

LECTURE ON CONFLICTS OF INTEREST

By Michael G. Karnavas

ADC-ICTY, The Hague

16 April 2014

TABLE OF AUTHORITIES

International Covenants

1. International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by United Nations General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976 in accordance with Article 49, Arts. 2(3), 14(3)(d).

International Codes of Conduct

2. ICTY Code of Professional Conduct for Defence Counsel, 1997 version, Arts. 9, 20.
3. ICTY Code of Professional Conduct for Defence Counsel, 2002 version, Arts. 10, 11, 13(A), 14(A), 14(C), 26.
4. ICTY Standards of Professional Conduct for Prosecution Counsel, 14 September 1999, Art. 2.
5. ICTR Code of Professional Conduct for Defence Counsel, Arts. 9, 1(4).
6. ICTR Standards of Professional Conduct for Prosecution Counsel, Art. 2.
7. International Criminal Court Code of Professional Conduct for Counsel, Arts. 4, 5, 6, 7, 12, 15, 16.
8. International Criminal Court Code of Conduct for the Office of the Prosecutor, Art. 9.
9. Code of Professional Conduct for Counsel with the Right of Audience before the Special Court for Sierra Leone, Arts. 15, 25.
10. The Code of Professional Conduct for Defence Counsel and Legal Representatives of Victims appearing before the Special Tribunal for Lebanon, 14 December 2012, Art. 11.
11. Special Tribunal for Lebanon, The Code of Professional Conduct for Counsel Appearing before the Tribunal, STL-CC-2011-01, February 2011, para. 4, Art. 11.
12. The ECCC Defence Support Section Administrative Regulations, Regulation 9.

13. International Bar Association International Principles for the Conduct of the Legal Profession, Art. 3.1, explanatory note 3.2.
14. The Hague Principles on Ethical Standards for Counsel Appearing Before International Courts and Tribunals, Principle 4.2.
15. International Criminal Bar Code of Conduct and Disciplinary Procedure of the International Criminal Bar, Art. 7(3)(a).

International Statutes and Rules

16. Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, NS/RKM/1004/006, 27 October 2004, Arts. 24 new, 35 new.
17. ECCC Internal Rules, as revised 3 August 2011, Rule 21.
18. ICTY Rules of Evidence and Procedure, IT/32/Rev. 44, 10 December 2009, Rule 89.

National Codes of Conduct

19. Bar Standards Board Handbook 1st Edition, January 2014, *available at* https://www.barstandardsboard.org.uk/media/1553795/bsb_handbook_jan_2014.pdf.
20. Solicitors' Regulation Authority Code of Conduct, Version 9, 1 April 2014, Ch. 3, Rule C21, Guidance C69 – *available at* <http://www.sra.org.uk/solicitors/handbook/code/part2/content.page>.
21. Règlement intérieur national de la profession d'avocat, Arts. 1.3, 4.1, 4.2 – *available at* http://cnb.avocat.fr/Reglement-Interieur-National-de-la-profession-d-avocat-RIN_a281.html#2.
22. Bar Association of the Kingdom of Cambodia (BAKC) Code of Ethics, Art. 25.
23. American Bar Association Model Rules of Professional Conduct, Rules 1.1, 1.3, 1.6, 1.7-1.11, 2.1.
24. Commentary to ABA Model Rules of Professional Conduct, Rules 1.7, 1.9.
25. Alaska Rules of Professional Conduct, Rules 1.9(a), 9.1(q).

26. Texas Disciplinary Rules of Professional Conduct, Rule 1.06.
27. German Code of Criminal Procedure, Section 146, *available at* http://www.gesetze-im-internet.de/englisch_stpo/.
28. Code of Conduct of the Netherlands Bar Association (1992), Rule 7, *available at* http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Netherlands_EN_Code_1_12_36161752.pdf.

ICTY Case law

29. *Prosecutor v. Mejakić et al.*, IT-02-65-AR73.1, Decision on Appeal by the Prosecution to Resolve Conflict of Interest Regarding Attorney Jovan Simić, 6 October 2004.
30. *Prosecutor v. Blagojević & Jokić*, IT-02-60-AR73.4, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojević to Replace his Defence Team, 7 November 2003.
31. *Prosecutor v. Knežević*, IT-95-4-PT / IT-95-8/1-PT, Decision on Accused's Request for Review of Registrar's Decision as to Assignment of Counsel, 6 September 2002.
32. *Prosecutor v. Blagoje Simić et al.*, IT-95-9-T, Decision on Motion to Resolve Conflict of Interest regarding Attorney Borislav Pisarević, 25 March 1999.
33. *Prosecutor v. Gotovina et al.*, IT-06-90-PT, Decision on Conflict of Interest of Attorney Miroslav Šeparović, 27 February 2007.
34. *Prosecutor v. Gotovina et al.*, IT-06-90-AR73.1, Decision on Miroslav Šeparović's Interlocutory Appeal Against Trial Chamber's Decision on Conflict of Interest and Finding of Misconduct, 4 May 2007.
35. *Prosecutor v. Gotovina et al.*, IT-06-90-PT, Registry Decision, 13 November 2007.
36. *Prosecutor v. Hadžihasanović et al.*, IT-01-47-PT, Decision on Prosecution's Motion for Review of the Decision of the Registrar to Assign Mr. Rodney Dixon as Co-Counsel to the Accused Kubura, 26 March 2002.

37. *Prosecutor v. Gotovina et al.*, IT-06-90-PT, Decision on Ivan Čermak's and Mladen Markač's Joint Motion to Resolve Conflict of Interest Regarding Attorney Gregory Kehoe, 29 November 2007.
38. *Prosecutor v. Međakić et al.*, IT-02-65-PT, Decision on Prosecution Motion To Resolve Conflict Of Interest Regarding Attorney Jovan Simić, 18 September 2003.
39. *Prosecutor v. Međakić et al.*, IT-02-65-PT, Decision on Prosecution's Second Motion to Resolve Conflict of Interest Regarding Attorney Jovan Simić, 17 June 2004.
40. *Prosecutor v. Prlić et al.*, IT-04-74-PT, Decision on Request for Appointment of Counsel, 30 July 2004.
41. *Prosecutor v. Prlić et al.*, IT-04-74-AR73.1, Decision on Appeal by Bruno Stojić Against Trial Chamber's Decision on Request for appointment of Counsel, 24 November 2004.
42. *Prosecutor v. Prlić et al.*, IT-04-74-AR73.1, Decision on Appeal by Bruno Stojić Against Trial Chamber's Decision on Request for Appointment of Counsel, 24 November 2004, Separate Opinion of Judge Mumba.
43. *Prosecutor v. Prlić et al.*, IT-04-74-AR73.1, Decision on Appeal by Bruno Stojić Against Trial Chamber's Decision on Request for Appointment of Counsel, 24 November 2004, Declaration of Judge Shahabuddeen, Judge Schomburg and Judge Weinberg de Roca.
44. *Prosecutor v. Delić*, IT-04-83-PT, Decision on Motion Seeking Review of the Registry Decision stating that Mr. Stéphane Bourgon cannot be Assigned to Represent Rasim Delić, 10 May 2005.
45. *Prosecutor v. Gotovina et al.*, IT-06-90-AR73.1, Decision on Miroslav Šeparović's Interlocutory Appeal Against Trial Chamber's Decision on Conflict of Interest and Finding of Misconduct, 4 May 2007.
46. *Prosecutor v. Gotovina et al.*, IT-06-90-PT, Decision on Conflict of Interest of Attorneys Čedo Prodanović and Jadranka Sloković, 5 April 2007.
47. *Prosecutor v. Gotovina et al.*, IT-06-90-PT, Judge Orić's Dissenting Opinion on Decision on Conflict of Interest of Attorneys Čedo Prodanović and Jadranka Sloković, 18 April 2007.

48. *Prosecutor v. Gotovina et al.*, IT-06-90-AR73.2, Decision on Ivan Čermak's Interlocutory Appeal Against Trial Chamber's Decision on Conflict of Interest of Attorneys Čedo Prodanović and Jadranka Sloković, 29 June 2007.
49. *Prosecutor v. Gotovina, Prosecutor v. Čermak & Markač*, IT-03-73-PT, IT-01-45-PT, Decision on Prosecution's Consolidated Motion to Amend the Indictment and for Joinder, 14 July 2006.
50. *Prosecutor v. Perišić*, IT-04-81-PT, Decision, 7 April 2006.
51. *Prosecutor v. Delalić et al.*, IT-96-21-A, Order Regarding Esad Landžo Request for Removal of John Ackerman as Counsel on Appeal for Zenjil Delalić, 6 May 1999.
52. *Prosecutor v. Martić*, IT-95-11-PT, Decision, 31 May 2002.
53. *Prosecutor v. Martić*, IT-95-11-PT, Decision, 14 June 2002.
54. *Prosecutor v. Martić*, IT-95-11-PT, Decision on Appeal against Decision of Registry, 2 August 2002.
55. *Prosecutor v. Martić*, IT-95-11-PT, Decision, 16 August 2002.
56. *Prosecutor v. Tolimir et al.*, IT-05-88-PT, Decision on Appointment of Co-Counsel for Radivoje Miletić, 28 September 2005.
57. *Prosecutor v. Delić*, IT-04-83-PT, Decision on Motion Seeking Review of the Registry Decision stating that Mr. Stéphane Bourgon cannot be Assigned to Represent Rasim Delić, 10 May 2005.
58. *Prosecutor v. Popović et al.*, IT-05-88-T, Decision on Request for Review of the Registry Decision on the Assignment of Co-Counsel, 16 November 2006.
59. *Prosecutor v. Popović et al.*, IT-05-88-T, Decision on Third Request for Review of the Registry Decision on the Assignment of Co-Counsel for Radivoje Miletić, 20 February 2007.
60. *Prosecutor v. Karadžić*, IT-95-5/18-PT, Decision on Accused Request for Judicial Review of the Registry Decision on the Assignment of Mr. Marko Sladojević as Legal Associate, 20 April 2009.

61. *Prosecutor v. Tolimir et al.*, IT-04-80-PT, Decision on Motion for Joinder, 21 September 2005.
62. *Prosecutor v. Krstić*, IT-98-33-T, Trial Judgement, 2 August 2001.
63. *Prosecutor v. Popović et al.*, IT-05-88-T, Trial Judgement, 10 June 2002.
64. *Prosecutor v. Mladić*, IT-09-92-T, Decision on Ratko Mladić's Request for Review of OLAD Decision on Additional Co-Counsel, 30 September 2013, Annex A: Appeal of OLAD Denial of Request for Additional Co-Counsel and DSA, p. 2.
65. *Prosecutor v. Mladić*, IT -09-92-PT, Decision, 22 July 2011.
66. *Prosecutor v. Mladić*, IT -09-92-PT, Decision, 23 February 2012.
67. *Prosecutor v. Šainović et al.*, IT-05-87-A, Appeals Judgement, 23 January 2014.
68. *Prosecutor v. Delalić et al.*, IT- 96-21-A, Appeals Judgement, 20 February 2001.
69. *Prosecutor v. Blaškić*, IT-95-14-A, Appeals Judgement, 29 July 2004.
70. *Prosecutor v. Blagojević & Jokić*, IT-02-60-T, Trial Judgement, 17 January 2005.
71. *Prosecutor v. Blagojević et al.*, IT-02-60-PT, Second Amended Indictment, 27 May 2002.
72. *Prosecutor v. Obrenović*, IT-01-43, Initial Indictment, 16 March 2001.
73. *Prosecutor v. Perišić*, IT-04-81, Second Amended Indictment, 26 September 2005, p. 2.
74. *Prosecutor v. Perišić*, IT-04-81-T, Trial Judgement, 6 September 2011.

ECCC jurisprudence:

75. *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC(SCC01/02), Decision on Immediate Appeals by NUON Chea and IENG Thirith on Urgent Applications for Immediate Release, 3 June 2011, E50/2/1/4.

National Law and Jurisprudence

US Case law:

76. *Ratzlaf v. United States*, 510 U.S. 135(1994).
77. *Gustafson v. Alloyd Co.*, 513 U.S. 561(1995).
78. *Flatt v. Superior Court*, 885 P.2d 950, 954-55 (Cal. 1994).
79. *Sumpter v. Hungerford*, 2013 U.S. Dist. LEXIS 71119 (E.D. La. 2013).
80. *State v. Craddock*, 62 So. 3d 791 (La. Ct. App. 1st Cir. 2011).
81. *Duncan v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 646 F.2d 1020 (5th Cir. 1981).
82. *In re TOCFHBI*, 413 B.R. 523 (Bkrcty. N.D. Tex. 2009).
83. *Swindler v. U.S.*, 524 U.S. 399 (1998).
84. *In re Jaeger*, 213 B.R. 578 (Bkrcty C.D. Cal 1997).
85. *Cuyler v. Sullivan*, 446 U.S. 335 (1980) (Marshall, J., dissenting).
86. *Official Unsecured Creditors Comm. of Valley-Vulcan Mold Co. v. Ampco-Pittsburgh Corp.* (In re Valley-Vulcan Mold Co.), 237 B.R. 322, 337 (B.A.P. 6th Cir. Ohio 1999).
87. *Alexander v. Primerica Holdings, Inc.*, 822 F. Supp. 1099(D. N.J. 1993).
88. *Panduit Corp. v. All States Plastic Mfg. Co.*, 744 F.2d 1564 (Fed. Cir. 1984).
89. *McCool v. Operative Plasterers' & Cement Masons' Int'l Ass'n of the United States & Canada*, 2014 U.S. Dist. LEXIS 19650 (D. Mich. 2014).
90. *Hampton v. Spencer*, 2002 WL 442306 (Conn. Super. 2002).
91. *Duncan v. Merrill Lynch*, 646 F. 2d 1019 (5th Cir. 1981).
92. *Tremont Public Advisors v. Connecticut Resources Recovery Authority*, 2014 Conn. Super. LEXIS 147 (Conn. Super. 2014).
93. *Enquire Printing & Publishing Co. v. O'Reilly*, 477 A. 2d. 648 (1984).

94. *U.S. v. Turner*, 594 F.3d 946 (7th Cir. 2010).
95. *U.S. v. Volpendesto*, 2014 U.S. App. LEXIS 5428 (7th Cir. 2014).
96. *U.S. v. Massino*, 303 F.Supp.2d 258 (E.D.N.Y., 2003).
97. *U. S. v. Curcio*, 680 F.2d 881 (2d Cir.1982).
98. *Com. v. Martinez*, 425 Mass. 382, 681 N.E.2d 818 (Mass. 1997).
99. *In re Boone*, 83 F. 944 (9th Cir. 1897).
100. *U.S. v. Bishop*, 90 F.2d 65 (6th Cir.1937).
101. *U.S. v. Ziegenhagen*, 890 F.2d 937 (7th Cir. 1989).
102. *Strickland v. Washington*, 466 U.S. 668 (1984).
103. *U.S. v. Horton*, 945 F.2d 1414 (7th Cir. 1988).
104. *U.S. v. Cancilla*, 725 F.2d 867 (2d Cir. 1984).
105. *Maiden v. Bunnell*, 35 F.3d 477 (9th Cir. 1994).
106. *U.S. v. Miskinis*, 966 F.2d 1263 (9th Cir. 1992).

French Law and jurisprudence:

107. Décret no 2005-790 du 12 juillet 2005 relatif aux règles de déontologie de la profession d'avocat, as amended, 30 December 2011, Art. 7.
108. Décret n°91-1197 du 27 novembre 1991 organisant la profession d'avocat, (updated 29 July 2013), Art. 187 – available at http://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=420733B7EC34AC15596D84DFDAAE7F60.tpdjo08v_2?idArticle=LEGIARTI000006922932&cidTexte=LEGI TEXT000006078311&dateTexte=20140131.
109. Cour de Cassation. Cass. 1e civ. Oct 17 2012, pourvoi n°11-17.999, Bull. civ. 2012, I, n° 203, No. Jurisdata 2012-023285 – available at

<http://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000026514678&fastReqId=986918560&fastPos=1>.

Books, Articles, and Miscellaneous

110. Charles W. Wolfram, *Former-Client Conflicts*, 10 GEO. J. LEGAL ETHICS 677 (1996-97).
111. Robert H. Aronson, Conflict of Interest, 52 Wash. L. Rev. 807 (1977).
112. Note, *Attorney's Conflicts of Interest: Representation of Interests Adverse to that of a Former Client*, 55 B.U.L. REV. 61 (1975)
113. WILLIAM H. FORTUNE, RICHARD H. UNDERWOOD & EDWARD J. IMWINKELRIED, MODERN LITIGATION AND PROFESSIONAL RESPONSIBILITY HANDBOOK § 3.6.5 (2d ed. 1996).