

**UNITED  
NATIONS**



International Residual Mechanism for Criminal  
Tribunals

Case no.: MICT-13-55-A

Date: 9 November 2018

Original : French

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**SENIOR JUDGE**

**Before:** Judge Jean-Claude Antonetti, Senior Judge

**Registrar:** Mr Olufemi Elias

**Decision of:** 9 November 2018

**THE PROSECUTOR**

v.

**RADOVAN KARADŽIĆ**

***PUBLIC DOCUMENT***

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**DECISION WITH OBSERVATIONS FOR THE PRESIDENT OF  
THE MECHANISM ON MOTION TO DISQUALIFY OF 25  
OCTOBER 2018**

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**Office of the Prosecutor**

Mr Serge Brammertz  
Ms Laurel Baig  
Ms Barbara Goy  
Ms Katrina Gustafson

**Counsel for Radovan Karadžić**

Mr Peter Robinson  
Ms Kate Gibson

**I, JEAN-CLAUDE ANTONETTI**, Judge of the International Residual Mechanism for Criminal Tribunals (“Mechanism”), and Senior Judge in this case,<sup>1</sup>

**NOTING** that on 25 October 2018 the Prosecution filed a motion to disqualify me as Senior Judge (“Prosecution Motion”),<sup>2</sup> while I have before me a motion to disqualify Judge Meron and Judge Sekule filed by the Radovan Karadžić Defence pursuant to Rule 18 of the Rules (“Motion to Disqualify Judges Meron and Sekule”) on 12 October 2018,<sup>3</sup>

**NOTING** that the present decision aims to present my observations to the President of the Mechanism on the matter of the Prosecution Motion, as I deem that he has jurisdiction to adjudicate on this matter,

**NOTING** that a judge has discretionary power in administrative matters and does not need to provide reasoning for his decision,

**NOTING** that the Prosecution Motion does not concern questionable impartiality due to actions in other cases but, rather, due to complaints that lack substance,

**NOTING** that I solely wish to adjudicate the issue of the Prosecution’s legal capacity to file the Prosecution Motion against a judge who is charged under the Rules with deciding on the Motion to Disqualify Judges Meron and Sekule,

**NOTING** that, pursuant to the Rules, I am the only one with authority to decide on the Motion to Disqualify Judges Meron and Sekule,

**NOTING** that in case of *The Prosecutor v. Ratko Mladić*, my capacity to rule in the case was not challenged by any party,

**NOTING** that prior contradictory positions of the Prosecution on the issue of withdrawal are only motivated by the wish to protect its own interests,<sup>4</sup>

**NOTING** that the President of the Mechanism and the Senior Judge act on matters of disqualification as part of an administrative and not judicial function,

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<sup>1</sup> Rules 18 (B) (iv) and 22 (B) of the Rules of Procedure and Evidence of the Mechanism (“Rules”).

<sup>2</sup> Prosecution Motion to Disqualify Judge Jean-Claude Antonetti, 25 October 2018.

<sup>3</sup> Second Motion to Disqualify Judge Theodor Meron, Motion to Disqualify Judge William Sekule, and for Related Orders, 12 October 2018.

<sup>4</sup> For example, I refer here to the Harhoff case, in which the Prosecution filed a motion to disqualify Judge Harhoff on the ground that he had supposedly met with a witness. During deliberations, Vojislav Šešelj’s Defence intervened in support of the denial of this motion. The only possible explanation for such a removal was that it was in the interest of the Prosecution to keep within the Chamber a judge who was inclined towards its arguments.

**NOTING** that Rule 18 of the Rules stipulates that a disqualification of a judge may be sought when he is sitting in a Trial Chamber or Appeals Chamber,

**NOTING** that the Rule only allows for the disqualification of a judge when he is sitting in a case that will result in a final judgement, while the disqualification judge rules solely on whether a reasonable and duly informed observer is likely to apprehend any bias on the part of a judge in relation to the Indictment because of his previous actions,

**CONSIDERING** that the disqualification procedure is purely administrative and that this does not concern judicial proceedings,<sup>5</sup>

**CONSIDERING** that the parties in this case do not have a say in the composition of a Chamber for reasons other than those linked to the guilt of the accused or that are not envisaged by Rule 18 of the Rules,

**CONSIDERING** that the Radovan Karadžić Defence has revealed in its motion for an extension of time that it would like to have my observations before formulating its own,<sup>6</sup>

**CONSIDERING** that, in the context of the Motion to Disqualify Judges Meron and Sekule, I am required to decide on whether Judge Sekule's prior actions are likely to cause a reasonable and informed observer to apprehend the existence of apparent bias, which is a different matter from adjudicating on the merits, namely the guilt or innocence of Radovan Karadžić,

**CONSIDERING** that, in the circumstances, it would not be in the interest of justice for me to withdraw and that it is my responsibility to take on the administrative responsibilities that have been bestowed upon me, as the Senior Judge, by the Rules,

**CONSIDERING** that the Motion to Disqualify Judges Meron and Sekule was sent to me directly, as Radovan Karadžić's Defence was careful, in line with procedure, to mention that it had been sent to me pursuant to Rule 18 of the Rules, as Judge Meron did not have jurisdiction to deal with it,

**CONSIDERING** that the Prosecution Motion should have been brought before me and not the President of the Mechanism,

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<sup>5</sup> I note that a judicial procedure is subject to guarantees that apply to a fair trial, namely the right to be represented by an attorney before an impartial decision-maker when a decision is subject to appeal.

<sup>6</sup> Motion for Interim Order and Extension of Time, 1 November 2018. I note that my previous disqualifications, introduced by the Defence in its submissions, concerned the fact that I was likely to entertain the guilt of an accused and could not address the question at hand. This is not the case here.

**NOTING** that I have been informed of the President's decision to declare moot the Prosecution Motion, as well as the Defence request for an extension of time without me having the possibility of presenting my observations pursuant to Rule 18 of the Rules,<sup>7</sup>

**CONSIDERING** that it would be appropriate for me to receive any future motions to disqualify a member of the current Appeals Chamber in the case of *The Prosecutor v. Radovan Karadžić*, until the end of Judge Meron's mandate in January 2019,

**FOR THE FOREGOING REASONS,**

**DECLARE** that the Prosecution Motion is unfounded.

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

Done on 9 November 2018

The Hague (Netherlands)

Senior Judge

/signed/  
**Jean-Claude Antonetti**

[Seal of the Mechanism]

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<sup>7</sup> Decision on Prosecution Motion to Disqualify Judge Jean-Claude Antonetti, 6 November 2018.