



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-95-11-A

Date: 5 October 2007

Original: English

**THE VICE-PRESIDENT OF THE INTERNATIONAL TRIBUNAL**

**Before:** Judge Kevin Parker, Vice-President

**Registrar:** Mr. Hans Holthuis

**Order:** 5 October 2007

**PROSECUTOR**

v.

**MILAN MARTIĆ**

**PUBLIC**

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**ORDER PURSUANT TO RULE 15**

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**The Office of the Prosecutor:**

Ms. Michelle Jarvis

**Counsel for the Accused:**

Mr. Predrag Milovančević

Mr. Nikola Perović

I, Kevin Parker, Vice-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** that on 17 August 2007, Milan Martić (“Martić”) filed a Motion before President Pocar requesting that Judge Schomburg be disqualified from sitting on the Appeals Chamber in this case and from his function as Pre-Appeal Judge (“Motion”);<sup>1</sup>

**NOTING** that the Prosecution filed its response on 27 August 2007<sup>2</sup> to which Martić replied on 3 September 2007;<sup>3</sup>

**NOTING** that, pursuant to Rule 15(B) of the Rules of Procedure and Evidence (“Rules”), the Motion was referred to the President, Judge Pocar, as the Presiding Judge of the Appeals Chamber who in accordance with Rule 15(B)(i) of the Rules consulted with Judge Schomburg and on 20 September 2007 submitted to me a report pursuant to that Rule, because the President, having consulted with Judge Schomburg as required by Rule 15(B)(i) of the Rules, was thereafter unable to act in furtherance of his own report;

**CONSIDERING** that pursuant to Rule 15(A) of the Rules 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.<sup>4</sup>

**NOTING** that Martić bases the Motion *inter alia* on Judge Schomburg’s German nationality, arguing that many issues on appeal are directly connected to Germany’s “crucial political and

<sup>1</sup> Motion to Disqualify Judge Wolfgang Schomburg from Sitting on Appeal, 17 August 2007.

<sup>2</sup> Prosecution Response to Motion to Disqualify Judge Wolfgang Schomburg, 27 August 2007.

<sup>3</sup> Reply to Prosecution Response to Defence Motion to Disqualify Judge Wolfgang Schomburg from Sitting on Appeal, 3 September 2007 (“Reply”).

<sup>4</sup> *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.

financial support to Croatia, as well as armed supplies”,<sup>5</sup> and that “the Appeals Chamber will be faced with the issues relating to WWII and reaffirmations of Nazi policy in Croatia with the indispensable German support”;<sup>6</sup>

**NOTING** further that Martić bases his Motion also on Judge Schomburg’s prior position in “the German State machinery”<sup>7</sup> as Undersecretary of State at the Senate Justice Department, Berlin, from 1989 to 1991,<sup>8</sup> and on words attributed to Judge Schomburg in an article in *Deutsche Welle* “in which he expressed prejudicial position relating to the facts that have to be elaborated by the Appeals Chamber”;<sup>9</sup>

**NOTING** from the report of President Pocar of 20 September 2007 that Judge Schomburg did not agree that the circumstances were such that he should recuse himself;

**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 Motion and report its decision on those merits to me pursuant to Rule 15(B)(ii) of the Rules.

For the foregoing reasons, pursuant to Rules 15 and 21 of the Rules, I hereby **APPOINT** a panel of three Judges to consider the merits of the application, composed as follows:

Judge Patrick Robinson

Judge Carmel Agius

Judge Iain Bonomy

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

Done this fifth day of October 2007,

at The Hague, The Netherlands.



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Judge Kevin Parker

Vice-President

**[Seal of the Tribunal]**

<sup>5</sup> Motion, para. 24.

<sup>6</sup> Reply, para. 2. Motion, para. 26.

<sup>7</sup> Motion, para. 28.

<sup>8</sup> Motion, paras 28-29.

<sup>9</sup> Motion, paras 33, 35. Reply, para. 7.