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
IT-04-75-PT

Date: 17 August 2012

Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: **Judge Jean-Claude Antonetti, Presiding**
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: **Mr John Hocking**

Decision of: **17 August 2012**

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT
With separate individual opinion
from Presiding Judge Jean-Claude Antonetti in public annex

DECISION ON PROSECUTION MOTION FOR RECONSIDERATION OF DECISION ON GORAN HADŽIĆ'S REQUEST FOR ACCESS TO PUBLIC MATERIALS RELATED TO CROATIA IN *ŠEŠELJ* CASE (IT-03-67)

The Office of the Prosecutor
Mr Mathias Marcussen
Mr Douglas Stringer

The Accused

Mr Vojislav Šešelj

Counsel for Goran Hadžić

Mr Zoran Živanović
Mr Cristopher Gosnell

TRIAL CHAMBER III 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 ("Chamber" and "Tribunal" respectively),

SEIZED, as a preliminary matter, of the motion filed by the Office of the Prosecutor of the Tribunal ("Prosecution") as a public document on 10 July 2012, in which the Prosecution seeks reconsideration of the Chamber's decision rendered on 27 June 2012[1] and asks the Chamber to allow Counsel for Goran Hadžić, the accused in Case No. IT-04-75 *The Prosecutor v. Goran Hadžić* ("Hadžić Defence"), to have access to all public exhibits admitted in the present case, not only those exhibits relating to events occurring in Croatia between 1991 and 1993, such as public transcripts and other public filings in the present case,[2]

NOTING the response filed as a public document on 17 July 2012 by the Hadžić Defence in which it objects to the Motion of 10 July 2012, submitting that the Prosecution failed to show that the Decision of 27 June 2012 contains a "clear error of reasoning" or that reconsideration is required to "prevent an injustice",[3] specifying furthermore that the Motion of 10 July 2012 is without merit since: (i) the criterion of review ordered by the Chamber is sufficiently specific, (ii) despite the significant volume of documents to be reviewed the Prosecution cannot plausibly assert that it does not have adequate resources and (iii) it cannot be excused of its obligation to disclose exculpatory material on the ground that it does not know the Defence's strategy or the limit of information to be disclosed,[4]

SEIZED, as a secondary matter, of the request filed by the Prosecution as a public document on 18 July 2012 in which the Prosecution seeks leave to reply to the Hadžić Response and encloses its reply,[5]

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[1] "Decision on Goran Hadžić's Request for Access to Public Materials Related to Croatia in *Šešelj* Case (IT-03-67)", 27 June 2012 (public), ("Decision of 27 June 2012").

[2] "Prosecution's Motion for Reconsideration of the *Décision relative à la Requête de Goran Hadžić aux fins de communication des documents publics relatifs à la Croatie issus de l'affaire Šešelj (IT-03-67)*", 10 July 2012 (public) ("Motion of 10 July 2012"), paras 1 and 6. The Prosecution deems, furthermore, that it is difficult for it to identify the exhibits that the Hadžić Defence will find relevant to the events in Croatia during the period in question and/or those necessary for the preparation of its defence, and that in order to achieve this, it will be required to use its limited resources whereas the Hadžić Defence is best equipped for the said task (*ibid.*, paras 1, 4, 5 and 7).

[3] "Response to Prosecution Motion for Reconsideration of the *Décision relative à la Requête de Goran Hadžić aux fins de communication des documents publics relatifs à la Croatie issus de l'Affaire Šešelj (IT-03-67)*", 17 July 2012 (public) ("Hadžić Response"), para. 1.

[4] Hadžić Response, para. 2.

[5] "Prosecution Request for Leave to File Reply and Reply'', 18 July 2012 (public) ("Request of 18 July 2012"), para. 1. In its Reply, contained in paragraphs 2 to 6 of the Request of 18 July 2012 ("Reply"), the Prosecution submits that the Hadžić Defence mischaracterises the scope of application of Rule 75 of the Rules of Procedure and Evidence of the Tribunal; ("Rules") and the relevance of the Chamber's decisions regarding requests for access to materials in the present case filed by Jovica Stanišić, an accused in another trial before the Tribunal, notably regarding the obligation to disclose confidential documents and public exhibits (Reply, paras 2 to 5 referring to the "Decision on Stanišić Motion for Access to Confidential Materials in the *Šešelj* Case Pursuant to Rule 75 (G) (i) of the Rules", 24 April 2008 (public)

CONSIDERING that, in light of the arguments put forth in the Reply, which provide additional details on the Motion of 10 July 2012, it is appropriate to allow its filing and to take the arguments raised into consideration,

CONSIDERING that the Accused Vojislav Šešelj ("Accused") has not filed a response to either the Motion of 10 July 2012[6] or the Request of 18 July 2012,[7] and that he had previously stated during the hearing of 30 March 2010 that he would not oppose the disclosure of documents related to this case when the disclosure was sought by the defence team of another accused before the Tribunal,[8]

NOTING the Decision of 27 June 2012 in which the Chamber allowed the Hadžić Defence to "examine all public material – in particular public documents disclosed pursuant to Rules 66 (A) and 66 (B) of the Rules, so long as they form part of the file in the sense of Article 10.1 of the "Directive for the Court Management and Support Services Section [of the] Judicial Support Services [of the] Registry", and the exhibits admitted as public documents – from the present case and relating to events occurring in Croatia between 1991 and 1993", and ordered the Prosecution to inform the Registry by 30 July 2012 at the latest of the said documents,[9]

CONSIDERING that, in response to the Request of the Hadžić Defence which the Chamber granted in part in its Decision of 27 June 2012,[10] the Prosecution had no objection to the procedure of identifying the public exhibits in the present case to which the Hadžić Defence could have access,[11]

CONSIDERING that the case-law of the Tribunal has consistently held that a Trial Chamber has the inherent power to reconsider its own decisions and allow a request for reconsideration if the requesting party demonstrates that the impugned decision contains a clear error of reasoning

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("*Stanišić* and *Simatović* Decision of 24 April 2008") and the "Decision on the Request of Jovica Stanišić for Public Trial Exhibits in the Šešelj Case (IT-03-67)", 27 October 2010 (public) ("*Stanišić* and *Simatović* Decision of 27 October 2010")). Furthermore, the Prosecution argues that the Decision of 27 June 2012 is inconsistent with the Chamber's approach in earlier decisions and imposes an unreasonable burden on the Prosecution (*ibid.*, para. 6).

[6] On 12 July 2012 the Accused received the translation into BCS of the Motion of 10 July 2012 (*see* procès-verbal of reception filed on 16 July 2012) and therefore had until 26 July 2012 to respond to it.

[7] On 20 July 2012 the Accused received the translation into BCS of the Request of 18 July 2012 (*see* procès-verbal of reception filed on 24 July 2012) and therefore had until 3 August 2012 to respond to it.

[8] Procedural issues, T(F) of 30 March 2010, p. 15862; *see* also the Decision of 27 June 2012, p. 1.

[9] Decision of 27 June 2012, p. 3 (footnote not reproduced).

[10] "Goran Hadžić's Request for Access to All Public Materials in *The Prosecutor v. Vojislav Šešelj* Related to Croatia", 15 June 2012 (public) ("Request of 15 June 2012").

[11] The Chamber notes that in the said response, the Prosecution stated that it supported in part the present request for access to *all* public exhibits in the present case (whereas the Request of 15 June 2012 clearly stated that the Hadžić Defence was only seeking access to documents relating to events in Croatia that occurred between 1991 and 1993), but that on the other hand, it objected to documents being disclosed directly to the Accused pursuant to Rules 66 (A) and 66 (B) of the Rules, arguing that this disclosure request is not a matter for this Chamber ("Prosecution's Response to Goran Hadžić's Request for Access to All Public Materials in *Prosecutor v. Vojislav Šešelj* Related to Croatia", 26 June 2012 (public), paras 1 to 4).

or that particular circumstances, which can be new facts or arguments, justify its reconsideration to avoid injustice,[12]

CONSIDERING that, contrary to what the Prosecution argues,[13] the Hadžić Defence is unable to identify on its own the documents in the present case file that relate to the events in Croatia between 1991 and 1993 as it does not have access to the public exhibits in the present case, in accordance with the Decision of 18 September 2008,[14]

CONSIDERING that the Prosecution's argument that the exhibits in question in the Request of 15 June 2012 are not the Prosecution's responsibility[15] is unfounded as the Prosecution has access to all of the exhibits admitted in the present case, the majority of which, furthermore, were admitted at the request of the Prosecution,

CONSIDERING, consequently, that the Prosecution is the party that is in the best position to identify the exhibits and, if necessary, other public material not accessible to the Hadžić Defence from the present case file pursuant to the Decision of 27 June 2012,

CONSIDERING, furthermore, that in its *Stanišić* and *Simatović* Decision of 24 April 2008, the Chamber limited the requesting party's access to the confidential documents in the present case to thematic categories that it considered relevant in the case, explicitly excluding confidential documents that fell outside the geographical scope of the *Stanišić* and *Simatović* case,[16]

CONSIDERING that in its *Stanišić* and *Simatović* Decision of 27 October 2010 the Chamber found, on the basis of the same considerations as those taken into account in the *Stanišić and*

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[12] *See* notably *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/I-A, "Decision on Motion for Reconsideration", 12 July 2012 (public), p. 1; *The Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.16, "Decision on Jadranko Prlić's Interlocutory Appeal Against the Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence", 3 November 2009 (public), para. 18; *The Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No, IT-01-47-A, "Decision on Appellant's Motion for Reconsideration and Extension of Time Limits", 30 January 2007 (public), para. 9 ; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99 -52-A, "*Décision relative à la Requête de l'Appelant Jean-Bosco Barayagwiza demandant l'examen de la requête de la Défense datée du 28 juillet 2000 et Réparation pour abus de procedure*", 23 June 2006 (public), para 22; *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-37-AR72.1, "Decision on Motion for Reconsideration of the 'Decision on the Interlocutory Appeal Concerning Jurisdiction' dated 31 August 2004", 15 June 2006 (public), para. 9; *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, "Decision on Defence's Request for Reconsideration", 16 July 2004 (public), pp. 3 and 4.

[13] Motion of 10 July 2012, paras 4 and 5; Request of 18 July 2012, para. 3.

[14] "Decision Regarding Public Access to Trial Exhibits", 18 September 2008 (public), pp. 1 and 2 in which the Chamber decided, notably, that the public could not have access to the exhibits tendered into evidence in this case, including public exhibits, before the rendering of the judgement and that it would be appropriate therefore to stay its ruling on any request to obtain access to the said exhibits until the end of the trial, with the exception of requests from the accused before the Tribunal, or national courts who might need them for the preparation of their defence. *See* also the Decision of 27 June 2012, p. 1.

[15] Reply, para. 3: "As opposed to material subject to Prosecution's disclosure obligation, which is in the Prosecution's custody, the exhibits in the trial record are not in the Prosecution's custody and it is the Trial Chamber that *proprio motu* has determined some restrictions should temporarily apply to exhibits that are admitted as public exhibits".

[16] *Stanišić* and *Simatović* Decision of 24 April 2008, paras 15 and 18 (a).

Simatović Decision of 24 April 2008, that "access to public exhibits from this case [might] help the [a]pplicant in the preparation of his case",[17]

CONSIDERING that in its Decision of 27 June 2012, the Chamber found – in order to protect the rights of the accused and in light of the circumstances in the case, notably the arguments of the Hadžić Defence put forth in its Request of 15 June 2012 which the Prosecution seems to have misunderstood at the time[18] – that the public material in the present case relating to events in Croatia between 1991 and 1993 could help the Hadžić Defence to prepare its case,[19]

CONSIDERING, furthermore, that in its Decision of 13 March 2012 on access to confidential material, the Chamber found that the confidential *inter partes* material for which the Hadžić Defence requested disclosure was properly identified and that its general nature was clearly specified on the basis of the same criteria,[20]

CONSIDERING that the Prosecution did not raise any objection in this respect and identified the documents in question in accordance with the said decision although the number of documents to be reviewed was comparable, if not greater, than those concerned by the Decision of 27 June 2012,[21]

CONSIDERING, in any case, that the argument on the management of limited resources raised by the Prosecution[22] cannot justify a request for reconsideration of a Chamber's decision,

CONSIDERING, in light of the foregoing, that the Prosecution has failed to show how the Decision of 27 June 2012 contains a clear error of reasoning or leads to injustice,

[17] *Stanišić* and *Simatović* Decision of 27 October 2010, p. 2.
[18] *See supra*, no. 10.
[19] Decision of 27 June 2012, p. 2.
[20] Namely: "confidential *inter partes* documents in the file of the present case relating to the events that took place in Croatia between 1991 and 1993" (Decision of 13 March 2012, para. 29 (a)).
[21] The Chamber notes in this respect that the Decision of 13 March 2012 concerned not only the exhibits under seal but also transcripts of testimony heard in closed and private session, confidential submissions of the parties and confidential decisions in the case file, *etc.* (Decision of 13 March 2012, para. 28).
[22] Motion of 10 July 2012, paras 1 and 7; Reply, para. 6.

FOR THE FOREGOING REASONS,

PURSUANT TO Articles 21 (2) and 21 (4) (b) of the Statute of the Tribunal and Rules 54 and 73 of the Rules,

GRANTS the Request of 18 July 2012 and allows the Prosecution to file its Reply,

DENIES the Motion of 10 July 2012,

UPHOLDS the Decision of 27 June 2012 pursuant to which the Chamber ordered the Prosecution to inform the Registry of the public material relating to events that occurred in Croatia between 1991 and 1993 and that are part of the file in the present case, and requested that the Registry disclose to Hadžić the documents identified in this way,[23] **AND**,

ORDERS that, considering the date of the present decision, the deadline set in the Decision of 27 June 2012 be extended until 30 August 2012.

Presiding Judge Antonetti attaches a separate individual opinion.

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

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Jean-Claude Antonetti
Presiding Judge

Done this seventeenth day of August 2012
The Hague
The Netherlands

[Seal of the Tribunal]

[23] Decision of 27 June, 2012, p. 3.

ANNEX: SEPARATE INDIVIDUAL OPINION OF JUDGE ANTONETTI

Requests for Reconsideration

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On **15 June 2012**, Trial Chamber III was seized of a request filed as a public document on behalf of **Goran Hadžić**, an accused before the Tribunal in Case No. IT-04-75 *The Prosecutor v. Goran Hadžić*.[24] In this request, **Goran Hadžić** sought access to **all public documents** regarding **events in Croatia between 1991 and 1993** which form part of the case file in the Šešelj Case No. IT-03-67.[25] In a decision rendered on 27 June 2012, the Trial Chamber partially granted the Accused Hadžić's request and gave him access to all public material and exhibits relating to events in Croatia between 1991 and 1993 from the Šešelj case.[26] The Chamber also ordered the Office of the Prosecutor to inform the Registry, no later than 30 July 2012, of the public material relating to events in Croatia between 1991 and 1993 that are part of the file in the Šešelj case.[27]

On 10 July, the Office of the Prosecutor filed a motion before the Chamber for reconsideration of the Decision of 27 June, deeming that the defence team for Goran Hadžić should have access to **all the public exhibits in the Šešelj case** and not only the public exhibits concerning events in Croatia.[28] The Office of the Prosecutor argued that it would be difficult for it to identify which exhibits the defence for the Accused Hadžić would consider relevant to events in Croatia since many exhibits in the Šešelj case might be considered relevant to events in Croatia.[29] Additionally, according to the Prosecution, the Defence is best equipped to determine which exhibits are relevant to events in Croatia.[30] The Prosecution argued furthermore that it should not be required to use its limited resources to implement the Chamber's decision of 15 June and inform the Registry of the public documents regarding events in Croatia between 1991 and 1993.[31]

In response to this motion for reconsideration from the Office of the Prosecutor, the Defence for the Accused Hadžić put forth its arguments to the Chamber in a document filed on 17 July 2012.[32] It argued firstly that the criterion indicated by the Chamber in the Decision of 15 June was sufficiently specific, that, on the other hand, the Prosecution could not argue that it does not have the necessary resources to identify the exhibits in question, and finally, that any exercise of disclosure requires the application of some criteria of relatedness and relevance. It is for these reasons that the Defence for the Accused Hadžić submits that the Prosecution cannot

[24] *The Prosecutor v. Goran Hadžić*, Case No. IT-04-75, "Goran Hadžić's Request for Access to All Public Materials in *Prosecutor v. Vojislav Šešelj* Related to Croatia", 15 June 2012 (public).
[25] *Ibid.*, paras 2 and 7.
[26] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, "Decision on Goran Hadžić's Request for Access to Public Materials Related to Croatia in *Šešelj* Case (IT-03-67)", 27 June 2012 (public), p. 3.
[27] *Ibid*.
[28] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, " Prosecution's Motion for Reconsideration of the *Décision relative à la requête de Goran Hadžić aux fins de communication des documents publics relatifs à la Croatie issus de l'affaire Šešelj* (IT-03-67) ", 10 July 2012 (public), para. 1.
[29] *Ibid*., para. 4.
[30] *Ibid*., para. 5.
[31] *Ibid*., para. 7.
[32] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, " Response to Prosecution Motion for Reconsideration of the *Décision relative à requête de Goran Hadžić aux fins de communication des documents publics relatifs à la Croatie issus de l'affaire Šešelj* (IT-03-67) ", 17 July 2012 (public).

ask to be excused from its obligation to disclose material under the pretext that it does not know the Accused's line of defence.[33] The defence team of the Accused Hadžić argues that no cause has been shown to warrant reconsideration of the Chamber's decision and that, consequently, the Chamber must reject the Prosecution's motion for reconsideration.[34]

On the procedural level, the terms "**review**" and "**reconsideration**" are used interchangeably by the Chambers and relate to the reconsideration of a Chamber's decision prior to the delivery of a final judgement. This procedure is not provided for under any provision of the Rules of Procedure and Evidence of the Tribunal. The term "**review**" concerns the procedure provided for in Chapter 8 of the Rules of Procedure and Evidence of the Tribunal, which allows for the possibility of submitting a request for a review of the judgement.[35] Only a final judgement, that is to say, a "decision which terminates the proceedings",[36] may be reviewed pursuant to Article 25 of the Statute and Rule 120 of the Rules.

No provision of the Tribunal's Rules of Procedure and Evidence provides for the possibility of filing a request for reconsideration of a decision previously rendered by a Chamber, which is what the Trial Chamber pointed out in the ***Prosecutor v. Dario Kordić and Mario Čerkez*** **case** in 1999 by recalling that "motions to reconsider are not provided for in the Rules and do not form part of the procedures of the International Tribunal".[37]

However, the **Appeals Chamber** did not adopt a **strict interpretation** of the Rules as the Trial Chamber in the *Kordić* case had done. In 1999, in the ***Delalić et al.*** **case**, it stated that **particular circumstances could justify reconsideration by a Trial Chamber or the Appeals Chamber of one of its decisions**: "Considering that in the absence of particular circumstances justifying a Trial Chamber or the Appeals Chamber to reconsider one of its decision, motions for reconsideration do not form part of the procedure of the International Tribunal".[38] In this case, the Appeals Chamber rejected the emergency motion for reconsideration filed by the Accused, basing itself notably on the fact that "the Emergency Motion does not disclose any new material facts not available to the Appellant at the time of the Original Request";[39] consequently, the Chamber deemed that it would not be appropriate to consider the emergency motion.[40]

At first glance, the above-quoted reasoning from the *Delalić et al* case is surprising. It appears to me that the rules specifically provide for an appeals procedure and that it is solely up to the Appeals Chamber to decide whether a decision is valid or not. In my opinion, it is not up to the Chamber to reconsider its decision. Why? The fact of reconsidering a decision at any opportunity may mean that the Judges were careless – even vague – in their decision-making. This is not how I see it because when we make a decision, it is after a long process involving Judges, assistants and interns, and every decision is carefully thought out. How then can we

[33] *Ibid*., para. 2.
[34] *Ibid*., para. 5.
[35] Rule 119 of the Rules of Procedure and Evidence of the Tribunal.
[36] *Semanza* Case, "*Arrêt (Requête en révision de la décision de la Chambre d'appel du 31 mai 2000)*", 4 May 2001, p. 4, *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A. *See* also, *The Prosecutor v. Imanishimwe*, Case No. ICTR-97-36-AR72, "*Arrêt (Requête en révision)*", 12 July 2000, p. 2; *The Prosecutor v. Bagilishema*, Case No, ICTR-95-1A-A, "Appeal Judgement (Motion for Review of the Pre-Hearing Judge's Decisions of 30 November and 19 December 2001)", 6 February 2002, p. 2; Decision of 14 September 2000, p. 3; Appeals Judgement of 31 March 2000, para. 49. *See* also, *Tadić* Case, Decision, para. 22; *The Prosecutor v. Hazim Delić*, Case No, IT-96-21-R-R119, "Decision on Motion for Review", 25 April 2002 ("*Delić* Case, Decision"), para. 8.
[37] *The Prosecutor v. Dario Kordić* and *Mario Čerkez*, Case No. IT-95-14/2, "Decision on Prosecutor's Motion for Reconsideration", 15 February 1999, p. 2.
[38] *The Prosecutor v. Zejnil Delalić et al,* Case No. IT-96-21-A, "Order of the Appeals Chamber on Hazim Delić's Emergency Motion to Reconsider Denial of Request for Provisional Release", 1 June 1999 (public), p. 4.
[39] *Ibid.*
[40] *Ibid.*

reverse our decision only a few hours later? Such reasoning "undermines" international justice because it allows at any moment for the possibility of objecting to a Chamber's decision. This is the course being followed by the parties when they systematically submit written or oral requests for reconsideration.

As an example, I can cite two cases that illustrate this problem: the **Mladić** case on the one hand and the **Haradinaj** case on the other. Firstly, in case of *The Prosecutor v. Ratko Mladić,*[41] the Trial Chamber rendered a decision in which it set the date for the start of the hearings with the Prosecution's first witness for 25 June 2012.[42] The Defence team of the Accused Mladić filed **a motion for reconsideration** of this decision, arguing that the Chamber's decision was based on an error of reasoning and that relevant new information was presented by the Defence.[43] It requested reconsideration of the Chamber's decision and the granting of a six-month extension before the start of the trial to prepare the Accused's defence.[44] The Trial Chamber granted this motion and reconsidered its decision, pushing back the presentation of evidence to 9 July 2012 instead of the initial date of 24 June.[45]

In the case of *The Prosecutor v. Ramush Haradinaj et al.*, Trial Chamber II was seized of a joint motion from the three accused, Haradinaj, Balaj and Brahimaj, in which they alleged a violation of Rule 68 by the Prosecution,[46] and misconduct on the part of Mr Rogers from the Office of the Prosecutor.[47] The Chamber rendered a decision on 12 October 2011 in which it found that the Office of the Prosecutor had indeed violated Rule 68 of the Tribunal's Rules of Procedure and Evidence and ordered a reprimand against Mr Rogers pursuant to Rule 68 *bis*.[48] The Office of the Prosecutor filed a motion before the Chamber for the reconsideration of this decision, requesting that the reprimand against Mr Rogers be vacated.[49] Following this motion, the Presiding Judge of the Chamber, Bakone Justice Moloto, reversed his position and in a decision rendered on 27 March 2012, vacated the reprimand against Mr Rogers.[50]

How to explain then the position of the Appeals Chamber according to which particular circumstances can justify reconsideration by a Trial Chamber or the Appeals Chamber of one of its decisions, unless we deem it to be a way for it to avoid being seized of objections by leaving it to the Trial Chambers to review their own decisions.

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[41] *The Prosecutor v. Ratko Mladić*, Case No. IT-09-92.
[42] *The Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, "Decision on Urgent Defense Motion of 14 May 2012 and Reasons for Decision on Two Defence Requests for Adjournment of the Start of Trial of 3 May 2012", 24 May 2012 (public), para. 27.
[43] *The Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, "Motion to Reconsider Decision of 24 May 2012", 30 May 2012 (public), para. 4.
[44] *Ibid*., para. 15.
[45] *The Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, "Decision on Defense Motion for Reconsideration", 22 June 2012 (public), p. 2.
[46] Rule 68 of the Rules of Procedure and Evidence of the Tribunal concerns disclosure of exculpatory and other relevant material.
[47] *The Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj*, Case No. IT-04-84*bis*-T, "Joint Defense Motion for Relief from Rule 68 Violations by the Prosecution and for Sanctions to be Imposed Pursuant to Rule 68 *bis*", 9 September 2011 (public with confidential annexes), para. 40.
[48] *The Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj*, Case No. IT-04-84*bis*-T, "Joint Defense Motion for Relief from Rule 68 Violations by the Prosecution and for Sanctions to be Imposed Pursuant to Rule 68 *bis*", 12 October 2011 (public), para. 71.
[49] *The Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj*, Case No. IT-04-84*bis*-T, "Motion for reconsideration of relief ordered pursuant to rule 68 *bis*", 25 October 2011 (public), para. 20.
[50] *The Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj*, Case No. IT-04-84*bis*-T, "Decision on Prosecutor's Motion for Reconsideration of Relief Ordered Pursuant to Rule 68 *bis* with Partially Dissenting Opinion of Judge Hall", 27 March 2012 (public), para. 44.

Similarly to what the Appeals Chamber did in the *Delalić et al.* case in 1999, the **President of the Tribunal** took into consideration the presence or absence of new facts in order to rule on a request for reconsideration it was seized of by the Prosecution in the ***Prosecutor* v. *Radoslav Brdanin* case** in 2000.[51] In this case, President Jorda based his decision on, amongst others, the fact that "the Prosecutor provided no new ground justifying a reconsideration of the Order" and found that, consequently, there was no ground justifying a reconsideration of the latter.[52]

In 2001, in a decision relating to the ***Prosecutor v. Stanislav Galić* case**, the **Appeals Chamber** adopted the same position and deemed that a Trial Chamber may always reconsider a decision it has rendered, not only because of a change of circumstances but also where it is realised that the previous decision was **erroneous** or that it has caused an **injustice**.[53]

Notwithstanding the fact that a Chamber that realises a decision it has made is erroneous and causes an injustice may withdraw it, I cannot support this because it would mean that the Judges have made an error likely to cause an injustice. If that is the case, then it must be rectified through a certification of appeal. Furthermore, the mission of a Judge is to deliver justice and to do so by avoiding errors. If there is a material error, then a procedure to rectify it may be initiated. On the other hand, when the issue at hand is of a substantive nature, the Judges rendering the decision have considered all the ins and outs and I do not understand why a judge would go back on a decision made just a few hours earlier; this would signify leaving the doors to doubt permanently open.

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

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Jean-Claude Antonetti
Presiding Judge

Done this seventeenth day of August 2012
The Hague
The Netherlands

[Seal of the Tribunal]

[51] *The Prosecutor v. Radoslav Brdanin and Momir Talić,* Case No. IT-99-36-PT, "Prosecution's Motion for Reconsideration of the Order Issued by the President Dated 11 September 2000", 22 September 2000 (public).
[52] *The Prosecutor v. Radoslav Brdanin and Momir Talić,* Case No. IT-99-36-PT, "Order on the Prosecution's Motion for Reconsideration of the Order Issued by the President on 11 September 2000", 11 January 2001 (public), pp. 4 to 5.
[53] *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR 73, "Decision on Application by Prosecution for Leave to Appeal", 14 December 2001 (public), para. 13.