

**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-95-17/1-A  
Date: 21 July 2000  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Mohamed Shahabuddeen, Presiding  
Judge Lal Chand Vohrah  
Judge Rafael Nieto-Navia  
Judge Patrick Lipton Robinson  
Judge Fausto Pocar

**Registrar:** Mrs. Dorothee de Sampayo Garrido-Nijgh

**Judgement of:** 21 July 2000

**PROSECUTOR**

v.

**ANTO FURUND@IJA**

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**JUDGEMENT**

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**Counsel for the Prosecutor:**

Mr. Upawansa Yapa  
Mr. Christopher Staker  
Mr. Norman Farrell

**Counsel for the Accused:**

Mr. Luka S. Miseti  
Mr. Sheldon Davidson

objective fear of bias as opposed to having to assert actual bias. Similarly in Sweden, a Judge may be disqualified if any circumstances arise which create a legitimate doubt as to the Judge's impartiality.<sup>256</sup>

### 3. A standard to be applied by the Appeals Chamber

189. Having consulted this jurisprudence, the Appeals Chamber finds that there is a general rule that a Judge should not only be subjectively free from bias, but also that there should be nothing in the surrounding circumstances which objectively gives rise to an appearance of bias. On this basis, the Appeals Chamber considers that the following principles should direct it in interpreting and applying the impartiality requirement of the Statute:

A. A Judge is not impartial if it is shown that actual bias exists.

B. There is an unacceptable appearance of bias if:

i) a Judge is a party to the case, or has a financial or proprietary interest in the outcome of a case, or if the Judge's decision will lead to the promotion of a cause in which he or she is involved, together with one of the parties. Under these circumstances, a Judge's disqualification from the case is automatic; or

ii) the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.<sup>257</sup>

190. In terms of the second branch of the second principle, the Appeals Chamber adopts the approach that the "reasonable person must be an informed person, with knowledge of all the relevant circumstances, including the traditions of integrity and impartiality that form a part of the background and apprised also of the fact that impartiality is one of the duties that Judges swear to uphold."<sup>258</sup>

191. The Appeals Chamber notes that Rule 15(A) of the Rules provides:

A Judge may not sit on a trial or appeal 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 or her

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<sup>256</sup> Sections 13 and 14 of the Swedish Code of Judicial Procedure (1998).

<sup>257</sup> In the *Talic* Decision, it was found that the test on this prong is "whether the reaction of the hypothetical fair-minded observer (with sufficient knowledge of the actual circumstances to make a reasonable judgement) would be that [the Judge in question]... might not bring an impartial and unprejudiced mind" (para. 15).

<sup>258</sup> *R.D.S. v. The Queen* (1997) Can. Sup. Ct., delivered 27 September 1997.