

**UNITED  
NATIONS**

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Mechanism for International Criminal Tribunals

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

Date: 17 August 2015

Original: English

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**IN THE APPEALS CHAMBER**

**Before:**

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

**Registrar:**

**Mr. John Hocking**

**THE PROSECUTOR**

**v.**

**MILAN LUKIĆ**

***PUBLIC***

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

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**The Office of the Prosecutor:**

Mr. Hassan B. Jallow, Prosecutor  
Mr. Mathias Marcussen, Senior Legal Officer

**Counsel for Mr. Milan Lukić:**

Mr. Rodney Dixon QC

1. The Prosecution moves to strike Milan Lukić's Notice of Appeal.<sup>1</sup> The Notice of Appeal was filed pursuant to Article 23 of the Mechanism Statute, Rule 133 of the Rules<sup>2</sup> and the "case law of the Tribunal",<sup>3</sup> none of which provide for an appeal against the Decision<sup>4</sup> dismissing Lukić's Application for Review.<sup>5</sup>
2. The Appeals Chamber dismissed Lukić's Application for Review at the preliminary examination stage.<sup>6</sup> As no judgement on review was issued under Rule 147, Rule 148 does not provide for an appeal against the Decision and accordingly Rule 133 does not apply. Lukić's reliance on *Barayagwiza* to support his claim that an appeal lies from a decision dismissing a request for review is misplaced.<sup>7</sup>
3. Even if the Appeals Chamber *had* pronounced a judgement on review pursuant to Rule 147, such a judgement would not be subject to appeal. Article 23(2) of the Mechanism Statute only gives the Appeals Chamber authority to affirm, reverse or revise decisions taken by a "Single Judge or Trial Chamber". This is reflected in Rule 148, which makes no provision for an appeal against a judgement of an Appeals Chamber on review.<sup>8</sup>

Word Count: 476



Mathias Marcussen  
Senior Legal Officer

Dated this 17<sup>th</sup> day of August, 2015  
At The Hague, The Netherlands.

<sup>1</sup> *Prosecutor v. Milan Lukić*, Case No.MICT-13-52-R.1 ("*Lukić*"), Notice of Appeal of "Decision on Milan Lukić's Application for Review", 6 August 2015 ("Notice of Appeal").

<sup>2</sup> Rules of Procedure and Evidence ("Rules").

<sup>3</sup> Notice of Appeal, paras.1-2.

<sup>4</sup> *Lukić*, Decision on Milan Lukić's Application for Review, 7 July 2015 ("Decision").

<sup>5</sup> *Contra* Notice of Appeal, paras.1-9; *Lukić*, Application on behalf of Milan Lukić for Review of the Trial Judgment of 20 July 2009, 6 February 2014 (public with confidential annexes) ("Application for Review").

<sup>6</sup> *Lukić's* Application for Review was dismissed in its entirety on the basis that Lukić failed to submit any new fact meriting review. Decision, paras.17, 23, 31, 37-38.

<sup>7</sup> Notice of Appeal, para.5. In *Barayagwiza*, the ICTR Appeals Chamber was concerned with whether a decision dismissing an indictment against an accused could be subject to review proceedings. The Chamber defined the term "final judgement" for the purposes of bringing a request for review. It did not define a "judgement [...] on review" for the purposes of an appeal under the equivalent provision to Rule 148. *Jean Bosco Barayagwiza v. The Prosecutor*, Case No.ICTR-97-19-AR72, Decision (Prosecutor's Request for Review or Reconsideration), 31 March 2000, paras.2, 49. *See also Lukić*, Order Assigning Judges to a Case before the Appeals Chamber, 24 February 2014, p.2, fn.6.

<sup>8</sup> Rule 148 provides only that "[t]he judgement of a Trial Chamber or Single Judge on review may be appealed in accordance with the provisions of Part Seven" (emphasis added).