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: 6 March 2012

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: **6 March 2012**

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT
with a statement by Judge Flavia Lattanzi in annex

DECISION ON PROSECUTION'S REQUEST FOR CORRECTION TO EXHIBIT P01298 ADMITTED BY DECISION OF 23 DECEMBER 2010

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 request filed by the Office of the Prosecutor ("Prosecution") on 29 February 2012 in which the Prosecution respectfully seeks permission from the Chamber to correct the content of Exhibit P1298 uploaded on the E-court system ("Request"),[1]

CONSIDERING that for the sake of an expeditious trial and in light of the late stage of the proceedings, the Chamber does not deem it necessary, when dealing with the present Request, to wait for the expiry of the deadline for the response of Vojislav Šešelj's ("Accused")[2] and emphasises in this respect that this decision is not likely to prejudice him since it only relates to a matter of form,

NOTING the motion of the Prosecution of 17 May 2010 to admit into evidence 180 exhibits tendered in writing from the bar table ("Motion of 17 May 2010"),[3]

NOTING the decision rendered by the Chamber on 23 December 2010 ruling on the Motion of 17 May 2010, in which the Chamber ordered, by a majority, with Judge Lattanzi partly dissenting,[4] the admission of the documents listed in the annex to the decision, including document 65 *ter* 1084 which later became Exhibit P1298 ("Decision of 23 December 2010"),[5]

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[1] "Prosecution's Request for Correction to Exhibit P01298", 29 February 2012 (public).
[2] The said deadline will expire 14 days after the receipt by the Accused of the translation of the Request in the Bosnian/Croatian/Serbian ("BCS") language, the date of the Procés-verbal being authoritative.
[3] "Prosecution's Second Motion for Admission of Evidence from the Bar Table", 17 May 2010 (public).
[4] *See* Decision of 23 December 2010, para. 32.
[5] "Decision on Prosecution's Second Motion for Admission of Evidence from the Bar Table and for an Amendment to the 65 *ter* Exhibit List", 23 December 2010 (public with annex and partly dissenting opinion of Judge Lattanzi), paras 30 and 32: the Chamber, by a majority, Judge Lattanzi dissenting, deemed for several admitted documents – including 65 *ter* document 1084 – that their dates fell outside the Indictment period and even though they contained partially or fully reproduced statements by the Accused, but which concerned a fundamental issue in the Indictment, such as the ideology of the Accused, the concept of "Greater Serbia", discrimination against the non-Serbian population, the formation and organisation of the Serbian Chetnik Movement and the Serbian Radical Party, or the joint criminal enterprise as alleged in the Indictment. The documents were admitted by the Chamber on condition that their official translation be completed by the official translation service of the

CONSIDERING that in its Motion, the Prosecution submits that: (i) in the Motion of 17 May 2010 it had requested the admission of 65 *ter* document 1084, which contained three press articles dealing with inflammatory statements of the Accused about the non-Serbian population and which preceded his speech in Hrtkovci on 6 May 1992;[6] (ii) in the Decision of 23 December 2010, the Chamber admitted 65 *ter* document 1084, containing the three press articles, but that (iii) the electronic version of Exhibit P1298 that is currently on the E-court system only contains the *Politika* article of 5 April 1992,[7]

CONSIDERING that the Prosecution consequently seeks permission from the Chamber to correct the electronic version of Exhibit P1298 which is currently on the E-court system and replace it by the complete version of 65 *ter* document 1084 which it originally submitted to the Chamber in its Motion of 17 May 2010,[8]

CONSIDERING that in its Motion of 17 May 2010, the Prosecution did seek admission of 65 *ter* document 1084, which contained three articles from the daily *Politika* dated 15 March 1992, 27 March 1992 and 5 April 1992, respectively, but only cited in the title of 65 *ter* document 1084, in the annex to the said Motion, the article of 5 April 1992,[9]

CONSIDERING that the Chamber admitted 65 *ter* document 1084 in its entirety[10] and, moreover, that it cited the *Politika* article of 27 March 1992 in its Decision under Rule 98 *bis* of 4 May 2011,[11]

CONSIDERING that the Chamber finds that it has reproduced in the title of 65 *ter* document 1084 in the annex to the Decision of 23 December 2010 the same error as

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Tribunal ("CLSS") or on specific conditions set out in the body of the decision (in paragraph 26 to 29) and in the annex.

[6] Request, paras 1 and 2.

[7] Request, paras 4 and 7.

[8] Request, para. 8.

[9] *See* Request, para. 2; Motion of 17 May 2010, annex, pp. 38 and 39.

[10] As the Prosecution points out (Request, paras 2 and 4), the Chamber did not express any reservations with respect to the admission of this document and did not admit it in part (annex to the Decision of 23 December 2010, p. 18).

[11] *See* Request, paras 5 and 6, referring to the "Oral Decision on the Motion for Acquittal Presented by the Defence, pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence", French transcript of 4 May 2011, pp. 16826-16886 (public hearing) ("Decision under Rule 98 *bis* of 4 May 2011"), p. 16861.

in the annex to the Motion of 17 May 2010 – by only citing one press article instead of three – and that this therefore concerns a formal error,[12]

CONSIDERING that the title of 65 *ter* document 1084 containing three press articles in the annex to the Decision of 23 December 2010 worded as follows:

1084	Newspaper article published in the Belgrade-based daily *Politika* on the Serbian Radical Party political rally held in Apatin (Vojovodina), entitled "Croats have no business staying in Serbia"	ADMISSION (deals with a fundamental issue in the Indictment)

should have been worded as follows:

1084	1) Newspaper article published in the Belgrade-based daily *Politika* on the Serbian Radical Party political rally held in Apatin (Vojovodina), entitled "Croats Have No Business Staying in Serbia", dated 5 April 1992. 2) Newspaper article published in the Belgrade-based daily *Politika* entitled "Šešelj Supports the Exchange of Population", dated 27 March 1992. 3) Newspaper article published in the Belgrade-based daily *Politika* entitled "Šešelj: The Serbs Will Not Accept the Jamahiriya", dated 15 March 1992.	ADMISSION (deals with a fundamental issue in the Indictment)

CONSIDERING that, with respect to the electronic version of Exhibit P1298[13] which the Prosecution seeks to upload on to the E-court system, the Chamber notes that the version containing three press articles in 65 *ter* document 1084 attached to the Motion of 17 May 2010 contained English translations that were not official CLSS translations,

CONSIDERING, therefore, that there should be an order not to upload the version of the 65 *ter* document attached to the Motion of 17 May 2010 – as requested by the Prosecution in its Request[14] - but to upload the original BCS versions of the three articles from the daily *Politika* dated 15 March 1992, 27 March 1992 and 5 April 1992, as well as the final CLSS translations into English,

[12] Decision of 23 December 2010, annex, p. 18.
[13] The Chamber finds that the current electronic version of this Exhibit in fact only contains the article from the daily *Politika* of 5 April 1992 and not the three articles from *Politika* dated 15 March 1992, 27 March 1992 and 5 April 1992.
[14] Request, para. 8.

FOR THE FOREGOING REASONS,

GRANTS IN PART the Request,

ORDERS that the title of 65 *bis* document 1084 in the annex to the Decision of 23 December 2010 shall henceforth be worded as follows:

1084	1) Newspaper article published in the Belgrade-based daily *Politika* on the Serbian Radical Party political rally held in Apatin (Vojovodina), entitled "Croats Have No Business Staying in Serbia", dated 5 April 1992. 2) Newspaper article published in the Belgrade-based daily *Politika* entitled "Šešelj Supports the Exchange of Population", dated 27 March 1992. 3) Newspaper article published in the Belgrade-based daily *Politika* entitled "Šešelj: The Serbs Will Not Accept the Jamahiriya", dated 15 March 1992.	ADMISSION (deals with a fundamental issue in the Indictment)

ORDERS the Prosecution to upload on to the E-court system the original BCS versions of the three articles from the daily *Politika* dated 15 March 1992, 27 March 1992 and 5 April 1992, as well as their final CLSS translations into English.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this sixth day of March 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

ANNEX: STATEMENT BY JUDGE FLAVIA LATTANZI

1. Considering that the Decision of 23 December 2010 presents my partly dissenting opinion on the admission of the following 65 *ter* documents: 210, 213, 458, 653, 997, 1024, 1083, 1084, 1132, 1305, 1358, 1766, 1996, 1998, 2021, 2024, 2025 and 2158,[15] I wish to specify by means of this statement that my dissent relating to document 1084 only concerned the article from the daily *Politika* of 5 April 1992 and not the articles of 15 and 27 March 1992.

/signed/
Judge Flavia Lattanzi

Done this sixth day of March 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

[15] Decision of 23 December 2010, para. 32.