

**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: 6 September 2013
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Carmel Agius, Acting President
Registrar: Mr. John Hocking
Order of: 6 September 2013

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**ORDER ON PROSECUTION MOTION FOR
RECONSIDERATION AND REQUEST FOR STAY**

Office of the Prosecutor

Mr. Serge Brammertz
Mr. Mathias 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 decision issued on 28 August 2013¹ by a panel of three Judges appointed by myself pursuant to Rule 15 of the Tribunal’s Rules of Procedure and Evidence (“Panel” and “Rules”, respectively),² in which the Majority of the Panel, Judge Liu dissenting, upheld a motion by the Accused for disqualification of Judge Frederik Harhoff;³

BEING SEISED of a motion filed by the Office of the Prosecutor (“Prosecution”) on 3 September 2013,⁴ in which the Prosecution requests that the Decision on Disqualification be: (i) reconsidered; and (ii) stayed pending a decision on the Motion for Reconsideration;⁵

NOTING the Prosecution’s submission that it filed the Motion for Reconsideration before me, rather than before the Panel, because the Panel has reported its decision to me “and no longer is seized of the matter”;⁶

RECALLING that it is for a Chamber, based on its inherent power, to reconsider *its own* decisions;⁷

CONSIDERING therefore that I am not competent to reconsider the Decision on Disqualification, which I did not make, and that in this respect the Motion for Reconsideration has not been correctly brought before me;

¹ Decision on Defence Motion for Disqualification of Judge Frederik Harhoff and Report to the Vice-President, 28 August 2013 (“Decision on Disqualification”).

² See Order Pursuant to Rule 15, 25 July 2013.

³ Decision on Disqualification, p. 5. See Professor Vojislav Šešelj’s Motion for Disqualification of Judge Frederik Harhoff, 9 July 2013.

⁴ Prosecution Motion for Reconsideration of Decision on Defence Motion for Disqualification Judge Frederik Harhoff and Request for Stay, 3 September 2013 (“Motion for Reconsideration”).

⁵ Prosecution Motion for Reconsideration, para. 22.

⁶ Prosecution Motion for Reconsideration, para. 2.

⁷ See, e.g., *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence’s Request for Reconsideration, 16 July 2004, p. 2; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR108bis.3, confidential Decision on Request of Serbia and Montenegro for Review of the Trial Chamber’s Decision of 6 December 2005, 6 April 2006, para. 26; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR72.1, Decision on Motion for Reconsideration of the “Decision on the Interlocutory Appeal Concerning Jurisdiction” Dated 31 August 2004, 15 June 2006, para. 9; *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-Misc.1, Decision on Strugar’s Request to Reopen Appeal Proceedings, 7 June 2007, paras 23-25; See also, *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on the Stojić Defence Request for Reconsideration, 4 November 2008, p. 2; *Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-I, Decision on Defence Motion for Reconsideration of the Decisions Rendered on 29 November 2001 and 5 December 2001 and for a Declaration of Lack of Jurisdiction, 28 March 2002, para. 21; *Emmanuel Ndingabahizi v. Prosecutor*, Case No. ICTR-01-71-A, Decision on Defence “Requête de l’appelant en reconsidération de la décision du 4 avril 2006 en raison d’une erreur matérielle”, 14 June 2006, para. 2.

CONSIDERING however that, to the extent I was authorised under Rule 15(B)(ii) of the Rules to appoint the Panel that made the Decision on Disqualification, I have the inherent power to reconvene it for the purposes of considering the Motion for Reconsideration;

CONSIDERING that, without pronouncing on the merits of the Motion for Reconsideration, it is in the interests of justice to reconvene the Panel for the purposes of considering the Motion for Reconsideration;


CONSIDERING that the Decision on Disqualification shall continue to have effect until at least such time as the Panel has considered the Motion for Reconsideration, but that the assignment of another Judge to sit in the place of Judge Frederik Harhoff has in any event been stayed;⁸

HEREBY RECONVENE the Panel for the purposes of considering the Motion for Reconsideration; and

ORDER the Registrar to transmit a copy of both the Motion for Reconsideration and this order to the Panel.

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

Done this sixth day of September 2013,
At The Hague,
The Netherlands.



Judge Carmel Agius
Acting President

[Seal of the Tribunal]

⁸ Order Following Decision of the Panel to Disqualify Judge Frederik Harhoff, 3 September 2013, p. 2. *See also* Order Partially Staying Execution of “Order Following Decision of the Panel to Disqualify Judge Frederik Harhoff”, 4 September 2013, p. 1.