

**UNITED
NATIONS**



Mechanism for International Criminal Tribunals

Case No. MICT-13-52-R.1

Date: 19 August 2015

Original: FRENCH

THE BENCH

Before: Judge Theodor Meron, Presiding
Judge Jean-Claude Antonetti
Judge William Hussein Sekule
Judge Carmel Agius
Judge Liu Daqun

Registrar: Mr John Hocking

Order of: 19 August 2015

In the case of

THE PROSECUTOR

v.

MILAN LUKIĆ

PUBLIC DOCUMENT

**JUDGE JEAN-CLAUDE ANTONETTI'S LETTER OF
WITHDRAWAL TO THE PRESIDENT OF THE MECHANISM
FOR INTERNATIONAL CRIMINAL TRIBUNALS PURSUANT
TO RULE 18 (A) OF THE RULES OF PROCEDURE AND
EVIDENCE**

The Office of the Prosecutor:

Mr Hassan Bubacar Jallow

Counsel for the Accused:

Mr Rodney Dixon

Milan Lukić's attorney sent the Appeals Chamber, composed of Judge Meron, Judge Antonetti, Judge Sekule, Judge Agius and Judge Liu a submission **appealing** the decision of the review Chamber rendered on 7 July 2015 and seeking the composition of a new Appeal Chamber.

Rule 18 (A) of the Rules of Procedure and Evidence ("Rules") stipulates:

"A Judge may not sit in any 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. The Judge shall in any such circumstance withdraw, and the President shall assign another Judge to the case."

(A) Admissibility of the appeal

Relying on Article 23 of the Statute of the Mechanism for International Criminal Tribunals ("Mechanism") and Rule 133 of the Rules, the Applicant **Milan Lukić** maintains through his attorney that the decision rendered by the review Chamber is a judgement subject to appeal. In this respect, Rule 148 of the Rules states that "[t]he judgement of a Trial Chamber or Single Judge on review may be appealed in accordance with the provisions of Part Seven." Thus, it follows that when a request for review is received and a judgement is rendered, it may be subject to appeal. From my point of view, this should also apply when a request for review is denied by a bench appointed pursuant to Rule 146 (B) of the Rules. Consequently, the request for appeal is admissible.

(B) Association which might affect impartiality

It is undeniable that having taking notice of all the facts of the judgement, the Judgement of the Appeals Chamber and the submissions of the parties within the context of a request for review, I am associated with the case; this is undeniable. In addition, having dissented in the decision rendered on 7 July 2015 and having filed the first part of my opinion (I will file the second part as soon as possible, in any case, before 1 October 2015), I reached the conclusion that the request for review was admissible and that a process leading to a new judgement should begin. From my point of view, the Trial Chamber and the Appeals Chamber committed errors of law and fact, and the new facts in the sense of Rule 146 (A) were fully established by the documents attached to the request for review.

Moreover, I note that the Applicant seeks in paragraph 9 of his submission a reconstituted Appeals Chamber to rule on the request for review. In these circumstances, the judges who already ruled on the merits of the request cannot rule again on the appeal. Logic demands that each judge puts forward his own request to withdraw or, at least, that the President of the Mechanism assigns another Appeals Chamber composed of other judges. If in the past the Appeals Chamber in the ICTY and the ICTR was composed of the same judges in most cases on the pretext that there was an insufficient number of judges, this is not so in the Mechanism since there are as many as 25 elected judges, one of whom must withdraw because he was elected to the International Court of Justice and will take up his functions there. The current President of the Mechanism therefore has a **list of 19 judges** at his disposal, which allows him to compose a review Appeals Chamber without any problems.

The victims, the families of victims and the international community expect international justice to deliver impartial decisions based upon evidence. How can we accept a system in which the President, who chooses the judges at his discretion, rules in the Appeals Chamber, then in the review Chamber and in the appeal of the review decision?

It is unacceptable and any judge who has **integrity** and is **independent** must have the courage to withdraw from the case in order not to leave room for any criticism.

As far as I am concerned, this is why I consider that I must not be part of the composition ruling on the request for review.

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

Done this nineteenth day of August 2015,

At The Hague,
The Netherlands

/signed/

Judge Jean-Claude Antonetti

[Seal of the Tribunal]