application”) pursuant to Rule 15(B)(ii) of the Rules of Procedure and Evidence (“Rule” or “Rules”);¹

NOTING that pursuant to Rule 15(B) the Application was referred to Judge Jean-Claude Antonetti, as the Presiding Judge of the Trial Chamber who, in accordance with Rule 15(B)(i), consulted with Judge Harhoff and, on the same day, submitted to me a report pursuant to that Rule;

NOTING the “Prosecution’s Citations in Support of Motion under Rule 15” filed on 9 January 2008;

CONSIDERING that pursuant to Rule 15(A) a Judge may not sit in any case in which he or she “has a personal interest or concerning which the Judge has or has 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.²

NOTING that the Application is based on Judge Harhoff’s membership and activity in a human rights non-governmental organization in 1993 and on the fact that, as a member of this organization, he took part in interviewing an individual whom the Prosecution intends to call as a witness in the present proceedings;³

¹ T. 2238 (8 January 2008).

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

³ T. 2233-2236 (8 January 2008).

NOTING that the Prosecution further submits that such activity, of an investigative nature, is incompatible with Judge Harhoff's involvement in this case;⁴

NOTING that the Prosecution does not allege an actual bias on part of Judge Harhoff, but submits that in the present case the independence of the judiciary and an appearance of bias are at stake;⁵

NOTING that at the oral hearing of 8 January 2008, the Accused stated his opposition to the Application, suggesting that it is just a pretext to delay the proceedings and submitting that, in any event, the work of the human rights organization in question was not judicial in nature and furthermore that the interview should be disregarded because it relates to a municipality not listed in the operative indictment;⁶

NOTING from the report of Judge Antonetti of 8 January 2008 that Judge Harhoff has advised that he does not consider that the circumstances identified in the Application impugn his ability to act impartially and that Judge Antonetti concurs with that view;

CONSIDERING that, in these circumstances, it is necessary and appropriate that a panel of three Judges drawn from other Chambers should consider the merits of the Application and report its decision on those merits to me pursuant to Rule 15(B)(ii);

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

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

Judge Liu Daqun

Judge Theodor Meron

Judge O-Gon Kwon

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

Done this 9th day of January 2008,
At The Hague,
The Netherlands.



Judge Fausto Pocar
President

[Seal of the Tribunal]

⁴ T. 2236-2237 (8 January 2008).

⁵ T. 2236 (8 January 2008).

⁶ T. 2239-2242 (8 January 2008).