



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

File number: KSC-BC-2020-07

Before: The President of the Specialist Chambers
Judge Ekaterina Trendafilova

Registrar: Fidelma Donlon

Date: 6 August 2021

Language: English

Classification: Public

Decision on the Application for Recusal or Disqualification

Judges of Trial Panel II:

Judge Charles Smith III, presiding

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor (reserve)

Specialist Prosecutor's Office:

Jack Smith

Counsel for Hysni Gucati:

Jonathan Elystan Rees

Huw Bowden

Counsel for Nasim Haradinaj:

Toby Cadman

Carl Buckley

THE PRESIDENT of the Specialist Chambers (“President”), acting pursuant to Rule 20(3) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules” and “KSC”, respectively), Articles 36(1), (3) and 41 of the Registry Practice Direction on Files and Filings before the Specialist Chambers (“Practice Direction”), herewith renders a decision on the application of Mr Nasim Haradinaj and the joinder by Mr Hysni Gucati for the recusal or disqualification in this case of the President, the Vice President and the Presiding Judge (“Application”).¹

I. PROCEDURAL BACKGROUND

1. On 15 July 2021, the President assigned Trial Panel II to the proceedings against the Accused,² following notification by the Pre-Trial Judge pursuant to Rule 98(3) of the Rules, that the complete case file in this case would be ready for transmission to a Trial Panel.³
2. On 26 July 2021, the Defence of Mr Haradinaj filed the Application, which the Defence of Mr Gucati joined on 28 July 2021.⁴

II. DISCUSSION

3. The President notes that with respect to a request for recusal or disqualification of

¹ F00268/RED, Public Redacted Version of Application for Recusal of the President of the Specialist Chambers, Judge Ek[a]terina Trendafilova, and the Vice President of the Specialist Chambers, Judge Charles L. Smith, Presiding Judge of Trial Panel II, 28 July 2021 (confidential version filed on 26 July 2021) (public with confidential annexes); F00269, Joinder re Application for Recusal KSC-BC-2020-07/F00268, 28 July 2021 (confidential) (“Joinder”). Mr Haradinaj’s Defence filed a further, corrected version of the Application on the same day. See F00268/COR, Application for Recusal of the President of the Specialist Chambers, Judge Ek[a]terina Trendafilova, and the Vice President of the Specialist Chambers, Judge Charles L. Smith, Presiding Judge of Trial Panel II, 28 July 2021 (confidential with confidential annexes). Given the very minor corrections made to the Application, all references herein are to the public redacted version of the Application, filed on 28 July 2021.

² F000263, Decision Assigning Trial Panel II, 15 July 2021.

³ See F00261, Notification Pursuant to Rule 98(3) of the Rules of Procedure and Evidence, 14 July 2021.

⁴ Joinder, para. 1.

a Judge it is generally recognised that a Judge cannot rule in his or her own cause. Nevertheless, given the circumstances underlying the present Application and as further discussed below, the President has the competence to decide this matter on her own.⁵

A. Preliminary matters – Word Limit and Timeliness of the Application

4. First, the President notes that the Practice Direction is applicable *mutatis mutandis* to her. As regards the Application, the President observes that the Application amounts to 9,779 words and thus exceeds by almost 40% the 6,000 word limit set forth in Article 41 of the Practice Direction. Mr Haradinaj's Defence has not requested a variation of the word limit sufficiently in advance, nor has it provided an explanation whether good cause exists to exceed the word limit, as Article 36(1) of the Practice Direction stipulates.

5. Notwithstanding the above observation, in order to ensure that the Application is addressed in a timely manner, the President avails herself of the possibility provided for in Article 36(3) of the Practice Direction and exceptionally considers the Application as "validly made". Yet, Mr Haradinaj's Defence is reminded to exercise due diligence in regard to future filings.⁶

6. Next, with respect to the timing of the Application, Rule 20(3) of the Rules makes it explicitly clear that a "Party may apply to the President [...] *immediately*, but not later than ten (10) days after the grounds on which the application is based become known to the Party" (emphasis added).⁷ The word "immediately" means "in an immediate

⁵ See *supra*, paras 19-22, 36.

⁶ See in the same vein, IA004/F00007, Decision on the Defence Appeals Against Decision on Preliminary Motions, 23 June 2021, para. 17.

⁷ Rule 20(3) of the Rules reads: "A Party may apply to the President for the disqualification of a Judge immediately, but not later than ten (10) days after the grounds on which the application is based become known to the Party. A Judge whose disqualification is sought may recuse himself or herself after being notified of the application for disqualification."

manner”,⁸ “instantly”,⁹ or “without interval of time”.¹⁰ Similarly, the word “grounds” refers to the “basis or foundation”, “reasons sufficient in law to justify relief”.¹¹ Thus, the reference to the word “immediately” followed by the words “but not later than ten (10) days” emphasises that the interested Party, in this case the Defence, acts instantly as soon as it becomes aware of the basis for the application, be it through a public source or otherwise but no later than ten (10) days. The ten-day deadline is indicative of the maximum time frame within which a Party may submit an application pursuant to Rule 20 of the Rules.

7. The Application seeks the recusal or disqualification in this case of the President and the Vice President, albeit on different grounds. Accordingly, the timing of the Application will be addressed separately for the President and the Vice President.

8. With respect to the Vice President, who is the Presiding Judge in this case, the President notes that the Application was filed within 10 days after the decision assigning Trial Panel II was notified and is thus within the time frame specified in Rule 20(3) of the Rules. Accordingly, the President considers the Application timely in this respect.

9. Turning to the timing of the Application in respect of the President, upon review of the Application and the annexes thereto the President considers that the Defence’s arguments mainly revolve around the 8 December 2020 diplomatic briefing. The Defence also makes reference to the diplomatic briefing of 11 February 2021.¹² The first diplomatic briefing took place almost eight months before the date of the Application

⁸ Webster’s New World College Dictionary, 4th ed., 2010, available at: [Immediately definition and meaning | Collins English Dictionary \(collinsdictionary.com\)](#), accessed 30/07/2021.

⁹ Collins English Dictionary, available at: [Immediately definition and meaning | Collins English Dictionary \(collinsdictionary.com\)](#), accessed 30/07/2021.

¹⁰ Merriam Webster Dictionary, available at: [Immediately | Definition of Immediately by Merriam-Webster](#), accessed 30/07/2021.

¹¹ The Free Dictionary, available at: [Grounds legal definition of Grounds \(thefreedictionary.com\)](#).

¹² See Application, paras 41-42; Annex A04.

was filed, while the latter took place more than five months before that date. The case record also clearly demonstrates that the Defence expressed concerns about the diplomatic briefing of 8 December 2020 and 11 February 2021 in previous submissions before the Pre-Trial Judge, and were well aware of the main issues they want to raise.

10. For instance, as early as 3 March 2021, in a reply to the SPO's response to a request concerning diplomatic briefings, Mr Haradinaj's Defence stated that he "has provided uncontested information regarding the [11 February 2021] Meeting which raise several serious concerns".¹³ Thus, since the Defence had "uncontested information" by the beginning of March 2021, it was in possession of information, which allowed it to file an application much earlier. Indeed, in paragraph 41 of the Application, the Defence acknowledges that the details of the 11 February 2021 diplomatic briefing "were published by the media" on 15 February 2021.¹⁴ This suggests that the Defence had sufficient information at the time to submit the Application.

11. In addition, upon the decision of the Pre-Trial Judge of 11 March 2021 rejecting Mr Haradinaj's request for disclosure of material related to the diplomatic briefing,¹⁵ and denying the certification of appeals related thereto,¹⁶ it became clear to the Defence that no further information could have been obtained in this regard. It follows that Mr Haradinaj's Defence could have filed an application on the basis of the information available at the time as the Defence was aware of the circumstances underpinning the Application well in advance of the date of filing.

¹³ F00146, Haradinaj Defence Reply to Prosecution Response to Haradinaj Defence Request for Information Concerning Diplomatic Briefings, 3 March 2021, para. 7.

¹⁴ Application, para. 41; F00138, Defence Submissions Following Order Setting the Date for the Second Conference and Related Matters (KSC-BC-2020-07/F00129), 23 February 2021 ("Defence Submission on Second Conference"), paras 43-44.

¹⁵ F00150, Decision on Request for Information on Diplomatic Briefing, 11 March 2021 ("Decision on Diplomatic Briefing"), para. 18.

¹⁶ F00178, Decision on the Defence Applications for Leave to Appeal the Decision on Request for Information on Diplomatic Briefing ("Decision on Leave to Appeal"), 9 April 2021, para. 30.

12. Referring to an “*inter-partes*” request for information to the SPO concerning the diplomatic briefing of 8 December 2020, the Defence further argues that the SPO declined the request on 26 July 2021.¹⁷ According to the Defence, the Application “is being made now on the basis that disclosures of those diplomatic briefings have recently been made available to the Defence, confidentially, and the contents verified”.¹⁸ However, the Defence does not explain the reason for making *only* on 19 July 2021 the “*inter-partes*” request to the SPO regarding the diplomatic briefing of 8 December 2020 albeit having knowledge thereof long before that date.

13. Nor does the Defence explain the relevance of the Pre-Trial Judge’s decision transmitting the case file to Trial Panel II or of the decision notifying of the election of a Presiding Judge, to the issue of disqualification of the President on account of the diplomatic briefing of 8 December 2020, and how these two decisions relates to the late filing of the Application.

14. In the absence of proper substantiation of these points pertaining to the late filing of the Application, the latter could be considered as filed out of time. However, given that the Defence made several attempts in the course of the proceedings to obtain disclosure of more detailed information they deemed relevant to their assertions,¹⁹ the President considers it in the interests of justice to entertain the merits of the Application.

B. Recusal or Disqualification of the President

15. The Defence submit that participation in and statements made at a diplomatic briefing on 8 December 2020 undermine the President’s “independent and impartial judicial decision-making and representation of the Specialist Chambers [...] and seriously harm the proper administration of justice before the Specialist Chambers or

¹⁷ Application, para. 23.

¹⁸ Application, para. 24.

¹⁹ Defence on Second Conference, para. 45; Decision Diplomatic Briefing; Decision on Leave to Appeal.

the proper internal functioning of the Specialist Chambers and” that the President’s “conduct may have caused harm to the standing of the Specialist Chambers.”²⁰

16. The Defence contend that their “rights and interest are substantially affected” by the President’s “presence, in her representative capacity as well as in her judicial capacity” and suggests that there “is a risk of that abuse of authority, misrepresentations of Defendants and promoting the cause of another party” if the President continue in her judicial, administrative or case-management functions in this case.²¹ The Defence assert that for the reasons advanced in the Application, any “objective observer or bystander” would apprehend “an appearance of judicial bias or impropriety and a distinct lack of impartiality and independence, that cannot be restored”.²²

17. Accordingly, the Defence request that:²³

a. The President is recused or disqualified from fulfilling any judicial, administrative or case-management role in the instant case, including, but not limited to, the assignment of judges to panels, sitting as a member of an appeals panel or making decisions in respect of the recusal application against the Vice President in accordance with the Rules

18. The President shall first turn to the Defence’s request for recusal or disqualification from fulfilling any “administrative or case-management role in the instant case”. The Defence’s arguments that serve as a basis for the request that the President, *inter alia*, recuse herself are principally centred on allegations in relation to meetings the President attended with the diplomatic community.²⁴

19. While it is inherent that a President can contemplate recusal if he or she considers this necessary, there can be no recusal or disqualification of a President

²⁰ Application, para. 1. See also Application, paras 32-50, 56-61, 68-69.

²¹ Application, para. 2. See also Application, paras 51-55.

²² Application, para. 32. See also Application, paras 62-67.

²³ Application, para. 101(a).

²⁴ See, e.g., Application, paras 1-2, 31-50.

pursuant to Rule 20(1) of the Rules for the reasons discussed in further detail below.²⁵

20. Article 4(3) of the Law provides that the President may represent his or her organ and entity in the exercise or undertaking of his or her functions. Such functions include annual meetings with those States that finance or contribute other resources to the KSC and with other stakeholders, during which updates may be given on the KSC's progress in the fulfilment of its mandate.²⁶ The Defence's submissions in this respect are grounded exclusively on their misinterpretation of comments made at a routine diplomatic briefing and drawn from an unnamed source's summary notes. The President therefore declines to recuse herself on the basis of the Defence's arguments from exercising the administrative functions in this case conferred upon her by the KSC's legal framework.

21. With respect to the request for disqualification from the same responsibilities (fulfilling any "administrative or case-management role in the instant case"), the President notes that Article 32(3) of the Law expressly confers solely upon the President the responsibility "for the judicial administration" of the KSC. This includes the issuance of assignment decisions in accordance with Article 33 of the Law, as well as any other tasks that relate to the judicial administration of the KSC.

22. It should be recalled that Rule 20 of the Rules is confined to the disqualification of a Judge sitting on a case, who will be determining the innocence or guilt of an accused.²⁷ This follows from the plain language of said Rule, which does not accommodate any other disqualification scenario beyond that of a Judge sitting on a case, such as disqualification of a President carrying out his or her administrative

²⁵ See *supra*, paras 21-22.

²⁶ The KSC has consistently reported on these meetings in public annual reports, available on its website at <https://www.scp-ks.org/en/publications/reports>. See for example KSC/SPO 2020 Annual Report, pp. 7, 30, 33; KSC/SPO 2019 Annual Report, pp. 9, 31; KSC/SPO Annual Report 2018, pp. 8, 22-23; KSC/SPO First Report, pp. 7, 26.

²⁷ See Rule 20(1) of the Rules.

functions.²⁸ In other words, neither the Law nor the Rules foresee disqualification by a party of the President exercising his or her administrative authority, let alone the issuance of prospective administrative decisions or orders.²⁹ Accordingly, the Defence request for disqualification from exercising any future administrative duties as President in this case is hereby dismissed.

23. The President shall next turn to the Defence request for recusal or disqualification from fulfilling any judicial role. In this respect, the President is at present not serving in any judicial capacity in this case. Accordingly, she can neither recuse herself nor be presently disqualified from fulfilling the judicial role as provided for in Rule 20(1) of the Rules.³⁰ Accordingly, the Defence request in this regard is dismissed.

C. Recusal or Disqualification of the Vice President and Judge of Trial Panel II

24. The Defence generally submit that allegations made by an individual in relation to Judge Smith's tenure as President of the Assembly of Judges at the EU Rule

²⁸ See, e.g., IRMCT, *Prosecutor v. Radovan Karadžić*, Case No. MICT-13-55-A, Decision on Prosecution Motion to Strike Karadžić's Second Motion to Disqualify Judge Theodor Meron, Motion to Disqualify Judge William Sekule, and for Related Orders, 1 November 2018 ("*Karadžić Decision*"), para. 13 ("an order determining the composition of the Appeals Chamber in a particular case is rendered by the President pursuant to his authority to coordinate the work of the Chambers and is thus an administrative matter. Given that Rule 18(A) does not address the involvement of a Judge in administrative matters, the President cannot be disqualified from assigning the members of a Bench of the Appeals Chamber. Accordingly, to the extent that an applicant may seek the disqualification of the President from administrative matters related to the applicant's case, such a request has no legal basis in the Rules."); *Lukić Decision*, pp. 1-2; ICTY, *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on Prosecution Request for Clarification of President's Order of 16 May 2007, 28 June 2007, para. 2 ("The Statute and the Rules clearly confer on the President the sole authority for coordinating the work of the Chambers and determining the composition of the Appeal and Trial Chambers [...]. The President's authority to make such determinations and to issue such orders falls squarely within the executive powers of the President [...] and the exercise of such powers is non-justiciable by the parties.").

²⁹ Cf. *Karadžić Decision*, para. 14.

³⁰ Cf. ICTY, *Prosecutor v. Milan Lukić & Sredoje Lukić*, Case No. IT-98-32/1-AE11bis.1, Decision on 'Motion to Disqualify President and Vice-President from Appointing Appeals Chamber and to Disqualify President Judge and Judge Meron from Sitting on Appeals Chamber', 4 May 2007 ("*Lukić Decision*"), p. 1.

of Law Mission in Kosovo (“EULEX”), “undermine his judicial decision-making and risks seriously harming the proper administration of justice before the [KSC] or the proper internal functioning of the [KSC] and further that Vice President Smith’s conduct may have caused harm to the standing of the [KSC]”.³¹

25. The Defence contend that this “prior conduct, as alleged, would cause any objective observer or bystander to apprehend, that there is an appearance of judicial bias or impropriety and a distinct lack of impartiality and independence, that cannot be restored”.³² The Defence further assert, presumably in relation to the Judge’s capacity as Vice President, that where a request for disqualification is directed at both the President and the Vice President, “it would not be appropriate for either to adjudicate on their respective complaint of the other”.³³

26. While the Defence do not clearly distinguish between the role of Vice President and his role as Judge of Trial Panel II,³⁴ the President will treat the Application as seeking recusal and/or disqualification as both. The President shall start with the Defence submissions, which appear to relate to the Judge’s position as Vice President.

a. Request for recusal or disqualification of the Vice President

27. The Defence request that “the Vice President is recused or disqualified from any judicial, administrative or case management duties in the instant case”.³⁵

³¹ Application, para. 3. See also Application, paras 72, 75-76, 94-95.

³² Application, para. 5. See also Application, paras 85, 88.

³³ Application, para. 17. See also Application, para. 70.

³⁴ Compare, for example, Application, paras 3 (discussing the recusal of “Vice President Smith from Trial Panel II”) and 4 (discussing “Vice President Smith as Presiding Judge on Trial Panel II” and the “Vice President continuing if he is not recused or disqualified from serving as Presiding Judge II”), 5 (seeking the recusal or disqualification ‘of the Vice President from all judicial, administration and case management functions in the instant case’), 6 (seeking the assignment of a panel of three Judges to “determine whether the Vice President should be recused as Presiding Judge or as a judicial member of Trial Panel II), with para. 17 (wherein the Defence discusses “the recusal of both the President and the Vice President” in the same case and refers to “a complaint against both the incumbent President and Vice President”).

³⁵ Application, para. 101(b). See also Application, para. 5.

28. Article 32(4) of the Law provides that the Vice President shall be activated from the Roster of International Judges and shall assume the duties of the President in the latter's "absence or inability to act". As found above, the President cannot be disqualified from exercising her administrative duties in accordance with the Law and the Rules and is neither absent nor unable to act. Accordingly, in the instant case, the circumstances of the Vice President assuming the role of the President as foreseen by Article 32(4) of the Law do not arise. The Defence request for disqualification of the Vice President is therefore dismissed as moot.

b. Request for recusal or disqualification of Judge Smith

29. Even though the relief sought does not explicitly so request, the President now turns to the Defence request for the Judge's recusal and/or disqualification as a member of Trial Panel II and, accordingly, for changes to the composition of Trial Panel II. To this end, the Defence rely on statements made by a former EULEX Judge concerning Judge Smith while serving as President of the Assembly of EULEX Judges.³⁶ The Defence on this basis request:³⁷

- c. That a Panel of Three Judges is assigned, in accordance with Rule 20(3) of the Rules, to determine the present application, on the basis that, for the reasons set out in this application, neither the President nor the Vice President can adjudicate on the complaint against the other;
- d. That Judge Fergal Gaynor, as the appointed reserve judge, is appointed as a member of Trial Panel II;
- e. That an alternative reserve [J]udge is appointed to Trial Panel II;
- f. That an alternative Presiding Judge is appointed to serve on Trial Panel II

30. Turning first to the request for recusal, the President notes that Judge Smith was notified of the Application and has indicated that he does not intend to recuse himself from the present case. Accordingly, the President shall turn to the request for

³⁶ See Application, paras 71, 73-84, 86-87, 89-93, 96-100. See also Annexes A06-A07. The Defence further refer to an email exchange between the former EULEX Judge and Judge Smith (Annex A08), as well as two emails from other former EULEX Judges regarding Judge Smith's alleged behavior (Annex A09).

³⁷ Application, para. 101(c)-(d).

disqualification pursuant to Rule 20(3) of the Rules.

31. At the outset, the President recalls the overarching precepts governing disqualification proceedings. As consistently found by various international and other judicial institutions applying the same standards, an unacceptable appearance of bias exists where the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.³⁸ There is a strong presumption of impartiality attached to a Judge, which cannot be easily rebutted.³⁹ It is for the party alleging bias to adduce reliable and sufficient evidence to rebut that presumption, for no Judge may be disqualified on the basis of sweeping or abstract allegations that are neither substantiated nor detailed.⁴⁰

32. This high threshold is required because “just as any real appearance of bias on the part of a judge undermines confidence in the administration of justice, it would be as much of a potential threat to the interests of the impartial and fair administration

³⁸ See, e.g., STL, *The Prosecutor v. Salim Jamil Ayyash*, Case No. STL-11-01/A-1/OTH/R25, Decision on Ayyash Defence Application for the Disqualification of Judge Riachy, 3 February 2021 (“Ayyash Decision”), para. 7; IRMCT, *Prosecutor v. Milan Lukić*, Case No. MICT-13-52-R.1, Decision on Request for Disqualification, 28 October 2020 (“Lukić Decision”), para. 11; ICTY, *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91-A, Judgement, 30 June 2016 (“Stanišić and Župljanin Appeal Judgement”), para. 43; ICTY, *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Judgement, 23 January 2014, para. 180; ICTY, *Prosecutor v. Anto Furundžija*, Case No. IT-95-1711-A, Judgement, 21 July 2000, para. 189. See also ICC, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Case No. ICC-01/12-01/18-398-AnxI, 8 July 2019 (“Hassan Decision”), para. 20; ECHR, *Case of Nicholas v. Cyprus*, Application No. 63246/10, Judgment, 9 April 2018 (“Nicholas Judgment”), para. 54 (and jurisprudence cited therein).

³⁹ See, e.g., Ayyash Decision, para. 8; Lukić Decision, para. 11; ECCC, Case No. 002/31-10-2019-ECCC/SC (03), Decision on Khieu Samphân’s Application for Disqualification of Six Appeal Judges who Adjudicated in Case 002/01, 14 July 2020 (“Samphân Decision”), para. 64; Hassan Decision, paras 19, 21; Stanišić and Župljanin Appeal Judgement, para. 44; ICC, *The Prosecutor v. Thomas Lubanga Dyilo*, Annex I, Case No. ICC-01/04-01/06-3154-AnxI, 3 August 2015, para. 35. See also Nicholas Judgment, para. 50; ECHR, *Case of Micallef v. Malta*, Application No. 17056/06, Judgment, 15 October 2009, para. 94; ECHR, *Case of Indra v. Slovakia*, Application No. 46845/99, Judgment, 1 February 2005, para. 49.

⁴⁰ Ayyash Decision, para. 8; Samphân Decision, para. 64; Lukić Decision, para. 11; Stanišić and Župljanin Appeal Judgement, para. 44. Moreover, an appearance of bias is case specific. A finding on appearance of bias in one case does not automatically disqualify a judge from other cases. It must be shown that the prior actions of the judge, which allegedly reveal an unacceptable appearance of bias had an impact on his/her impartiality in the case under consideration. See ICTY, *Prosecutor v. Mićo Stanišić et al.*, Case No. IT-08-91-A, Judgment, 30 June 2016, paras 32-33.

of justice if judges were to disqualify themselves on the basis of unfounded and unsupported allegations of apparent bias”.⁴¹ Indeed, to find otherwise will impinge on the ability of Judges to carry out their duties in accordance with the mandate of the respective judicial body, including the KSC, and as such would have a chilling effect on the administration of justice.

33. The above principles are reflected in the KSC legal framework, including in Rule 20(3) of the Rules, which provides for a summary dismissal of a request for disqualification of a Judge sitting in a case if the President considers it to be “vexatious, misconceived, frivolous or lacking in substance”.

34. Having considered the Application, the President notes that the Defence’s submissions concern unsubstantiated allegations⁴² regarding Judge Smith before he was appointed to the KSC. Accordingly, the President summarily dismisses the Application as entirely lacking in substance in accordance with Rule 20(3) of the Rules.

35. Given that the Application has been dismissed with respect to the disqualification of Judge Smith as a Judge in this case, the remainder of the relief sought by the Defence⁴³ is hereby dismissed as moot.

III. DISPOSITION

36. For the foregoing reasons, the President hereby:

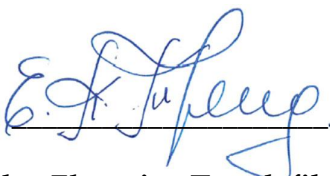
- a) **DECIDES** to recognise the Application as validly made in accordance with Article 36(3) of the Practice Direction;

⁴¹ ICTY, *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, Judgement, 20 February 2001, para. 707. See also *Samphân* Decision, para. 64; ICTY, *Prosecutor v. Ratko Mladić*, Case Nos. IT-09-92-AR73.6 & IT-09-92-AR73.7, Decision on Ratko Mladić’s Motion for Disqualification of Judge Fausto Pocar, 26 October 2016, para. 11.

⁴² As the Defence admit, they are relying on submissions, which “are allegations and are not stated as proven facts”. See Application, para. 90.

⁴³ See Application, para. 101(d)-(f).

- b) **REMINDS** the Defence to adhere in the future to the requirements contained in Articles 36(1) and (3) and 41 of the Practice Direction;
- c) **DISMISSES** the Application as it relates to the recusal or disqualification of the President of the KSC in relation to both judicial and administrative functions;
- d) **DISMISSES** as moot the Application as it relates to the recusal or disqualification of the Vice President;
- e) **DISMISSES SUMMARILY** the Application as it relates to the request for disqualification of Judge Smith as Judge on Trial Panel II in the present case;
- f) **DISMISSES** as moot the remainder of the relief requested in paragraph 101(c) to (f) of the Application; and
- g) **ORDERS** the Defence to file a public redacted version of the corrected Application (F00268/COR) and a public version of the Joinder (F00269) by 23 August 2021.



Judge Ekaterina Trendafilova,
President of the Specialist Chambers

Dated this Friday, 6 August 2021
At The Hague,
The Netherlands