

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-13-55-A

Date: 1 November 2018

Original: English

IN THE APPEALS CHAMBER

Before: Judge Burton Hall, Presiding
Judge Joseph E. Chiondo Masanche
Judge Lee G. Muthoga
Judge Seon Ki Park
Judge Ben Emmerson

Registrar: Mr. Olufemi Elias

Decision of: 1 November 2018

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION TO STRIKE
KARADŽIĆ'S SECOND MOTION TO DISQUALIFY JUDGE
THEODOR MERON, MOTION TO DISQUALIFY JUDGE
WILLIAM SEKULE, AND FOR RELATED ORDERS**

The Office of the Prosecutor:

Mr. Serge Brammertz
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Ms. Katrina Gustafson

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Mr. Peter Robinson
Ms. Kate Gibson

1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively)¹ is seised of the “Prosecution Motion to Strike Karadžić’s Second Motion to Disqualify Judge Theodor Meron, Motion to Disqualify Judge William Sekule, and for Related Orders” filed on 15 October 2018 (“Motion to Strike”). Radovan Karadžić filed a response on 25 October 2018.²

I. BACKGROUND

2. On 24 March 2016, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia convicted Karadžić, former President of the *Republika Srpska* and Supreme Commander of its armed forces, of genocide, crimes against humanity, and violations of the laws or customs of war, and sentenced him to 40 years of imprisonment.³ On 20 April 2016, Judge Theodor Meron, in his capacity as President of the Mechanism, assigned a Bench of the Appeals Chamber, composed of Judge Theodor Meron, Presiding, Judge William Hussein Sekule, Judge Vagn Prüsse Joensen, Judge José Ricardo de Prada Solaesa, and Judge Graciela Susana Gatti Santana, to consider the appeals filed by Karadžić and the Prosecution against the Trial Judgement (“*Karadžić* case”).⁴ Following the completion of the briefing of the appeals,⁵ the Appeals Chamber held the appeal hearing on 23 and 24 April 2018.⁶ At a status conference held on 15 August 2018, the Presiding Judge informed the parties of the Appeals Chamber’s intention to render the appeal judgement before the end of 2018.⁷

3. On 25 September 2018, Karadžić filed a motion, pursuant to Rule 18(B)(iv) of the Rules of Procedure and Evidence, before Judge Jean-Claude Antonetti, seeking the disqualification of Judge Meron for appearance of bias.⁸ On 27 September 2018, Judge Meron withdrew from the *Karadžić* case, noting that, in order not to allow disqualification proceedings to impede the progress of the

¹ Order Assigning Judges to the Appeals Chamber to Consider a Matter, 17 October 2018 (“Order of 17 October 2018”), p. 1.

² Response to Prosecution Motion to Strike, 25 October 2018 (“Response”).

³ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Public Redacted Version of Judgement Issued on 24 March 2016, 24 March 2016, paras. 2, 3524, 4937-4939, 5849, 5850, 6000-6010, 6022, 6070-6072.

⁴ Order Assigning Judges to a Case Before the Appeals Chamber, 20 April 2006, p. 2.

⁵ See Radovan Karadžić’s Notice of Appeal, 22 July 2016 (public with confidential annex); Radovan Karadžić’s Appeal Brief, 5 December 2016 (confidential; public redacted version filed on 23 December 2016); Prosecution Response Brief, 15 March 2017 (confidential; public redacted version filed on 16 May 2017); Radovan Karadžić’s Reply Brief, 6 April 2017 (confidential; public redacted version filed on 19 April 2017). See also Prosecution’s Notice of Appeal, 22 July 2016; Prosecution Appeal Brief, 5 December 2016 (confidential; public redacted version filed on 11 January 2017); Radovan Karadžić’s Response Brief, 15 March 2017 (confidential; public redacted version filed on the same date); Prosecution Reply Brief, 6 April 2017 (confidential; public redacted version filed on 16 May 2017).

⁶ T. 23 April 2018 pp. 84-236; T. 24 April 2018 pp. 237-316. See also Scheduling Order for Appeal Hearing and Status Conference, 27 February 2018, pp. 1, 2.

⁷ T. 15 August 2018 pp. 327, 328.

⁸ Motion to Disqualify Judge Theodor Meron, 25 September 2018 (“First Disqualification Motion”), paras. 1, 42.

appeals, it is in the interests of justice that he withdraws from the case.⁹ Judge Meron emphasized, however, that, if he were to remain on the Bench, he would have continued to adjudicate the case with an impartial mind.¹⁰ The same day, in his capacity as President of the Mechanism, Judge Meron assigned Judge Ivo Nelson de Caires Batista Rosa to replace him on the Bench in the *Karadžić* case.¹¹

4. In view of Judge Meron's withdrawal, on 2 October 2018, Judge Antonetti declared the First Disqualification Motion moot.¹² Judge Antonetti noted, however, that Rules 18(A) and 18(B)(iv) bestow upon him, as Senior Judge, the responsibility to assign a Judge to replace Judge Meron on the Bench, and invited Judge Meron to withdraw the Assignment Order for lack of jurisdiction.¹³ On 3 October 2018, Judge Meron declined Judge Antonetti's invitation, noting that he had not been disqualified from the *Karadžić* case pursuant to Rule 18 and that, therefore, he was not precluded from continuing to exercise his duty as President of the Mechanism and coordinate the work of the Chambers, including by assigning a Judge to replace him on the Bench in the *Karadžić* case.¹⁴

5. On 5 October 2018, *Karadžić* filed a motion before Judge Meron, seeking reconsideration of the Assignment Order on the basis that it harms the interests of justice in setting a precedent whereby a Judge, who is the subject of a disqualification motion, may choose his replacement on the Bench.¹⁵ On 10 October 2018, Judge Meron denied *Karadžić*'s request.¹⁶ On 12 October 2018, *Karadžić* filed a second motion before Judge Antonetti, seeking, under Rule 18(B)(iv), the disqualification of Judge Meron, in his capacity as President of the Mechanism, from taking any decision related to the *Karadžić* case, including in relation to the composition of the Bench, and requesting also the disqualification of Judge William Sekule for appearance of bias.¹⁷ *Karadžić* further requested that Judge Antonetti assign the judges who are to replace Judge Meron and

⁹ Decision, 27 September 2018 ("Decision of 27 September 2018"), p. 2. Judge Meron indicated his view that Judge Antonetti's prior decision to disqualify him for reasons of apparent bias in the case of *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, clearly contradicted established jurisprudence and harmed the interests of the Mechanism, and that, allowing Judge Antonetti to adjudicate yet another motion brought under Rule 18 was liable to delay the proceedings in the *Karadžić* case and further harm the interests of the Mechanism. *See* Decision of 27 September 2018, pp. 1, 2.

¹⁰ Decision of 27 September 2018, p. 2.

¹¹ Order Replacing a Judge in a Case Before the Appeals Chamber, 27 September 2018 ("Assignment Order"), p. 1.

¹² Order on Motion to Disqualify Judge Theodor Meron, 2 October 2018 (English translation filed on 4 October 2018) ("Decision on First Disqualification Motion"), p. 2.

¹³ Decision on First Disqualification Motion, p. 2.

¹⁴ Decision in Response to Order on Motion to Disqualify, 3 October 2018, pp. 1, 2.

¹⁵ Motion to Reconsider Order Replacing a Judge, 5 October 2018, paras. 1, 5, 6, 12.

¹⁶ Decision on Motion to Reconsider Order Replacing a Judge, 10 October 2018, p. 2.

¹⁷ Second Motion to Disqualify Judge Theodor Meron, Motion to Disqualify Judge William Sekule, and for Related Orders, 12 October 2018 ("Second Disqualification Motion"), paras. 1, 8-14, 19-30, 42.

Judge Sekule on the Bench and order the Appeals Chamber in the *Karadžić* case to begin its deliberations anew.¹⁸

6. On 15 October 2018, the Prosecution filed the Motion to Strike before Judge Meron, in his capacity as President of the Mechanism, requesting him to strike the Second Disqualification Motion on the basis that Judge Antonetti lacks jurisdiction to consider the matters raised by *Karadžić*.¹⁹ On 17 October 2018, Judge Meron assigned the Motion to Strike to this Appeals Chamber, finding that “it is in the interests of justice that the [Motion to Strike] be assigned to a bench of the Appeals Chamber to resolve the question of jurisdiction”.²⁰ He also requested Judge Antonetti to stay any action on the Second Disqualification Motion, pending the Appeals Chamber’s ruling on the Motion to Strike.²¹ On 18 October 2018, Judge Antonetti declined Judge Meron’s request to stay the proceedings, noting that it would be appropriate for the Appeals Chamber to rule on the legal basis of its jurisdiction and on the authority of the President of the Mechanism to request him to stay proceedings in relation to the Second Disqualification Motion.²² Judge Antonetti also requested additional submissions from the parties on the issue of whether the Second Disqualification Motion constituted a request for reconsideration of the Decision on First Disqualification Motion.²³ On 19 October 2018, *Karadžić* clarified that he was indeed seeking reconsideration of the Decision on First Disqualification Motion on the basis that, in view of the Assignment Order, Judge Meron’s withdrawal did not provide all the relief originally sought by *Karadžić*.²⁴ The Prosecution filed its submissions in a consolidated response before the President of the Mechanism on 26 October 2018.²⁵

7. On 31 October 2018, Judge Antonetti issued a decision, reconsidering, *proprio motu*, the Decision on First Disqualification Motion.²⁶ In the Reconsideration Decision, Judge Antonetti disqualified Judge Meron for appearance of bias, invalidated the Assignment Order issued by Judge Meron in his capacity as President of the Mechanism, and assigned Judge Rosa to replace Judge Meron on the Bench in the *Karadžić* case.²⁷ In the Reconsideration Decision, Judge Antonetti did

¹⁸ Second Disqualification Motion, paras. 1, 31-40, 42.

¹⁹ Motion to Strike, paras. 1-10.

²⁰ Order of 17 October 2018, pp. 2, 3.

²¹ Order of 17 October 2018, p. 3.

²² Decision in Relation to the Order Assigning the Appeals Chamber to Consider a Matter of 17 October 2018, 18 October 2018 (English translation filed on 19 October 2018), p. 4.

²³ Order on Defence Motion for Disqualification of Judges Theodor Meron and William Sekule and for Related Orders, 17 October 2018 (English translation filed on 19 October 2018), p. 2.

²⁴ Defence Submissions on Second Motion to Disqualify Judge Theodor Meron, Motion to Disqualify Judge William Sekule, and for Related Orders, 19 October 2018, paras. 3-5.

²⁵ Prosecution Consolidated Response to Second Motion to Disqualify Judge Meron, Motion to Disqualify Judge Sekule, and for Related Orders and Further Submissions, 26 October 2018.

²⁶ Décision portant reconsideration *proprio motu*, 31 Octobre 2018 (“Reconsideration Decision”), p. 5.

²⁷ Reconsideration Decision, pp. 4, 5.

not rule on, *inter alia*, Karadžić's request, contained in the Second Disqualification Motion, for the disqualification of Judge Sekule.

8. In the Motion to Strike, the Prosecution argues that Judge Antonetti has no jurisdiction in relation to the matters raised in the Second Disqualification Motion, which was improperly filed before him and which should, therefore, be struck.²⁸ Regarding Karadžić's request for disqualification of Judge Meron, the Prosecution argues that Rule 18 cannot be invoked to disqualify the President of the Mechanism from exercising his administrative functions under Article 12 of the Statute of the Mechanism and Rule 23 in relation to the *Karadžić* case.²⁹ In relation to Karadžić's request for disqualification of Judge Sekule, the Prosecution submits that it was improperly filed before Judge Antonetti, given that the impugned Judge is not the President of the Mechanism and that, therefore, Rule 18(B)(iv) does not apply.³⁰

9. In response, Karadžić opposes the Motion to Strike.³¹ He submits that the Second Disqualification Motion is, in effect, a motion for reconsideration of the Decision on First Disqualification Motion and that, therefore, it was correctly filed before Judge Antonetti.³² Concerning the request for disqualification of Judge Sekule, Karadžić submits that he followed the procedure set in a previous case before the Mechanism and that, pursuant to Rule 18(B)(iv), upon disqualification of a Judge, who is also the President, the Judge most senior who is able to act and not the President, should assign the replacing Judge.³³

II. DISCUSSION

10. As a preliminary matter, the Appeals Chamber finds it pertinent to recall the importance of the principles of certainty and predictability in the application of the law,³⁴ as well as the duty of the Mechanism to ensure that proceedings are conducted in a fair and expeditious manner with full respect for the rights of the accused.³⁵ Considering that the matters raised in the Motion to Strike

²⁸ Motion to Strike, paras. 1, 2, 7.

²⁹ Motion to Strike, paras. 1, 3.

³⁰ Motion to Strike, para. 8.

³¹ Response, paras. 1, 18.

³² Response, para. 11.

³³ Response, paras. 12-14, 16, 17, referring to *Prosecutor v. Ratko Mladić*, Case No. MICT-13-56-A, Decision on Mladić's Motions for Disqualification of Judges, 20 June 2018, p. 1.

³⁴ See *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 March 2000, para. 113(ii).

³⁵ See Articles 18(1), 19, 23 of the Statute; *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-A, Decision on Joint Motion on Behalf of Mićo Stanišić and Stojan Župljanin Seeking Expedited Adjudication of Their Respective Grounds of Appeal *1bis* and 6, 22 October 2014, para. 17 (where the ICTY Appeals Chamber held that it has the primary obligation to ensure that the convicted person has a fair and expeditious process on appeal). See also *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Judgement, 23 January 2014 ("*Šainović et al.* Appeal Judgement"), para. 100; *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-AR73.5, Decision on Interlocutory Appeal by the Accused Zoran Žigić Against the Decision of Trial Chamber I Dated 5 December 2000, 25 May 2001,

are closely related to the fairness of ongoing appeal proceedings³⁶ and are of general significance to the Mechanism's jurisprudence on the interpretation of Rule 18,³⁷ the Appeals Chamber is satisfied that it has jurisdiction to consider the Motion to Strike and should decide this matter expeditiously. The Appeals Chamber further considers that the issuance, in the intervening period, of the Reconsideration Decision does not render the Motion to Strike moot, given Karadžić's outstanding request for, *inter alia*, disqualification of Judge Sekule that is currently pending before Judge Antonetti,³⁸ and the need for the Appeals Chamber to clarify the law, in order to avoid ambiguity in the interpretation of Rule 18 in the present and future proceedings before the Mechanism.

11. Pursuant to Rule 18(A), a Judge may not sit in a case in which the Judge has a personal interest or concerning which the Judge has or has had any association which might affect his impartiality. Rule 18(B), which sets out the procedure to be followed by a party seeking the disqualification of a Judge, provides that the party shall apply to the President who shall confer with the Judge whose disqualification is being sought, and either decide the application or, if necessary, appoint a panel of three Judges to decide the application. If the application for disqualification is granted, Rule 18(B)(ii) provides that the President shall assign another Judge to replace the Judge who has been disqualified. Pursuant to Rule 18(B)(iv), if the Judge whose disqualification is sought is the President, "the responsibility of the President in accordance with this paragraph shall be assumed by the Judge most senior who is able to act".

12. It follows that, where the President is disqualified from sitting in a case, the Judge most senior who is able to act shall assign another Judge to sit in the place of the President. This is clearly distinguishable from a situation where the President has not been disqualified from sitting in a case under Rule 18. In the absence of a disqualification decision, the power to assign a Judge to replace him on the Bench remains squarely within the President's authority to "coordinate the work

para. 21 (where the ICTY Appeals Chamber held that procedural equality requires that the concept of fair trial be applied taking into account the interests of both parties).

³⁶ Cf. *In Re. André Ntagerura*, Case No. ICTR-99-46-A28, Decision on Motion for Leave to Appeal the President's Decision of 31 March 2008 and the Decision of Trial Chamber III Rendered on 15 May 2008, 11 September 2008 ("Ntagerura Decision of 11 September 2008"), paras. 12, 13 (where the Appeals Chamber of the International Criminal Tribunal for Rwanda held that it has inherent jurisdiction to review decisions of the President and the Trial Chamber on issues that are closely related to the fairness of the appeal proceedings); *Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-A, Decision on Hassan Ngeze's Motion to Set Aside President Møse's Decision and Request to Consummate his Marriage, 6 December 2005, p. 4.

³⁷ Cf. *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-A, Judgement, 29 November 2017 (public with confidential Annex C), para. 18 (where the ICTY Appeals Chamber recalled that, in exceptional circumstances, it may hear appeals in which a party has raised a legal issue that would not lead to the invalidation of the trial judgement, but that is nevertheless of general significance to the ICTY jurisprudence); *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-A, Judgement, 8 April 2015, n. 662 (where the ICTY Appeals Chamber considered that a finding of the ICTY Trial Chamber, which was not challenged by Zdravko Tolimir on appeal, concerned an issue of general significance to the ICTY jurisprudence, and therefore decided to exercise its discretion and consider the issue *proprio motu*). See also *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999, paras. 247, 316.

³⁸ See Second Disqualification Motion, paras. 1, 14-30, 42.

of the Chambers” pursuant to Article 12 of the Statute and Rule 23.³⁹ To suggest that the mere filing of a motion for disqualification of the President, or of any other Judge sitting on the Bench, rebuts the strong presumption of impartiality attached to Judges has no basis in the Rules and is contrary to well settled jurisprudence. It is for the party alleging bias to adduce reliable and sufficient evidence to rebut that presumption and, before a Judge can be disqualified, a reasonable apprehension of bias must be “firmly established”.⁴⁰ Therefore, the filing in the eleventh hour of a motion for disqualification of a Judge carries no certainty that relief will be granted.

13. In addition, as previously held by the ICTY Appeals Chamber, an order determining the composition of the Appeals Chamber in a particular case is rendered by the President pursuant to his authority to coordinate the work of the Chambers and is thus an administrative matter.⁴¹ Given that Rule 18(A) does not address the involvement of a Judge in administrative matters, the President cannot be disqualified from assigning the members of a Bench of the Appeals Chamber.⁴² Accordingly, to the extent that an applicant may seek the disqualification of the President from administrative matters related to the applicant’s case, such a request has no legal basis in the Rules. The Appeals Chamber further observes that, where the President has not been disqualified from sitting in a case following the procedure set out in Rule 18(B)(iv), any subsequent applications for disqualification of a Judge in that case shall be filed before the President, in accordance with Rule 18(B)(i).

14. Turning to the facts of the case before it, the Appeals Chamber notes that, at the time the Appeals Chamber became seised of the matters before it, the President was not subject to a disqualification decision and that therefore, following his withdrawal, it was within his power under Rule 23 to assign a Judge to replace him on the Appeals Chamber seised of the *Karadžić* case.

³⁹ See *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-AR11bis.1, Decision on “Motion to Disqualify President and Vice-President From Appointing Appeals Chamber and to Disqualify President Judge and Judge Meron from Sitting on Appeals Chamber”, 4 May 2007 (“*Lukić* Decision of 4 May 2007”), p. 1. See also *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Prosecution Motion for the Appointment of Independent Counsel to Review Material Potentially Subject to Lawyer-Client Privilege, 16 July 2012 (public redacted version), para. 9.

⁴⁰ See *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-A, Judgement (public with confidential Annex C), 30 June 2016 (“*Stanišić and Župljanin* Appeal Judgement”), para. 44; *Šainović et al.* Appeal Judgement, para. 181; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3, Decision on Motion by Professor Vojislav Šešelj for the Disqualification of Judges O-Gon Kwon and Kevin Parker, 19 November 2010 (confidential; filed publicly on 23 November 2010), para. 17; *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, Judgement, 20 February 2001 (“*Delalić et al.* Appeal Judgement”), para. 707; *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-A, Judgement, 21 July 2000, para. 197. It bears recalling that, just as any real appearance of bias on the part of a Judge undermines confidence in the administration of justice, it is equally important that judicial officers “do not, by acceding too readily to suggestions of apparent bias, encourage parties to believe that, by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour”. See *Stanišić and Župljanin* Appeal Judgement, para. 44, citing *Delalić et al.* Appeal Judgement, para. 707.

⁴¹ See *Lukić* Decision of 4 May 2007, p. 1.

⁴² See *Lukić* Decision of 4 May 2007, p. 2.

Accordingly, to the extent that Karadžić argues that it is for the Judge most senior who is able to act to assign the replacing Judge on the Bench, his argument lacks merit.⁴³ In addition, for the reasons explained above, Karadžić's request that the President be disqualified from exercising any future administrative functions in relation to the *Karadžić* case⁴⁴ has similarly no legal basis and stands to be rejected. As to Karadžić's request that Judge Sekule be disqualified from the *Karadžić* case,⁴⁵ having considered Karadžić's arguments for filing the request under Rule 18(B)(iv),⁴⁶ the Appeals Chamber finds them unpersuasive. As explained above, such request should have been filed before the President, in accordance with Rule 18(B)(i).

15. The Appeals Chamber turns next to the Prosecution's request to strike the Second Disqualification Motion as improperly filed before Judge Antonetti. Nothing in the Statute or the Rules explicitly confers on the Appeals Chamber the power to strike a motion pending before a Judge of the Mechanism. However, as explained above, the Appeals Chamber has jurisdiction over the matters before it as the ongoing litigation creates legal uncertainty, which may significantly impact the appeal proceedings in the *Karadžić* case. The Appeals Chamber is also mindful of Karadžić's submission that the Second Disqualification Motion effectively seeks reconsideration of the Decision on First Disqualification Motion, which was issued by Judge Antonetti.⁴⁷ Indeed, a request for reconsideration, by definition, has to be made before the Judge, or Chamber, that rendered the impugned decision.⁴⁸ Nevertheless, the ICTY Appeals Chamber has, in exceptional circumstances and in the interests of judicial economy, previously disposed of a request for reconsideration that should have been filed before a trial chamber.⁴⁹

16. The Appeals Chamber is acutely aware of the complex procedural history of the matters before it and of their significant impact on the expeditious continuation of the proceedings in the *Karadžić* case. The Appeals Chamber further recalls that, while the President has no competence to

⁴³ See Second Disqualification Motion, paras. 1, 10, 11, 13, 31, 42; Response, paras. 16, 17.

⁴⁴ See Second Disqualification Motion, paras. 1, 10, 13, 42.

⁴⁵ See Second Disqualification Motion, paras. 1, 14-30, 42.

⁴⁶ See Response, paras. 12-14.

⁴⁷ See Response, para. 11.

⁴⁸ See *Prosecutor v. Jean De Dieu Kamuhanda*, Case No. MICT-13-33-AR90/108.1, Decision on Kamuhanda's Appeal of Decision on Motion for Appointment of *Amicus Curiae* Prosecutor to Investigate Prosecution Witness GEK, 8 December 2015, para. 17; *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, Decision on the Prosecution's "Motion for Reconsideration and Rescission of the Order to Disclose Issued in Trial Chamber's 'Decision on Motion by Radovan Karadžić for Access to Confidential Materials in the Lukić and Lukić Case' of 10 July 2009", 7 December 2009 ("*Lukić* Decision of 7 December 2009"), para. 4.

⁴⁹ Cf. *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-A&IT-95-5/18-T, Decision on Motion by Radovan Karadžić for Reconsideration of Decision on Motion for Access to Confidential Materials in the *Stanišić and Simatović* Case, 16 February 2015, p. 2; *Lukić* Decision of 7 December 2009. See also *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR54, Decision on Appeal from Refusal of Application for Disqualification and Withdrawal of Judge, 13 March 2003, para. 9 (where the ICTY Appeals Chamber found that the most expeditious way of resolving a procedural problem was for the ICTY Appeals Chamber itself to deal with an application that had been inappropriately referred to it).

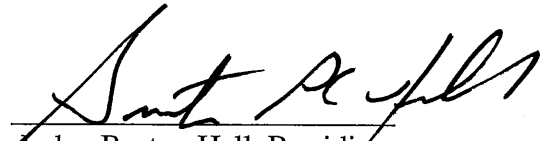
issue decisions that are binding on a trial chamber regarding the conduct of proceedings before it, Judges seised of a matter are bound by the *ratio decidendi* of the Appeals Chamber's decisions.⁵⁰ The law in relation to the issues raised by Karadžić in the Second Disqualification Motion is now clear. There is no need for any further factual assessment. There is, however, a need for immediate resolution. In these circumstances, the Appeals Chamber considers that it is in the interests of judicial economy and efficient management of the proceedings to exercise its discretion to rule directly on the matter before it. Accordingly, for the reasons explained above, the Appeals Chamber decides to act and strike the Second Disqualification Motion. As a consequence, the Reconsideration Decision has no legal effect.

III. DISPOSITION

17. For the foregoing reasons, the Appeals Chamber **STRIKES** the Second Disqualification Motion.

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

Done this 1st day of November 2018,
At The Hague,
The Netherlands


Judge Burton Hall, Presiding

[Seal of the Mechanism]

⁵⁰ The power to issue such decisions is exclusively conferred upon the Appeals Chamber. See *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.7, Decision on Appeal From Decision on Motion for Further Postponement of Trial, 31 March 2010, para. 19. The Appeals Chamber also has inherent jurisdiction over the enforcement of its orders and any decisions rendered as a consequence thereof. See *Ntagerura* Decision of 11 September 2008, para. 12.