



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: 14 December 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: 14 December 2011

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON PROSECUTION'S MOTION OF 23 NOVEMBER 2011 AND
ON ADMISSION INTO EVIDENCE OF 65 *TER* DOCUMENT 155**

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 filed as a public document on 23 November 2011 by the Office of the Prosecutor (“Prosecution”), in which the Prosecution requests the Chamber to reconsider in part the *corrigendum* rendered as a public document on 16 November 2011 (“*Corrigendum*”),¹ on the ground that it contains an error (“Motion”),²

NOTING the *Corrigendum*, in which the Chamber amended the decision on the admission of Milan Babić’s testimony pursuant to Rule 92 *quater* of the Rules of Procedure and Evidence (“Rules”), rendered as a public document on 10 December 2010 (“Decision of 10 December 2010”)³ and 1) ordered the correction of a clerical error in paragraph 49 of the Decision of 10 December 2010, as this error led to the admission into evidence of 65 *ter* Document 155 – marked as P 1138 –, when in fact this document was not relevant⁴ and 2) consequently ordered the correction of the disposition in the Decision of 10 December 2010 so that an exhibit number was no longer assigned to 65 *ter* Document 155,⁵

CONSIDERING that in support of its Motion, the Prosecution notes that in the *Corrigendum*, the Chamber noted that paragraph 49 of the Decision of 10 December 2010 mentioned the nomination of Milan Babić, instead of Milan Martić, as the Secretary of the Interior of the SAO Krajina and submits that 1) the Chamber erred on the one hand by concluding that 65 *ter* Document 155, which became Exhibit P 1138, was in fact not relevant to the present case and, on the other, by withdrawing Exhibit P 1138 from the record;⁶ 2) 65 *ter* Document 155 is relevant as it shows the official role of Milan Martić, who was also a member of the joint criminal enterprise alleged in the Indictment in the present case (“Indictment”) alongside Milan Babić and Vojislav Šešelj (“Accused”)⁷ and that the nomination of Milan Martić as the Secretary of the Interior of the SAO Krajina has the same relevance as the nomination of Milan Babić to the same functions;⁸ 3) 65 *ter*

¹ “*Corrigendum* to “Decision on Prosecution Motion for Reconsideration of the Decision of 7 January 2008 Rejecting the Admission of Milan Babić’s Testimony” of 10 December 2010”, public, 16 November 2011.

² “Prosecution’s Motion for Reconsideration of the *Corrigendum* to the Decision on the Admission of Evidence of Deceased Witness Milan Babić”, public, 23 November 2011; *see paras.* 1, 2, 4 and 9.

³ “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.

⁴ *See Corrigendum*, pp. 1-2.

⁵ *See Corrigendum*, pp. 2-3.

⁶ Motion, paras 2 and 6.

⁷ *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67, Third Amended Indictment, filed on 7 December 2007, French version filed on 2 January 2008.

⁸ Motion, paras 4 *i*, 7 and 9. The Prosecution points out in particular in paragraph 5 of the Motion that it had already described the relevance of this document in its previous written submissions, quoting in this respect “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, 9 April 2009.

Document 155 is also essential to understanding the portions of Milan Babić's testimony in Case No. IT-02-54-T *The Prosecutor v. Slobodan Milošević* ("Slobodan Milošević Case") admitted into evidence in the present case as Exhibit P 1137, and the Prosecution points out that Milan Babić's testimony mentions Milan Martić several times and describes his activities and interactions with other members of the alleged joint criminal enterprise,⁹

CONSIDERING that the Accused did not respond to the Motion within the 14-day deadline imposed by Rule 126 *bis* of the Rules from the date of receiving the BCS translation of the Motion,¹⁰

CONSIDERING that, pursuant to Rule 89 (C) of the Rules, the Chamber may admit any relevant evidence which it deems to have probative value;¹¹ that the Chamber recalls that evidence must be reliable in order to have probative value, although a *prima facie* showing of reliability is sufficient;¹² that, with respect to the requirement of relevance, "the offering party must be able to demonstrate, with clarity and specificity, where and how each document fits into its case",¹³

CONSIDERING that the Chamber recalls that it mistakenly indicated in paragraph 49 of the Decision of 10 December 2010 that "the Chamber notes that this is a decision of the SAO Krajina Executive Council, nominating Milan Babić as Secretary of the Interior of the SAO Krajina" and that this error was corrected in the *Corrigendum*,¹⁴

CONSIDERING that the Chamber notes, nevertheless, that the Prosecution submitted in the annexes to several of its written submissions a detailed description of 65 *ter* Document 155 as being the decision, signed by Milan Babić, nominating Milan Martić as the Secretary of the Interior of the SAO Krajina,¹⁵

CONSIDERING that the Chamber notes the arguments put forth by the Prosecution in its Motion and notes that 65 *ter* Document 155 is indeed a decision dated 4 January 1991 originating from the Executive Council of the SAO Krajina, signed by Milan Babić and nominating Milan Martić as the Secretary of the Interior of the SAO Krajina,

⁹ Motion, paras. 4 *ii*, 8 and 9.

¹⁰ Procès-verbal of Reception of BCS translation of the Motion signed by the Accused on 29 November 2011 and filed on 2 December 2011. The Accused had until 13 December 2011 inclusive to respond.

¹¹ *The Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, "Decision on Prosecution Motion to Admit Documents in Evidence", public, 9 May 2008, para. 8.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Corrigendum*, p. 1.

¹⁵ See notably "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, 9 April 2009, Annex D.

CONSIDERING that the Chamber deems therefore that 1) as 65 *ter* Document 155 may relate to the existence and implementation of the joint criminal enterprise alleged in the Indictment, it bears *prima facie* relevance in the present case; 2) its admission into evidence would enable a better assessment of the portions of Milan Babić's testimony in the *Slobodan Milošević* Case admitted into evidence in the present case as Exhibit P 1137¹⁶ and 3) 65 *ter* Document 155, signed by Milan Babić, bears sufficient indicia of reliability and probative value to be admitted into evidence,

FOR THE FOREGOING REASONS

PURSUANT TO Rules 54, 73 (A) and 89 (C) of the Rules,

GRANTS THE MOTION,

ORDERS the admission into evidence of 65 *ter* Document 155.

ORDERS the Registry to assign an exhibit number to this document.

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

/signed/ _____
Jean-Claude Antonetti
Presiding Judge

Done this fourteenth day of December 2011
The Hague (the Netherlands)

[Seal of the Tribunal]

¹⁶ See Decision of 10 December 2010, para. 52.