

**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-03-67-T
Date: 3 September 2013
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Carmel Agius, Acting President
Registrar: Mr. John Hocking
Order of: 3 September 2013

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**ORDER FOLLOWING DECISION OF THE PANEL TO
DISQUALIFY JUDGE FREDERIK HARHOFF**

Office of the Prosecutor

Mr. Mathius 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 motion filed by the Accused on 9 July 2013,¹ in which he sought, *inter alia*, the disqualification of Judge Frederik Harhoff pursuant to Rule 15(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”);²

NOTING that President Theodor Meron withdrew himself from considering the Motion for Disqualification, and assigned me to consider the Motion for Disqualification in his place;³

NOTING the “Order Pursuant to Rule 15” of 25 July 2013, whereby, following receipt of a report from Judge Antonetti in his capacity as Presiding Judge of the relevant Trial Chamber,⁴ I found it necessary and appropriate to appoint a panel of three Judges, composed of Judge Liu Daqun, Judge Justice Bakone Moloto and Judge Burton Hall, to consider the Motion for Disqualification and to report to me its decision on the merits thereof, pursuant to Rule 15(B)(ii) of the Rules;⁵

NOTING the “Decision on Defence Motion for Disqualification of Judge Frederik Harhoff and Report to the Vice-President”,⁶ whereby the Majority of the panel of three Judges, Judge Liu dissenting, upheld the Motion for Disqualification;⁷

CONSIDERING that, pursuant to Rule 15(B)(ii) of the Rules, if the decision of the panel of three Judges is to uphold the application for disqualification of a Judge, the President shall assign another Judge to sit in the place of the Judge in question;

CONSIDERING that Rule 15 of the Rules does not, however, address the impact on a case of the replacement of a Judge, or set out any procedures to be followed in the event of such replacement;

NOTING that Rules 15bis(C) and 15bis(D) of the Rules set out the procedures to be followed in the event that a Judge is, for any reason, unable to continue sitting in a part-heard case for a period which is likely to be longer than of a short duration;

¹ Professor Vojislav Šešelj’s Motion for Disqualification of Judge Frederik Harhoff, 9 July 2013 (“Motion for Disqualification”). The original BCS version of the motion was received on 1 July 2013. The Prosecution responded on 17 July 2013. *See* Prosecution’s Response to Motion for Disqualification of Judge Frederik Harhoff, 17 July 2013.

² Motion for Disqualification, paras 2, 58.

³ Order Assigning a Motion to a Judge, 23 July 2013, p.1.

⁴ Internal Memorandum dated 8 July 2013.

⁵ Order Pursuant to Rule 15, 25 July 2013, p.2.

⁶ Decision on Defence Motion for Disqualification of Judge Frederik Harhoff and Report to the Vice-President, 28 August 2013 (“Decision on Disqualification”).

⁷ Decision on Disqualification, p. 5.

CONSIDERING that, while the present case is at a more advanced stage than that envisaged by Rules 15bis(C) and 15bis(D) of the Rules and cannot strictly speaking be described as part-heard,⁸ in the interests of fairness and transparency, the procedures applicable under Rules 15bis(C) and 15bis(D) of the Rules ought to be applied to it *mutatis mutandis*;

CONSIDERING that Rule 15bis(C) of the Rules provides for consultation with the Accused on the question of whether to rehear the case or continue the proceedings, and that the remaining Judges of the Chamber are best placed to proceed with such consultation, given their familiarity with the case and their long-standing relationship with the Accused;

FINDING that, in these circumstances, it is appropriate to stay the assignment of another Judge to sit in the place of Judge Frederik Harhoff, until such time as the remaining Judges of the Chamber have: (i) reported to me, following consultation with the Accused on the question of whether to rehear the case or continue the proceedings; and (ii) decided, 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;

HEREBY STAY the assignment of another Judge to sit in the place of Judge Frederik Harhoff; and

REQUEST 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.

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

Done this third day of September 2013,

At The Hague,
The Netherlands.



Judge Carmel Agius
Acting President

[Seal of the Tribunal]

⁸ The closing arguments of the parties in this case concluded on 20 March 2012. On 12 April 2013, the Trial Chamber ordered that its judgement be pronounced on 30 October 2013. *See* Ordonnance portant calendrier, 12 avril 2013. The English translation of this order was filed on 15 April 2013. *See* Scheduling Order, 15 April 2013.