



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-04-81-PT

Date: 27 September 2007

Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Pre-trial Judge

Registrar: Mr. Hans Holthuis

Order of: 27 September 2007

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC FILING

**DECISION REGARDING DEFENSE REQUEST FOR B/C/S TRANSCRIPT OF THE
ACCUSED'S STATEMENT**

The Office of the Prosecutor

Mr. Mark B. Harmon

Counsel for the Accused

Mr. James Castle

Mr. Novak Lukić

I, **Patrick Robinson**, Judge 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”), am seized of a request from the Defence initially made orally at the Status Conference held on 19 September 2007¹ and then followed with written submissions by the parties² as called for at the Status Conference³, and hereby issue my decision.

I. INTRODUCTION

1. On 6, 7, 8, 18, 19 and 20 December 2003, and again on 23, 24, 25, 26 and 27 January 2004, the Accused, Momčilo Perišić (“Accused”), was interviewed as a suspect pursuant to Rules 42 and 43 of the Tribunal’s Rules of Procedure and Evidence (“Rules”).⁴ As is required under Rule 43(iv), a copy of the recorded tape of the interviews conducted of the Accused was provided to him.⁵

2. The Defence now requests that a B/C/S transcript of the interview of the Accused be provided, arguing that the appearance of the interview of the Accused on the Rule 65 *ter* exhibit list (exhibit numbers 5096 – 5110) indicates the Prosecution intends to introduce a transcript of the interview into evidence and should, therefore, be provided in a language which the Accused understands.⁶ The Defence relies upon Rule 66 as support for its request.⁷ The Defence further submits: “. . . it is assumed the Prosecution is offering the written transcript of the accused’s statement under Rule 92 *bis* as proof of a fact other than by oral Evidence⁸ [*sic*].”

3. The Prosecution submits that there is “no provision in the Rules which require [*sic*] the Prosecution (or any other organ of the Tribunal) to transcribe into the native language of the Accused his own statement.”⁹ The Prosecution submits that it has met its obligations with respect to the statement of the Accused by providing the video tapes of the interview, and by re-disclosing to

¹ *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81, Transcript of Status Conference, 19 September 2007 (“Transcript”), at pp. 112-113.

² *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81, Defence Submission Concerning B/C/S Transcript of Accused’s Statement, 21 September 2007 (hereinafter “Defence Submission”); Prosecution’s Submissions in Respect of Preparing a Serbian Language Transcript of Interview, 21 September 2007 (hereinafter “Prosecution Submission”).

³ Transcript, at pp. 115 – 116.

⁴ Prosecution Submission, para. 3.

⁵ Although the Defence Submission is silent as to this point, it is so stated in the Prosecution Submission at para. 3. Additionally, in the Status Conference Transcript, the Defence Counsel acknowledges that the audio tape of the interview was provided to the Accused. Transcript, p. 112.

⁶ Defence Submission, para. 1.

⁷ *Ibid.*, para. 2.

⁸ *Ibid.*, para 3.

the Accused copies of these video tapes on 27 April 2005, along with an English transcript of the interview.¹⁰

II. DISCUSSION

4. Rule 43 details the obligations of the Prosecution when questioning a suspect. The Prosecution correctly notes the provisions of paragraph 43(iv) of that Rule which states:

(iv) A copy of the recorded tape will be supplied to the suspect or, if multiple recording apparatus was used, one of the original recorded tapes.

However, none of the submissions of the parties addresses paragraph 43(vi), which states:

(vi) [T]he tape shall be transcribed if the suspect becomes an accused.

This provision places an obligation upon the Prosecution to produce not only the tape recording, but also to produce a transcript of the interview of the suspect upon becoming an accused.

5. Moreover, Rule 66 states, in relevant part:

(A) Subject to the provisions of Rules 53 and 69, the Prosecution shall make available to the defence in a language which the accused understands

(i) within thirty days of the initial appearance of the accused, copies of the supporting material which accompanied the indictment when confirmation was sought *as well as all prior statements obtained by the Prosecutor from the accused* (emphasis added)[.]

6. When Rule 43(iv) and (vi) is read in conjunction with Rule 66(A)(i), therefore, once the Accused went from the status of being a suspect to the status of being an accused, the tape of his interview was required to be transcribed, and then that transcript was required to be disclosed to the Accused in a language he understands.

7. The Prosecution argues that to provide such a transcript in a language the Accused understands would be onerous, and would take up to five to six weeks of time, when other translations remain pending in this case. However, the fact that such an obligation may be onerous does not relieve the Prosecution of its obligation, especially when, as is the case here, the interview has been in the

⁹ Prosecution Submission, para. 6.

possession of the Prosecution for well over three years. It is consistent with the requirement of fairness in Article 20(1) of the Statute of the Tribunal ("Statute"), that a statement as fundamentally important as the statement of the Accused be provided to the Accused in a language he understands. This is particularly so where Rule 43(vi) requires that a transcript be made once a suspect becomes an Accused. Further, both the letter and spirit of the Rules mandate that, if the Prosecution is going to conduct interviews of a suspect whom it eventually indicts, then it should be required to provide that Accused with a copy of the required transcript in a language he or she understands.¹¹

III. DISPOSITION

8. For the foregoing reasons, consistent with Articles 20 and 21 of the Statute, the Prosecution is therefore **ORDERED** pursuant to Rules 43(vi), 54 and 66(A)(i) of the Rules to make available to the Accused in a language he understands a copy of the transcript of the interview of the Accused conducted on 6, 7, 8, 18, 19 and 20 December 2003, and 23, 24, 25, 26 and 27 January 2004 no later than 15 December 2007.

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



Patrick Robinson
Pre-Trial Judge

Dated this 27th day of September 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁰ *Ibid.*, para. 4.

¹¹ *See Prosecutor v. Delalić, et al.*, Case No. IT-96-21-T, Decision on the Motion on Presentation of Evidence by the Accused, Esad Landžo, 1 May 1997, paras. 17 – 20.