



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: 31 October 2013
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Carmel Agius, Acting President
Registrar: Mr. John Hocking
Order of: 31 October 2013

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

ORDER ASSIGNING A JUDGE PURSUANT TO RULE 15

Office of the Prosecutor
Mr. Mathias Marcussen

The Accused
Mr. Vojislav Šešelj

I, CARMEL AGIUS, Acting 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 decision issued on 28 August 2013¹ by a panel of three Judges appointed by myself pursuant to Rule 15 of the Tribunal’s Rules of Procedure and Evidence (“Panel” and “Rules”, respectively),² in which the Majority of the Panel, Judge Liu dissenting, upheld a motion by the Accused for disqualification of Judge Frederik Harhoff from the case of *Prosecutor v. Vojislav Šešelj* (“Decision on Disqualification” and “Šešelj case”, respectively);³

NOTING the decision issued by the Panel on 7 October 2013,⁴ in which the Majority of the Panel, Judge Liu dissenting, *inter alia* denied a motion filed by the Office of the Prosecutor (“Prosecution”) for reconsideration of the Decision on Disqualification;⁵

NOTING that the Decision on Disqualification is therefore now final and it falls upon me to take further action in this matter;⁶

RECALLING the order issued by myself on 3 September 2013,⁷ in which I stayed the assignment of another Judge to sit in the place of Judge Frederik Harhoff pursuant to Rule 15(B)(ii) of the Rules and, applying Rule 15*bis* of the Rules *mutatis mutandis*, requested the remaining Judges of the Chamber seised of the present case to: (i) report to me, following consultation with the Accused on the question of whether to rehear the case or continue the proceedings; and (ii) decide, in the event that the Accused withholds his consent to the continuation of proceedings, whether or not to nonetheless continue the proceedings with a substitute Judge (“Order”);⁸

CONSIDERING that Judge Jean-Claude Antonetti and Judge Flavia Lattanzi, being the remaining Judges of the Chamber seised of the present case, have indicated that they do not agree with the

¹ Decision on Defence Motion for Disqualification of Judge Frederik Harhoff and Report to the Vice-President, 28 August 2013.

² See Order Pursuant to Rule 15, 25 July 2013. See also Order Assigning a Motion to a Judge, 23 July 2013.

³ Decision on Disqualification, para. 15. See Professor Vojislav Šešelj’s Motion for Disqualification of Judge Frederik Harhoff, 9 July 2013.

⁴ Decision on Prosecution Motion for Reconsideration of Decision on Disqualification, Requests for Clarification, and Motion on Behalf of Stanišić and Župljanin, 7 October 2013 (“Decision on Motion for Reconsideration”).

⁵ Decision on Motion for Reconsideration, para. 22. See Prosecution Motion for Reconsideration of Decision on Defence Motion for Disqualification Judge Frederik Harhoff and Request for Stay, 3 September 2013.

⁶ See Order Following Decision of the Panel to Disqualify Judge Harhoff, 3 September 2013, p. 2; Order on Prosecution Motion for Reconsideration and Request for Stay, 6 September 2013, p. 2.

⁷ Order Following Decision of the Panel to Disqualify Judge Frederik Harhoff, 3 September 2013.

⁸ Order, p. 2.

approach proposed in the Order, particularly in its application *mutatis mutandis* of Rule 15*bis* of the Rules;⁹

CONSIDERING that, while in my view, the interests of fairness and transparency are indeed better protected by application of the regime envisaged in Rule 15*bis* of the Rules, and that this Rule may correctly be applied *mutatis mutandis*, it is ultimately for the Judges seised of the present case to determine whether or not the trial shall proceed;

CONSIDERING therefore that, in these circumstances, there is no point in further delaying the assignment of another Judge under Rule 15(B)(ii) of the Rules;

EMPHASISING however that, in my view, the Judges seised of the present case should consult with the Accused on the question of whether to rehear the case or to continue the proceedings with the newly assigned Judge;¹⁰

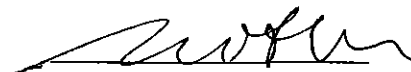
PURSUANT to Rules 15, 19 and 21 of the Rules;

HEREBY ASSIGN, with immediate effect, Judge Mandiaye Niang to the Bench seised of the *Šešelj* case.

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

Done this thirty first day of October 2013,

At The Hague,
The Netherlands.



Judge Carmel Agius
Acting President

[Seal of the Tribunal]

⁹ Internal Memorandum dated 3 September 2013, filed publicly on 4 September 2013.

¹⁰ See *Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-A15*bis*, Decision in the Matter of Proceedings Under Rule 15*bis*(D), 21 June 2004, para. 13.