UNITED NATIONS

International Residual Mechanism for Criminal Tribunals

Case No.: MICT-13-55

Date: 14 July 2020

Original: English

THE PRESIDENT OF THE MECHANISM

Before: **Judge Carmel Agius, President**

Registrar: **Mr. Abubacarr Tambadou**

Decision of: **14 July 2020**

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON RADOVAN KARADŽIĆ'S MOTION FOR DISQUALIFICATION AND RECONSIDERATION OF THE DISMISSAL OF NOTICE OF SENTENCING APPEAL

The Office of the Prosecutor:

Mr. Serge Brammertz
Ms. Laurel Baig
Ms. Barbara Goy

Counsel for Mr. Radovan Karadžić:

Mr. Peter Robinson

I, **CARMEL AGIUS**, President of the International Residual Mechanism for Criminal Tribunals ("President" and "Mechanism", respectively);

RECALLING that, on 20 March 2019, the Appeals Chamber of the Mechanism ("Appeals Chamber") rendered its Judgement in which the Appeals Chamber, *inter alia*: (i) affirmed the convictions of Mr. Radovan Karadžić ("Karadžić") for genocide, for persecution, extermination, murder, deportation, and other inhumane acts (forcible transfer) as crimes against humanity, as well as for murder, terror, unlawful attacks on civilians, and hostage-taking as violations of the laws or customs of war;[1] and (ii) set aside the sentence of 40 years of imprisonment and imposed a sentence of life imprisonment;[2]

RECALLING that, on 2 April 2019, I rendered a Decision in which I, *inter alia*, dismissed Karadžić's notice seeking to appeal the sentence imposed on him by the Appeals Chamber,[3] because: (i) there is no legal basis in the Statute of the Mechanism or the Rules of Procedure and Evidence of the Mechanism ("Statute" and "Rules", respectively) for Karadžić to appeal the Appeal Judgement or any part thereof;[4] and (ii) there is no legal basis for me to assign an Appeals Bench to consider Karadžić's Notice of Appeal;[5]

BEING SEISED of a motion filed by Karadžić on 4 September 2019, in which he seeks: (i) reconsideration of the Impugned Decision;[6] and (ii) the disqualification of both myself and Judge Theodor Meron from reconsidering the Impugned Decision;[7]

NOTING Karadžić's submissions, *inter alia*, that: (i) the Impugned Decision should be reconsidered because I erroneously ruled on the merits of whether the Notice of Appeal was admissible, rather than appointing an Appeals Bench to consider the matter, and thereby exceeded

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[1] *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Judgement, 20 March 2019 (public redacted) ("Appeal Judgement"), para. 777.

[2] Appeal Judgement, para. 777.

[3] Decision on Radovan Karadžić's Notice of Sentencing Appeal and the Related Motion for Assignment of Counsel and Extension of Time, 2 April 2019 ("Impugned Decision"), pp. 1, 4. *See also* Radovan Karadzic's Notice of Sentencing Appeal, 28 March 2019 ("Notice of Appeal"); Motion for Assignment of Counsel and Extension of Time, 28 March 2019 ("Motion of 28 March 2019"). In rendering the Impugned Decision, I took into account the arguments advanced by Karadžić in his Motion of 28 March 2019. *See* Impugned Decision, pp. 1-3.

[4] Impugned Decision, p. 3. *See* Impugned Decision, p. 2, *referring to Prosecutor v. Vojislav Šešelj*, Case No. MICT-16-99, Decision on Request to be Allowed to Exercise the Right to Appeal and to Have a Deadline Set for the Notice of Appeal, 27 November 2018 ("*Šešelj* Decision of 27 November 2018"), para. 8 and fn. 19.

[5] Impugned Decision, p. 3. *See* Impugned Decision, p. 2, *referring to Prosecutor v. Vojislav Šešelj*, Case No. MICT-16-99, Decision on Vojislav Šešelj's Appeal Against Decision Denying Request to Appeal the Appeal Judgement, 5 February 2019 ("*Šešelj* Decision of 5 February 2019"), p. 2.

[6] Motion to Reconsider Dismissal of Notice of Appeal and to Disqualify Judges Agius and Meron, 4 September 2019 ("Motion"), paras. 1, 20, 35. *See also* Motion, paras. 2, 7-19.

[7] Motion, paras. 1, 21, 34-35. *See also* Motion, paras. 2, 22-33.

my authority as President;[8] and (ii) I should be disqualified, pursuant to Rule 18 of the Rules, from reconsidering the Impugned Decision in order to avoid an appearance of bias given my participation in other cases concerning crimes that are the subject of the Notice of Appeal, and because I previously imposed a life sentence on some of Karadžić's subordinates;[9]

NOTING that, on 6 September 2019, I assigned the Motion to a three-Judge panel ("Panel") with respect to the request for disqualification, and declared that I remained seised of the Motion insofar as it seeks reconsideration of the Impugned Decision;[10]

NOTING that, on 16 September 2019, the Office of the Prosecutor of the Mechanism ("Prosecution") filed a response opposing reconsideration and submitting, *inter alia*, that I acted within the bounds of my authority in declining to assign an Appeals Bench to consider the Notice of Appeal;[11]

NOTING that, on 28 October 2019, the Panel rendered its Decision in which it, *inter alia*: (i) held that Rule 18 of the Rules relates solely to the disqualification of Judges sitting in a case, and does not apply to the President performing administrative functions;[12] (ii) declared that because "Rule 18 of the Rules does not provide jurisdiction to request the disqualification of the President from taking or reconsidering" decisions concerning the assignment of benches, the Panel does not have jurisdiction to consider Karadžić's request for disqualification;[13] and (iii) rejected Karadžić's attempt to advance claims of an appearance of bias in order to reach his preferred decision maker and cautioned his Counsel to refrain from engaging in such litigation before the Mechanism;[14]

CONSIDERING that, as the Panel declared that it does not have jurisdiction to consider the request for disqualification, I remain seised of this aspect of the Motion as well;

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[8] Motion, paras. 8-10, 19-20, 35.

[9] Motion, paras. 21, 26-31.

[10] Order Assigning a Three-Judge Panel, 6 September 2019, p. 2.

[11] Prosecution Response to Motion to Reconsider Dismissal of Notice of Appeal, 16 September 2019, paras. 1-3, 5-7. The Prosecution filed additional submissions before the Panel concerning Karadžić's request for disqualification. *See* Prosecution Response to Motion to Disqualify President Agius and Judge Meron, 16 September 2019.

[12] Decision on Motion for Disqualification and Motion Challenging Jurisdiction, 28 October 2019 ("Panel Decision"), para. 10.

[13] Panel Decision, paras. 11, 14. The Panel noted that the inapplicability of Rule 18 of the Rules does not mean that a President cannot decide *proprio motu* to recuse him or herself from an administrative matter. *See* Panel Decision, para. 11.

[14] Panel Decision, para. 13.

CONSIDERING that the Panel held that the Impugned Decision, concerning the non-assignment of an Appeals Bench, is an administrative decision made in my capacity as President for which I cannot be subject to a disqualification request pursuant to Rule 18 of the Rules;[15]

 FINDING, therefore, that Karadžić's request for disqualification, which is based on Rule 18 of the Rules,[16] is devoid of any legal basis;

CONSIDERING further that Karadžić's submissions do not raise any concerns that would warrant me recusing myself *proprio motu* from reconsidering the Impugned Decision;

RECALLING that a party requesting reconsideration of a decision must demonstrate the existence of a clear error of reasoning in the impugned decision, or that particular circumstances exist justifying reconsideration in order to avoid injustice;[17]

CONSIDERING that contrary to Karadžić's arguments,[18] I did not rule on the merits of the Notice of Appeal thereby exceeding my authority as President, but rather found that there was no legal basis for me to assign an Appeals Bench to consider his Notice of Appeal;[19]

CONSIDERING that Karadžić fails to demonstrate any error with respect to this finding, which is in line with established jurisprudence confirming that neither the Statute nor the Rules provide a legal framework for an appeal of an appeal judgement or any part thereof;[20]

CONSIDERING further that the Impugned Decision expressly addressed Karadžić's attempt to distinguish his case from other cases,[21] and that Karadžić: (i) does not address this reasoning in his Motion;[22] (ii) merely repeats prior arguments without demonstrating any error in the Impugned Decision;[23] and (iii) adds that he directed his Notice of Appeal to the Appeals Chamber[24] and that I

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[15] *See* Panel Decision, paras. 10-12.
[16] Motion, paras. 1, 21.
[17] *See*, *e.g.*, *Prosecutor v. Alfred Musema*, Case No. MICT-12-15-ES.1, Decision on the Request for Reconsideration of the Decision Denying Early Release, 10 January 2020, p. 1 and references cited therein.
[18] *See* Motion, paras. 8, 10, 19-20. *See also* Motion, para. 33.
[19] Impugned Decision, p. 3.
[20] *See* Impugned Decision, p. 2, *referring to Šešelj* Decision of 27 November 2018, para. 8 and fn. 19. *See also* Panel Decision, para. 11 ("Here the proceedings have concluded, and the only avenue for further relief, as confirmed recently by the Appeals Chamber, is review."); *Šešelj* Decision of 5 February 2019, p. 2.
[21] Impugned Decision, p. 2.
[22] *See generally* Motion.
[23] *See* Motion, paras. 14-15, 17. *See also* Motion of 28 March 2019, para. 4.
[24] *See* Motion, para. 13. *See also* Notice of Appeal, p. 1.

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dismissed it without awaiting a response from the Prosecution,[25] which I consider to have no bearing on the correctness of the Impugned Decision;

FINDING that Karadžić has failed to demonstrate a clear error of reasoning in the Impugned Decision;

FINDING, therefore, that reconsideration of the Impugned Decision is not warranted;

FOR THE FOREGOING REASONS,

HEREBY DISMISS the Motion.

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

Done this 14th day of July 2020,
At The Hague,
The Netherlands.

Judge Carmel Agius
President

[Seal of the Mechanism]

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[25] *See* Motion, para. 6. *See also* Motion, paras. 16, 19.

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for Criminal Tribunals

Mécanisme international appelé à exercer

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