

**UNITED  
NATIONS**



Mechanism for International Criminal Tribunals

Case No. MICT-13-52-R.1  
Date: 13 November 2015  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Burton Hall, Presiding  
Judge Aydin Sefa Akay  
Judge Prisca Matimba Nyambe  
Judge Seon Ki Park  
Judge Solomy Balungi Bossa

**Registrar:** Mr. John Hocking

**Decision of:** 13 November 2015

**PROSECUTOR**

v.

**MILAN LUKIĆ**

***PUBLIC***

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**DECISION ON PROSECUTION'S MOTION TO STRIKE  
MILAN LUKIĆ'S NOTICE OF APPEAL OF DECISION ON  
APPLICATION FOR REVIEW**

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**The Office of the Prosecutor:**

Mr. Hassan Bubacar Jallow  
Mr. Mathias Marcussen

**Counsel for Milan Lukić:**

Mr. Rodney Dixon, QC

**THE APPEALS CHAMBER** of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively);

**NOTING** the “Decision on Milan Lukić’s Application for Review” issued on 7 July 2015, in which the Appeals Chamber, Judge Antonetti dissenting, dismissed Milan Lukić’s request to have his convictions and sentence reviewed in light of alleged new evidence, which came to his attention after his appeal was concluded;<sup>1</sup>

**NOTING** the “Notice of Appeal of ‘Decision on Milan Lukić’s Application for Review’” filed on 6 August 2015 (“Appeal”), in which Milan Lukić argues, *inter alia*, that the Review Decision is subject to appeal pursuant to Article 23 of the Statute of the Mechanism (“Statute”) and Rule 133 of the Rules of Procedure and Evidence of the Mechanism (“Rules”),<sup>2</sup> requests that his appeal proceed before a “reconstituted Appeals Chamber”, and seeks an extension of time to file his appeal brief;<sup>3</sup>

**BEING SEISED OF** the “Prosecution Motion to Strike Lukić’s Notice of Appeal of ‘Decision on Milan Lukić’s Application for Review’”, filed on 17 August 2015 (“Prosecution Motion”), in which the Prosecution contends that Milan Lukić’s claim that an appeal lies from the Review Decision is unfounded because neither the Statute nor the Rules provide for an appeal from a decision dismissing a request for review;<sup>4</sup>

**NOTING** that Milan Lukić did not file a response to the Prosecution Motion;

**NOTING** that the Review Decision was rendered by the Appeals Chamber as the chamber which issued the final judgement in the case against Milan Lukić;<sup>5</sup>

<sup>1</sup> Decision on Milan Lukić’s Application for Review, 7 July 2015 (“Review Decision”), para. 38; *Première partie de l’Opinion Dissidente du Juge Jean-Claude Antonetti jointe à la Décision du 7 juillet 2015*, 20 July 2015; *Deuxième partie de l’Opinion Dissidente du Juge Jean-Claude Antonetti jointe à la Décision du 7 juillet 2015*, 1 October 2015. See also Application on Behalf of Milan Lukić for Review of the Trial Judgment of 20 July 2009, 6 February 2014 (public with confidential annexes) (“Review Application”), paras. 3, 5, 20.

<sup>2</sup> Appeal, paras. 5-8.

<sup>3</sup> Appeal, paras. 9, 16.

<sup>4</sup> Prosecution Motion, paras. 1-3. See also Order Assigning a Bench to Consider a Notice of Appeal and a Prosecution Motion, 22 September 2015.

<sup>5</sup> The Appeals Chamber of the International Criminal Tribunal for Rwanda has held that only a final judgement – a decision which puts an end to the proceedings – can be reviewed. See, e.g., *Jean Uwinkindi v. The Prosecutor*, Case No. ICTR-01-75-AR11bis, Decision on Uwinkindi’s Motion for Review or Reconsideration of the Decision on Referral to Rwanda and the Related Prosecution Motion, 23 February 2012, para. 10, referring to *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 procédure*, 23 June 2006, para. 21; *Jean Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Decision (Prosecutor’s Request for Review or Reconsideration), 31 March 2000, para. 49; Rule 120(A) of the ICTR Rules of Procedure and Evidence. In this case, the final judgement was rendered by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia. See *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, Judgement, 4 December 2012. Therefore, the proper forum for considering Milan Lukić’s request for review was the Appeals Chamber. See Order Assigning Judges to a Case Before the Appeals Chamber, 24 February 2014, p. 2.

**NOTING** that, in the Review Decision, the Appeals Chamber dismissed at the preliminary examination stage Milan Lukić’s request to have his convictions and sentence reviewed;<sup>6</sup>

**CONSIDERING** that Article 23 of the Statute and Rule 133 of the Rules upon which Milan Lukić relies in his Appeal pertain to appellate proceedings concerning decisions taken by a Single Judge or decisions and judgements rendered by a Trial Chamber;

**FINDING** therefore that Article 23 of the Statute and Rule 133 of the Rules are not applicable in the present circumstances where the impugned decision was rendered by the Appeals Chamber;

**CONSIDERING FURTHER** that, pursuant to Rule 148 of the Rules, the only right of appeal in review proceedings pertains to a judgement on review pronounced by a Trial Chamber or a Single Judge, and that there is no provision in the Statute or the Rules that allows for appeals from decisions of the Appeals Chamber denying a request for review at the preliminary examination stage;<sup>7</sup>

**FINDING** therefore that the Appeal is unfounded;

**FOR THE FOREGOING REASONS,**

**HEREBY GRANTS** the Prosecution Motion; and

**DISMISSES** the Appeal in its entirety.

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

Done this 13th day of November 2015,  
At The Hague,  
The Netherlands



Judge Burton Hall, Presiding

**[Seal of the Mechanism]**

*Prosecutor v. Drago Josipović*, Case No. IT-95-16-R2, Decision on Motion for Review, 7 March 2003, para. 15; *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Request for Review, 30 June 2006, para. 8.

<sup>6</sup> Review Decision, paras. 17, 23, 31, 37, 38.

<sup>7</sup> See also *Eliézer Niyitegeka v. The Prosecutor*, Case No. MICT-12-16-R, Decision on Niyitegeka’s Request for Assignment of Counsel, 6 November 2014, para. 11 (where the Appeals Chamber held that decisions rejecting requests for review are final decisions and, as such, are not subject to reconsideration).