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-03-67-T

Date: 4 March 2011

Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: **Judge Jean-Claude Antonetti, Presiding**
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: **Mr John Hocking**

Decision of: **4 March 2011**

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

DECISION ON PROSECUTION'S MOTION FOR PARTIAL RECONSIDERATION OF DECISION OF 10 DECEMBER 2010 ON MILAN BABIĆ

The Office of the Prosecutor

Mr Mathias Marcussen

The Accused

Mr Vojislav Šešelj

TRIAL CHAMBER III ("Chamber") of the 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 ("Tribunal"),

SEIZED of the motion of 10 January 2011[1] filed publicly by the Office of the Prosecutor ("Prosecution") on the partial reconsideration of the Decision of 10 December 2010[2] in which the Chamber dismissed the request to admit into evidence a portion of Milan Babić's testimony ("Babić") in the Milošević Case[3] and the relevant evidence,[4]

NOTING the Decision of 10 December 2010 rendered on the Motion of 9 April 2009 in which the Prosecution requested that the Chamber reconsider its first decision of 7 January 2008,[5]

CONSIDERING that at the hearing of 18 January 2011, the Accused replied to the Motion by claiming that it represented an abuse of procedure by the Prosecution,[6]

CONSIDERING that, in this case, the Prosecution seeks a partial reconsideration of the Decision of 10 December 2010 arguing, on the one hand, that the Chamber committed an error in the said decision by rejecting the 11 excerpts from Babić's

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[1] "Prosecution's Motion for Partial Reconsideration of the Decisions on the Admission of Evidence of Deceased Witness Milan Babić", public with Annex, 10 January 2011 ("Motion").

[2] "Decision on Prosecution Motion for Reconsideration of the Decision of 7 January 2008 Rejecting the Admission of Milan Babić's Testimony", public, 10 December 2010 ("Decision of 10 December 2010").

[3] *The Prosecutor v. Slobodan Milošević*, IT-02-54-T ("Milošević Case").

[4] In its Decision of 10 December 2010, the Chamber admitted into evidence only the following portions of the testimony of the witness Babić in the Milošević Case: Hearing of 18 November 2002, French transcript, ("T(F)") 12861 – 12866, 12878 – 12920, 12923 – 12938; Hearing of 19 November 2002, T(F) 12992 – 12997, 13005 – 13010, 13040-13051; Hearing of 20 November 2002, T(F) 13062 – 13067, 13081 – 13086, 13089 – 13092, 13103 – 13106; Hearing of 21 November 2002, T(F) 13244 – 13246, 13175 – 13176; Hearing of 25 November 2002, T(F) 13387 – 13392 as well as 65 *ter* exhibits marked: 155, 197, 450, 1332 and 2083.

[5] The Decision of 10 December 2010 was issued following a motion of 9 April 2009 on reconsideration of the first decision of 7 January 2008. *See*: "Prosecution's Motion for Reconsideration of the Decision on the Admission of Evidence of Deceased Witness Milan Babić Pursuant to Rule 92 *quater*", public with partially confidential Annexes A to E, 9 April 2009 ("Motion of 9 April 2009") and the "Decision on the Prosecution's Consolidated Motion Pursuant to Rules 89 (F), 92 *bis*, 92 *ter* and 92 *quater* of the Rules of Procedure and Evidence", confidential, 7 January 2008. A public version of this Decision was filed on 21 February 2008 ("Decision of 7 January 2008").

[6] Hearing of 18 January 2011, T(F) 16595-16597, 16599.

testimony in the Milošević Case – excerpts corroborated by admitted evidence[7] - and, on the other hand, that the admitted evidence which corroborates the 11 excerpts of the testimony requested for admission, constitutes a new fact justifying the reconsideration of the Decision of 10 December 2010,[8]

CONSIDERING that, according to the Tribunal's case-law, a Trial Chamber has the inherent power to reconsider its own decisions and receive a request for reconsideration if the moving party satisfies the Chamber of the existence of a clear error in the impugned decision or of particular circumstances, new facts or new arguments, justifying its reconsideration in order to avoid injustice,[9]

CONSIDERING that the Chamber must however ensure the expedition of the trial and considers that the complexity and scope of this case necessitate that requests for reconsideration be the exception and not the rule,[10] all the more when, as in this case, the Prosecutor seizes the Chamber of a request for reconsideration of a decision on reconsideration,

CONSIDERING further that the Chamber considers that it did not commit a clear error in the implementation *in concreto* of Rule 92 *quater* of the Rules of Procedure and Evidence ("Rules") by making a distinction, in its Decision of 10 December 2010, between the portions of Babić's testimony and their relevant documents which were corraborated by *viva voce* testimony before the Chamber – testimony given subsequently to the Decision of 7 January 2008 which was cross-examined by the Accused – and the other portions of Babić's testimony and their relevant documents – which, even though admitted in other cases or corroborated by documentary evidence admitted from the bar in this case – were not cross-examined by the Accused,

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[7] Motion, para. 3. The Chamber notes that the evidence the Prosecution refers to was admitted into evidence in the period between the Motion of 9 April 2009 and the Decision of 10 December 2010.

[8] Motion, paras 3-5, 8-9.

[9] *The Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić*, Case No. IT-04-74-T, "Decision on Request for Reconsideration and Certification to Appeal the Decision for Admission of the Statement of Jadranko Prlić, 8 October 2007, p. 11, citing *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, "Decision on Defence's Request for Reconsideration", 16 July 2004, pp. 3-4.

[10] *See* in this regard: *The Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić*, Case No. IT-04-74-T, "Decision Regarding Requests Filed by the Parties for Reconsideration of Decisions by the Chamber", public, 26 March 2009.

CONSIDERING that the Chamber holds that the new fact alleged by the Prosecution, namely the admission of certain evidence which corroborates the excerpts of the testimony requested for admission, emerged in the period between the Motion of 9 April 2009 and the Decision of 10 December 2010,

CONSIDERING, consequently, that this fact is not a new element and that it was duly taken into consideration by the Chamber when it rendered its Decision of 10 December 2010, and that the Chamber, therefore, holds that the admission of corroborating evidence does not constitute a new fact justifying reconsideration of the Decision of 10 December 2010,

CONSIDERING, as such, that the Chamber finds that there is no valid reason to accept to reconsider a decision for a second time,

FOR THE FOREGOING REASONS

PURSUANT TO Article 20(1) of the Statute of the Tribunal and Rule 54 of the Rules,

DISMISSES the Motion.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this fourth day of March 2011
At The Hague
The Netherlands

[Seal of the Tribunal]