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-09-92-T

Date: 4 July 2016

Original: English

IN TRIAL CHAMBER I

Before: **Judge Alphons Orie, Presiding**
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: **Mr John Hocking**

Decision of: **4 July 2016**

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

DECISION ON DEFENCE MOTION FOR A FAIR TRIAL AND THE PRESUMPTION OF INNOCENCE OR, IN THE ALTERNATIVE, A MISTRIAL

Office of the Prosecutor
Mr Peter McCloskey
Mr Alan Tieger

Counsel for Ratko Mladić
Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 19 May 2016, the Defence filed a motion ("Motion") alleging that the fair-trial rights of Ratko Mladić ("Accused") have been violated by the integration of chamber staff who previously worked for the trial chamber seised of the case of *Prosecutor v. Radovan Karadžić* ("*Karadžić* case") into the present case, and requesting certain information or, in the alternative, that the Chamber declare a mistrial.[1] On 31 May 2016, the Prosecution responded ("Response"), opposing the Motion.[2] On 7 June 2016, the Defence requested leave to reply ("Request to Reply"),[3] attaching its reply as an annex ("Reply").[4]

II. SUBMISSIONS OF THE PARTIES

2. The Defence submits that most of the chamber staff who drafted the trial judgement in the *Karadžić* case ("Impugned Staff") are currently assisting the judges in the present case by providing substantive legal support upon which the judges' work is based.[5] The Defence argues that because the two cases are so closely related and have virtually identical indictments, and because findings were made in the *Karadžić* judgement which "for all intents and purposes convicted" the Accused, the Impugned Staff are no longer impartial towards the Accused.[6] The Defence submits that for these reasons, the influence of the Impugned Staff on the judges in the present case is an association that might affect the judges' impartiality under Rule 15(A) of the Tribunal's Rules of Procedure and Evidence ("Rules"), creating either actual bias or an objective appearance of bias against the Accused.[7] The Defence argues, therefore, that the Accused's fundamental fair trial rights have been violated.[8]

3. To address these concerns, the Defence seeks confirmation from the Chamber that the Impugned Staff neither have worked, nor will work, on the judgement in the present case, nor discussed case-related matters with anyone who has.[9] Alternatively, the Defence seeks copies of any written undertakings that the Impugned Staff have signed prior to taking up their duties on the

1 Motion for a Fair Trial and the Presumption of Innocence or, in the Alternative, a Mistrial, 19 May 2016, paras 28-31.
2 Prosecution Response to Defence Motion for a Fair Trial and the Presumption of Innocence, or in the Alternative, a Mistrial, 31 May 2016, para. 5.
3 Defence Request for Leave to Reply in Support of Motion for a Fair Trial and the Presumption of Innocence or, in the Alternative, a Mistrial, 7 June 2016, para. 6.
4 Defence Request for Leave to Reply in Support of Motion for a Fair Trial and the Presumption of Innocence or, in the Alternative, a Mistrial, 7 June 2016, Annex A: Reply in Support of Motion for a Fair Trial and the Presumption of Innocence or, in the Alternative, a Mistrial.
5 Motion, paras 1-2, 10-12.
6 Motion, paras 2, 14, 18, 24-26.
7 Motion, paras 17-28.
8 Motion, paras 8-9, 28.
9 Motion, para. 29.

present case, and a detailed description of all other efforts that the Chamber has taken to protect the Accused's rights in relation to this issue.[10] If the above requests are not granted, and if the judges in the present case might have already relied on the work of the Impugned Staff, the Defence requests that the Chamber declare a mistrial.[11] The Defence also seeks leave to exceed the word limit for motions given the "complex and subtle" issues at hand.[12]

4. The Prosecution submits that a judge's decision-making authority is solely within the judge's purview and is not diminished or infringed upon by the assistance of personnel such as legal officers or consultants.[13] The Prosecution argues that because the presumption of impartiality is not rebutted when judges work on overlapping cases, it cannot be rebutted when those assisting the judges work on overlapping cases, in particular when the Tribunal's judges are required to provide well-reasoned opinions in writing that identify the evidentiary basis for their findings.[14] The Prosecution submits that the jurisprudence cited as support in the Motion is unpersuasive because the cases relied upon concern chamber personnel having a direct link to one of the parties in a case rather than the issue raised in the Motion.[15] The Prosecution submits that Defence's arguments are negated by the Tribunal's relevant jurisprudence and the Motion therefore should be dismissed.[16]

5. The Defence submits that it should be allowed to reply in order to address certain submissions of the Prosecution concerning the critical issue of the Accused's fair trial rights.[17] In its Reply, the Defence submits that the jurisprudence cited by the Prosecution supports the Defence arguments concerning impartiality and that activities of chamber staff can violate the fair trial rights of the Accused.[18] The Defence further submits that Prosecution's argument that judicial decision-making is solely within the purview of the judge is not applicable to the Chamber in the present case, which has issued decisions by emails sent by staff and interns.[19] Lastly, the Defence submits that the Prosecution has ignored its main argument about the impact of alleged staff bias on the Accused's presumption of innocence.[20]

10 Motion, para. 30.
11 Motion, para. 31.
12 Motion, para. 3.
13 Response, para. 2.
14 Response, para. 3.
15 Response, para. 4.
16 Response, para. 5.
17 Request to Reply, paras 2-5.
18 Reply, paras 2-3.
19 Reply, para. 5.
20 Reply, paras 6-7.

III. APPLICABLE LAW

6. Article 13 of the Statute of the Tribunal ("Statute") states that the Tribunal's judges shall be persons of high moral character, impartiality, and integrity. Article 21 of the Statute guarantees an accused's right to a fair trial.

7. Rule 15(A) of the Rules 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.

8. Rule 15(B) of the Rules governs the procedure for determining disqualification:

> (i) 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 report to the President.
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> (ii) Following the report of the Presiding Judge, the President shall, if necessary, appoint a panel of three Judges drawn from other Chambers to report to him its decision on the merits of the application. If the decision is to uphold the application, the President shall assign another Judge to sit in the place of the Judge in question.
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> (iii). The decision of the panel of three Judges shall not be subject to interlocutory appeal.
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> (iv) If the Judge in question is the President, the responsibility of the President in accordance with this paragraph shall be assumed by the Vice-President or, if he or she is not able to act in the application, by the permanent Judge most senior in precedence who is able to act.

9. The Tribunal's Appeals Chamber, in considering an allegation of judicial bias in *Prosecutor v. Furundžija* ("*Furundžija* case"), found that an integral component of the right to a fair trial is the right of an accused to be tried before an independent and impartial tribunal.[21] The Appeals Chamber ultimately dismissed the complaint however, finding a presumption of impartiality that attaches to judges which is well-established in international and domestic jurisprudence.[22] To rebut this presumption of impartiality, such as in an application to disqualify a judge, a high threshold must be reached, showing the existence of a reasonable and firmly established apprehension of bias.[23] Accordingly, judges should not only be subjectively free from bias, but there should be nothing which objectively gives rise to an appearance of bias.[24] Any questions of potential bias must be considered in the context of the presumption of impartiality.[25] On this basis, the Appeals Chamber

[21] *Prosecutor v. Furundžija,* para. 177.
[22] *Furundžija* Appeal Judgement, para. 196. *See e.g., Prosecutor v. Kordić et al.,* Case No. IT-95-14/2-PT, Decision of the Bureau, 4 May 1998, p. 2.
[23] *Furundžija* Appeal Judgement, para. 197.
[24] *Furundžija* Appeal Judgement, para. 189.
[25] *Furundžija* Appeal Judgement, para. 197.

considered in assessing potential bias that: (1) a judge is not impartial if it is shown that actual bias exists; and (2) there is an unacceptable appearance of bias if either:

> (a) 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 which circumstances, a judge's disqualification from the case is automatic, or
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> (b) the circumstances would lead a reasonable observer,[26] properly informed, to reasonably apprehend bias.[27]

10. In *Prosecutor v. Renzaho* ("*Renzaho* case"), the Appeals Chamber of the International Criminal Tribunal for Rwanda ("ICTR") dismissed an allegation that a judge was influenced by hearing evidence in a related case, and confirmed its earlier findings that a properly informed and reasonable observer would expect frequent and considerable overlap between cases at the ICTR which would not affect the impartiality of judges.[28] In dismissing similar allegations of bias stemming from judges hearing related cases, the Trial and Appeals Chambers of the Tribunal and the ICTR have clearly established that judges cannot be disqualified simply by sitting in multiple criminal trials arising out of the same series of events, even when hearing evidence relating to those events across multiple cases because, absent evidence to the contrary, a reasonable observer would presume that judges rule fairly on the issues before them by virtue of their training and experience, relying exclusively on the evidence adduced in the relevant case.[29] Not only does the training and

[26] *Furundžija* Appeal Judgement, para. 190. A "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."

[27] *Furundžija* Appeal Judgement, para. 189. With regard to the appearance of bias, the test is "whether the reaction of the hypothetical fair-minded observer (with sufficient knowledge of the circumstances to make a reasonable judgment) would be that the judge in question might not bring an impartial and unprejudiced mind to the issues arising in the case." *Prosecutor v. Delalić et al.*, Case No. IT-96-21-A, Judgement, 20 February 2001 ("*Delalić* Appeal Judgement"), para. 683. *See also Prosecutor v. Brđanin and Talić*, Case No. IT-99-36-T, Decision on Joint Motion to Disqualify, 3 May 2002, para. 26. For the requirement that such an apprehension of bias must be a reasonable one, see *Delalić* Appeal Judgement, para. 697. *See also Prosecutor v. Akayesu*, Case No. ICTR-96-4-A, Judgement 1 June 2001, para. 91; *Prosecutor v. Karemera et al.*, The Bureau, Decision on Motion by Nzirorera for Disqualification of Trial Judges of 17 May 2004, paras 8-11.

[28] *Prosecutor v. Renzaho*, Case No. ICTR-97-31-A, Judgement, 1 April 2011, para. 22.

[29] *Prosecutor v. Šešelj*, Case No. IT-03-67-PT, Decision on Motion for Disqualification, 16 February 2007, para. 25; *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-A, Judgement, 27 November 2008, para. 78. The ICTY Bureau had found that two judges in the *Prosecutor v. Kordić and Čerkez* case, who at the time were hearing related witnesses and evidence in the *Prosecutor v. Blaškić* case, were not precluded from hearing the case against Kordić and Čerkez. *See Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14-T, Decision of the Bureau of 5 May 1998; *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-PT, Decision on the Application of the Accused for Disqualification of Judges Jorda and Riad of 21 May 1998. *See also Prosecutor v. Popović et al.*, Case No. IT-05-88-A, Decision on Drago Nikolić Motion to Disqualify Judge Liu Daqun, 20 January 2011, paras 3, 7-8, 10, 12. Tribunal decisions regularly refer to the professional capacity of judges to put out of their mind evidence other than that presented in the trial before them in rendering a verdict. For example, in *Prosecutor v. Kupreškić et al.*, the Trial Chamber ruled that whatever evidence was adduced in *Furundžija* would not be regarded as evidence in the *Kupreškić et al.* case, see *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-T, Order on Emergency Motion to Limit Prosecutor's Inquiry Relating to Accused Anto Furundžija, 26 August 1998. *See also Prosecutor v. Krajišnik*, Case No. IT-00-39-PT, Decision on the Defence Application for Withdrawal of a Judge from the Trial, 22 January 2003, paras 15, 17. The Presiding Judge in *Prosecutor v. Krajišnik* considered that the reasonable observer would know that the Tribunal is established to hear a number of cases related to the same overall conflict, *i.e.* the violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. The

professional experience of judges give them the ability to disregard evidence from related trials, the Tribunal's requirement that they render well-reasoned opinions in writing explaining the basis of their findings means that they are necessarily confined to considering only the evidence in the relevant case.[30]

11. In examining the issue of maintaining impartiality while adjudicating overlapping cases involving alleged co-perpetrators, the European Court of Human Rights ("ECHR") in *Poppe v. The Netherlands* ("*Poppe* case") considered that the work of criminal courts frequently involves judges sitting on separate trials in which a number of co-accused are charged, and that it would render the work of the criminal courts impossible, if by that fact alone, a judge's impartiality could be called into question.[31] In the *Poppe* case, the ECHR applied the objective test and held that:

> [T]he mere fact that a judge has already ruled on similar but unrelated criminal charges or that he or she has already tried a co-accused in separate criminal proceedings is not, in itself, sufficient to cast doubt on that judge's impartiality in a subsequent case. It is, however, a different matter if the earlier judgments contain findings that actually prejudge the question of the guilt of an accused in such subsequent proceedings.[32]

12. In finding that the applicant's fear of bias was not objectively justified, the court further held that in determining such a "question of the guilt" the court had to take into account:

> Whether the applicant's involvement with [other co-perpetrators mentioned in the earlier judgements] fulfilled all the relevant criteria necessary to constitute a criminal offence and, if so, whether the applicant was guilty, beyond reasonable doubt, of having committed such an offence was [...] addressed, determined or assessed by the trial judges whose impartiality the applicant now wishes to challenge.[33]

13. In *Miminoshvili v. Russia* ("*Miminoshvili* case"), the ECHR confirmed the standard it had set in the *Poppe* case, finding that mere references to co-accused in overlapping cases did not determine an applicant's guilt in the subsequent proceedings.[34] In concluding that the trial chamber

judges of the Tribunal will therefore be frequently faced with oral and material evidence relating to the same facts which, as highly qualified professional judges, will not affect their impartiality.

30 *Prosecutor v. Galić*, IT-98-29-T, Decision on Galić's Application Pursuant to Rule 15(B), 28 March 2003, para. 16. "Judges' training and professional experience engrain in them the capacity to put out of their mind evidence other than that presented at trial in rendering a verdict. Judges who serve as fact-finders may often be exposed to information about the cases before them either in the media or, in some instances, from connected prosecutions. The Bureau is not of the view that Judges should be disqualified simply because of such exposure. [...] The need to present a reasoned judgement explaining the basis of their findings means that Judges at the Tribunal are forced to confine themselves to the evidence in the record in reaching their conclusions."

31 *Poppe v. The Netherlands*, Judgement on Application No. 32271/04 ("*Poppe* Judgement"), 24 March 2009, paras 22-23.

32 *Poppe* Judgement, para. 26.

33 *Poppe* Judgement, para. 28. The ECHR therefore examined the judgements handed down by the national court in relation to Poppe's co-accused, in order to determine whether these included any finding that in fact prejudged Poppe's guilt. It found that in these judgements, the judges had not addressed the issue of whether the applicant's involvement fulfilled all the relevant criteria necessary to constitute a criminal offence and, if so, whether the applicant was guilty beyond reasonable doubt.[33] The ECHR therefore found that the applicant's fear of bias on the part of the two judges was not objectively justified.

34 *Miminoshvili v. Russia*, Judgement on Application No. 20197/03 ("*Miminoshvili* Judgement"), 28 June 2011, paras 116, 118.

had been impartial, the court also noted that a professional judge is *a priori* better prepared to disengage from their experience in previous proceedings when compared to a lay judge or juror, which supported their ability to examine overlapping cases without bias.[35] Similarly, in *Khodorkovskiy and Lebedev v. Russisa* ("*Khodorkovskiy* case"), the ECHR found that a judge sitting in overlapping cases did not prejudge an applicant's guilt in subsequent proceedings because the judgement in the former case did not analyze or establish the constituent elements of the crimes alleged in the latter case.[36] As in the *Miminoshvili* case, the court also found that a professional judge was able to disengage herself from her previous experience and was in no way bound by her earlier legal findings in an overlapping case because she had to consider the subsequent case on its own merits.[37]

14. With respect to the influence chamber personnel might have on the judicial process, the ICTR Appeals Chamber has rejected allegations of conflicts of interests and bias on the part of chamber staff in *Prosecutor v. Bizimungu et al.* ("*Bizimungu* case") and *Prosecutor v. Nyiramasuhuko et al.* ("*Nyiramasuhuko* case"), finding that those assisting judges are not subject to the same standards of impartiality, and that decision-making is solely within the purview of judges to whom legal officers and consultants merely provide assistance in conformity with the judges' instructions.[38] *In the Case against Florence Hartmann* ("*Hartmann* case"), a Tribunal Panel dismissed a request for recusal of a chambers staff member, finding that neither Rule 15 of the Rules nor the Tribunal's jurisprudence envisage the disqualification of chamber personnel, whose conduct it considered irrelevant to the impartiality of judges.[39]

15. With regard to the request for the declaration of a mistrial, the Chamber notes that although neither the Statute nor the Rules explicitly regulate motions for a declaration of mistrial, a chamber may issue pursuant to Rule 54 of the Rules such orders as necessary for the conduct of proceedings.[40] Finally, in relation to the request to exceed the word limit for motions, the Chamber notes that the Practice Direction on the Length of Briefs and Motions states that motions shall not exceed 3,000 words and that a party must seek authorization from the relevant chamber to exceed

35 *Miminoshvili* Judgement, para. 120.

36 *Khodorkovskiy and Lebedev v. Russia,* Judgement on Application Nos. 11082/06 and 13772/05 ("*Khodorkovskiy* Judgement"), 25 July 2013, paras 549-554, 557.

37 *Khodorkovskiy* Judgement, paras 548, 554, 556.

38 *Prosecutor v. Bizimungu et al.,* Case No. ICTR-99-50-AR73.8, Decision on Appeals Concerning the Engagement of a Chambers Consultant or Legal Officer, 17 December 2009, paras 5, 9; *Prosecutor v. Nyiramasuhuko,* Case No. ICTR-98-42-A, Judgement, 17 December 2015, para. 273.

39 *In the Case against Florence Hartmann,* Case No. IT-02-54-R77.5, Report of Decision on Defence Motion for Disqualification of Two Members of the Trial Chamber and of Senior Legal Officer, 27 March 2009, para. 54.

40 *See Prosecutor v. Stanišić and Župljanin,* Case No. IT-08-91-A, Decision on Mićo Stanišić's Motion Requesting a Declaration of Mistrial and Stojan Župljanin's Motion to Vacate Trial Judgement, 2 April 2014, para. 20.

this word limit, providing an explanation of the exceptional circumstances that necessitate the oversized filing.[41]

IV. DISCUSSION

A. Preliminary Matters

16. The Chamber will grant the Defence's request for an extension of the Motion's word limit due to the importance of the subject matter and because the limit was not significantly exceeded.[42] Moreover, in light of the submissions in the Response, the Chamber finds that the Defence has shown good cause for its request to reply.

17. The Chamber notes that the Defence's substantive arguments appear to be based in the requirements set out in Rule 15(A) of the Rules and related jurisprudence, alleging actual or at least possible bias on the part of the judges in the present case, as well as an appearance of bias resulting from allegedly prejudiced staff assisting those judges. The Chamber notes however that the Motion contains no related applications for disqualification of the judges or the Impugned Staff, and none of the relief requested is provided for in Rule 15 or elsewhere in the Rules, or in the related jurisprudence. Under these circumstances, the Chamber will first consider the role of the Impugned Staff and whether they influence the judges, and then consider the allegations of judicial bias pursuant to the principles formulated in Rule 15(A), in order to determine whether there is cause to issue a decision as requested by the Defence pursuant to Rule 54 of the Rules as necessary for the conduct of the trial and the protection of the Accused's fair trial rights.

B. Role of the Impugned Staff

18. With regard to the Defence's submissions alleging bias on the part of the Impugned Staff because of their role in the *Karadzić* case trial judgment, the Chamber notes at the outset the Defence's erroneous assumption that most of the Impugned Staff are assisting judges in the present case, and that it was the Impugned Staff rather than the judges in the *Karadzić* case who made findings in that case. The Chamber notes, however, that to date only two Impugned Staff have worked on the present case and considers that in accordance with the *Bizimungu* and *Nyiramasuhuko* cases, the role of the Impugned Staff in both cases has been and continues to be only that of providing assistance to the judges, while the decision-making remains entirely within the judges' purview. Moreover, the Chamber considers that just as in the *Hartmann* case, the conduct of the Impugned Staff in the present case is, therefore, irrelevant to the impartiality of the

[41] Practice Direction on the Length of Briefs and Motions, IT/184 Rev. 2, 16 September 2005, paras 5, 7.
[42] According to the Defence, the Motion exceeds the 3,000 word limit by 518 words.

judges, and neither the Tribunal's Rules nor the related jurisprudence provide for the disqualification of the Impugned Staff.

19. As for the Defence's argument that chambers staff in the present case do more than only provide assistance, but instead perform tasks within the purview of judges when emailing decisions to the parties, the Chamber notes that such decisions, like all chamber decisions, are nonetheless made exclusively by the judges. Although as a courtesy to the parties, some decisions are communicated informally by chamber personnel to provide guidance to the parties on time-sensitive matters until formal decisions can be placed on the record, this is only ever done pursuant to explicit instructions by the judges.

20. For these reasons, the Chamber finds that although Impugned Staff assist the judges in the present case with tasks like legal research, drafting, and even communicating with the parties, this assistance does not influence the decision-making ability of the judges, nor is the previous work of the Impugned Staff on the *Karadzić* case relevant to the judges' impartiality.

C. Bias of the Judges in the Present Case

21. With regard to the general allegations of bias on the part of the judges in the present case, the Chamber first considers, in accordance with the *Furundžija* case, whether the Defence has shown that actual bias exists on the part of the judges. The Chamber notes in this respect that although the Motion contains some ambiguous references to the possibility of actual bias of the judges, the Defence presents no facts or arguments demonstrating any indication of actual bias. The Chamber therefore finds that no actual bias has been shown to exist on the part of the judges in the present case.

22. Similarly, with respect to the Defence allegation of an appearance of bias on the part of the judges in the present case, the Chamber has considered, as set out in the *Furundžija* case, whether the circumstances described in the Motion would lead a properly informed observer to reasonably apprehend such bias. The Chamber notes in this regard that there is a considerable degree of overlap between the *Karadžić* case and the present case in that the indictments and evidentiary record for each case share similarities. The Chamber considers, however, that just as in the *Furundžija* case, a properly informed and reasonable observer would not consider, on the basis of the circumstances described in the Defence submissions, that the judges in the present case had failed to maintain the high degree of integrity and impartiality to which they are sworn, even if they or the Impugned Staff had worked on both cases.

23. Moreover, as established in the *Renzaho* case, the Chamber considers that a properly informed and reasonable observer would expect frequent and considerable overlap between cases at the Tribunal just as at the ICTR, which would not affect the impartiality of judges, regardless of whether the judges had actually adjudicated such cases or their staff had assisted them in doing so. Just as with the reasonable observer in the *Renzaho* case, the Chamber considers that a properly informed and reasonable observer in the present case would not expect, on the basis of the circumstances described in the Defence submissions, that the judges would do anything other than rule fairly on the issues before them by virtue of their professional training and experience, relying exclusively on the evidence adduced in the present case, even if they or their staff had been exposed to relevant evidence in both cases.

24. Furthermore, in accordance with the *Poppe, Miminoshvili,* and *Khodorkovskiy* cases, the Chamber considers that even if a legal finding had been made in the *Karadžić* case related to the Accused, this would not be sufficient to cast doubt on a judge's impartiality unless the judge had found that the Accused's participation fulfilled all the relevant criteria necessary to constitute a criminal offence, and then had found the Accused guilty beyond a reasonable doubt of having committed that offence. The Chamber notes in this respect that not only did the Impugned Staff and judges in the present case not make any findings in the *Karadžić* case, the findings referenced by the Defence as having "convicted" the Accused neither establish the criteria to constitute a criminal offence, nor make findings on the criminal responsibility of the Accused.

25. Additionally, the Chamber notes that the jurisprudence cited by the Defence is comprised of cases in which alleged bias stems from associations with parties to the proceedings rather than with another chamber in a related case and, therefore, do not support the arguments raised in the Motion.[43] Lastly, the Chamber notes that the International Criminal Court decision cited by the Defence only mentions the possibility that legal officer bias might raise an issue with regard to the disqualification of judges, but does not make any legal findings in this regard.[44]

26. For all of the above reasons, the Chamber considers that the presumption of impartiality attached to the judges in the present case has not been rebutted on the basis that the Impugned Staff worked on the overlapping *Karadžić* case in which factual findings were made in relation to the Accused. For this reason, the Chamber finds that there exists neither actual bias nor an objective appearance of bias with respect to the Impugned Staff or judges in the present case. The Chamber finds, therefore, that there have been no violations of the Accused's fair trial or other rights, and

[43] *See, e.g., Hamid v. Price Waterhouse,* 51 F.3d 1411 (9th Cir. 1995).

[44] *The Prosecutor v. Thomas Lubanga Dyilo,* Case No. ICC-01/04-01-06, Decision on the Prosecutor's Application to Separate the Senior Legal Adviser to the Pre-Trial Division from Rendering Legal Advice regarding the Case, 27 October 2006, p. 2.

finds no merit in the requests for information or materials related to chamber personnel, nor in the request for a declaration of a mistrial.

V. DISPOSITION

27. For the foregoing reasons, pursuant to Rule 54 of the Rules, the Chamber

GRANTS the Defence request to exceed the word limit in the Motion;

GRANTS the Defence Request to Reply; and

DENIES the remainder of the Motion.

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

Judge Alphons Orie
Presiding Judge

Dated this fourth day of July 2016
At The Hague
The Netherlands

[Seal of the Tribunal]