



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-04-74-T
Date: 16 September 2010
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President

Registrar: Mr. John Hocking

Decision of: 16 September 2010

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIC
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
BERISLAV PUŠIĆ**

PUBLIC

**DECISION OF THE PRESIDENT ON
JADRANKO PRLIĆ'S MOTION TO DISQUALIFY JUDGE ÁRPÁD PRANDLER**

Office of the Prosecutor:

Mr. Kenneth Scott
Mr. Douglas Stringer

Counsel for the Accused:

Mr. Michael G. Karnavas and Ms. Suzana Tomanović for Jadranko Prlić
Ms. Senka Nožica and Mr. Karim Khan for Bruno Stojic
Mr. Božidar Kovačić and Ms. Nika Pinter for Slobodan Praljak
Ms. Vesna Alaburić and Mr. Nicholas Stewart for Milivoj Petković
Ms. Dijana Tomašević-Tomić and Mr. Dražen Plavec for Valentin Ćorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Berislav Pušić

I, Patrick Robinson, 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 “Jadranko Prlić’s Motion for Disqualification of Judge Prandler”, filed 30 August 2010 (“Motion”).

1. On 30 August 2010, the Prlić Defence filed the Motion, in which it seeks the disqualification of Judge Árpád Prandler from the trial of *Prosecutor v. Prlić et al.* on the basis of an alleged appearance of bias resulting from Judge Prandler’s previous association with Victor Andreev, the Head of the United Nations Civil Affairs in Bosnia and Herzegovina.¹ The Prlić Defence points out that it has been concerned about the conduct and objectivity of United Nations personnel throughout the proceedings, but that it was not until the disclosure of the Mladić diaries that it “was able to surmise Andreev’s dark character and questionable pro-Bosnian Serb / anti-Bosnian Croat activities”.² It is also submitted that this situation has “contaminated” at least 630 documents and 37 witnesses in the trial.³

2. On 31 August 2010, the Praljak Defence joined the Motion, submitting that Judge Prandler’s “long and profound association with the United Nations” is not itself sufficient to merit disqualification, but that, when combined with other factors, creates “a reasonable apprehension that [he] might not bring an impartial and unprejudiced mind to issues arising in the case”.⁴

3. On 8 September 2010, the Presiding Judge of the Chamber seised of the *Prlić et al.* trial submitted a report to the President regarding the Motion.⁵

4. On 10 September 2010, the Prosecution filed a response to the Motion, requesting that it be denied.⁶ The Prosecution argues that the Motion is not properly filed,⁷ relies upon information outside the record of the proceedings,⁸ and has no merit.⁹

¹ Motion, p. 1, paras. 14–15, 19, 21.

² Motion, para. 16.

³ Motion, para. 18.

⁴ Slobodan Praljak’s Joinder to Jadranko Prlić’s 30 August 2010 Motion for Disqualification of Judge Prandler, 31 August 2010, para. 3 (footnote and internal quotation marks omitted).

⁵ Confidential and partially *ex parte* Report on Motions to Disqualify Judge Prandler Presented by the Presiding Judge to the President of the Tribunal, 8 September 2010; *see also* confidential Rapport Complémentaire Urgent au Président du Tribunal Relatif aux Demandes de Récusation du Juge Prandler Formées par les Défenses Prlić et Praljak, 14 September 2010.

⁶ Confidential Prosecution Consolidated Response to Prlić Motion for Disqualification of Judge Prandler, Report of Judge Antonetti and Motion for Stay, 10 September 2010 (“Response”).

⁷ Response, paras. 9–17.

⁸ Response, paras. 18–19.

⁹ Response, paras. 20–29.

5. I note that Rule 15(B)(i) of the Rules provides: “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 The Presiding Judge shall confer with the Judge in question and report to the President.” Rule 15(B)(ii) provides: “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.”

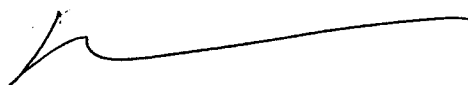
6. The general practice of the Tribunal in respect of the procedure for adjudicating disqualification motions under Rule 15 of the Rules has been for the moving party to apply to the Presiding Judge of the Chamber to which the case is assigned, rather than the Presiding Judge of the specific case. The Presiding Judge of the Chamber, not the Presiding Judge of the specific case, then confers with the Judge in question and reports to the President.¹⁰ This procedure was not followed in this case. The Prlić Defence seised the Trial Chamber of the *Prlić et al.* proceedings with the Motion, when it should have directed the Motion to the Presiding Judge of the Chamber to which the *Prlić et al.* trial is assigned, *i.e.*, Judge O-Gon Kwon who presides over Trial Chamber III. If this had been done, Judge Kwon could have conferred with Judge Prandler and then reported to me. The Motion therefore is not properly before me at this time.

¹⁰ See, *e.g.*, *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; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Motion to Disqualify Judge Picard and Report to the Vice-President Pursuant to Rule 15(B)(i), 22 July 2009; *Prosecutor v. Milan Lukić*, Case No. IT-98-32/1-T, Decision on Motion for Disqualification, 12 January 2009; *Prosecutor v. Vidoje Blagojević*, Case No. IT-02-60-R, Decision on Motion for Disqualification, 2 July 2008; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision on Motion for Disqualification, 16 February 2007; *Prosecutor v. Milan Martić*, Case No. IT-95-11-A, Order on Defence Motion to Disqualify Judge Wolfgang Schomburg From Sitting on Appeal, 23 October 2007; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-AR73.2, Order on Defence Motion that His Honour Judge Meron Not Sit on an Appeal, 1 September 2006; *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-R77, Decision on Application for Disqualification, 11 June 2004; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Decision on the Defence Motion for Withdrawal of Judge Orić, 3 February 2003; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-PT, Decision on the Defence Application for Withdrawal of a Judge from the Trial, 22 January 2003; *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-T, Decision on Joint Motion to Disqualify the Trial Chamber Hearing the Brđanin-Talić Trial, 3 May 2002; *Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-PT, Decision on Application by Momir Talić for the Disqualification and Withdrawal of a Judge, 18 May 2000; *but see Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Order on the Prosecution Motion for the Disqualification of Judge Frederik Harhoff, 14 January 2008; *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-AR11bis.1, Order on Second Motion to Disqualify President and Vice-President from Appointing Judges to Appeal Bench and to Disqualify President and Judge Meron from Sitting on Appeal, 11 May 2007; *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-T, Decision of the Bureau on Motion on Judicial Independence, 4 September 1998.

7. I note that the Prosecution, in its Response, opposes the Prlić Defence's motion for a stay of the proceedings, pending the outcome of this matter.¹¹ However, because the motion for a stay was filed before the Trial Chamber, it is a matter for the Trial Chamber to decide.

8. Pursuant to Rule 15(B) of the Rules, I hereby DISMISS the Motion, without prejudice to it being made under the proper procedure.

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



Judge Patrick Robinson
President

Dated this sixteenth day of September 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

¹¹ Jadranko Prlić's Motion for Stay of Proceedings Until a Decision has Been Issued on Jadranko Prlić's Motion for Disqualification of Judge Prandler, 30 August 2010; Response, para. 30.