



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

Case No. IT-04-81-T

Date: 7 October 2008

Original: English

IN TRIAL CHAMBER I

Before:

**Judge Bakone Justice Moloto, Presiding Judge
Judge Pedro David
Judge Michèle Picard**

Registrar:

Mr. Hans Holthuis

Decision of:

7 October 2008

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC

**DECISION ON MOTION FOR RECONSIDERATION OF
THE TRIAL CHAMBER'S DECISION OF
1 SEPTEMBER 2008**

The Office of the Prosecutor

Mr. Mark Harmon

Counsel for the Accused

Mr. Novak Lukić
Mr. Gregor Guy-Smith

TRIAL CHAMBER I (“Trial 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”) is seised of the “Motion for Reconsideration of the Trial Chamber’s Decision of 1 September 2008, with Confidential Annexes”, filed partly confidentially by the Prosecution on 17 September 2008 (“Motion”) and hereby renders its Decision.

I. PROCEDURAL HISTORY

1. On 17 July 2008, the Prosecution filed its partly confidential “Motion for Judicial Notice of Srebrenica Intercepts with Confidential Annexes” (“Original Motion”), whereby it requested that the Trial Chamber take judicial notice of 57 intercepts relating to 27 intercepted conversations which took place during the period relevant to the crimes in Srebrenica alleged in the Indictment.¹

2. On 1 September 2008, the Trial Chamber rendered its “Decision on Prosecution’s Motion for Judicial Notice of Srebrenica Intercepts, with Confidential Annexes” (“Impugned Decision”), in which it granted the Original Motion in part, taking judicial notice of some of the intercepts and refusing to take judicial notice of the remaining.²

II. SUBMISSIONS

3. In the present Motion, the Prosecution seeks to reconsider the following three aspects of the Impugned Decision:

- (i) refusal to take judicial notice of some intercepts on the basis that they were duplicates (“Aspect 1”);³
- (ii) refusal to take judicial notice of two intercepts on the ground that they were not provided to the Trial Chamber (“Aspect 2”);⁴ and
- (iii) refusal to take judicial notice of one intercept for the reason that the description thereof provided to the Trial Chamber was incorrect (“Aspect 3”).⁵

¹ Motion for Judicial Notice of Srebrenica Intercepts with Confidential Annexes, 17 July 2008, para. 3; Corrigendum to Annexes A and B to Prosecution’s Motion for Judicial Notice of Srebrenica Intercepts Filed on 17 July 2008, With Confidential Amended Annexes, 11 August 2008.

² Intercepts judicially noticed through the Impugned Decision are as follows: Intercepts 1, 2, 4, 5, 6, 7, 9, 10, 12, 13, 14, 17, 19, 20, 21, 23, 24, 28, 29, 30, 31, 32, 34, 36, 37, 40, 43, 49, 50, and 56.

³ Motion, para. 2 and Annex A, referring to the Impugned Decision, para. 10 and fn 20.

⁴ Motion, para. 3 and Annex B, regarding Intercepts 48 and 51.

⁵ Motion, para. 3 and Annex B, regarding Intercept 8.

4. With respect to Aspect 1, the Prosecution submits that “[w]hile each set of identical documents identified by the Trial Chamber relates to the same intercepted conversation, each set comprises different versions of the record of that conversation, namely a handwritten version of the intercepted conversation, and one or more typed versions of the intercepted conversion.”⁶ The Prosecution argues that both versions of each intercepted conversation are crucial as the “multiple versions of the intercepts illustrate [the] meticulous process by which the intercepted conversations were captured” and recorded by the Bosnian authorities and “corroborates the authenticity of the intercepts”.⁷ The Prosecution also submits that due to the multiplicity of versions of the same conversation, “in certain instances, the version of the intercept of which judicial notice was taken does not include information that is included in those versions which were not judicially noticed”.⁸

5. The Prosecution further submits that the handwritten versions are signed by the operators who took the record and therefore would eliminate the need to call individual operators to authenticate the documents, and that the typewritten versions corroborate, and contain amendments to, the handwritten documents.⁹ In the Annex A to the Motion, the Prosecution provides a more detailed analysis of each of the documents identified by the Trial Chamber as duplicates.

6. On 26 September 2008, the Defence informed the Trial Chamber that it would not respond to the Motion.¹⁰

III. DISCUSSION

7. According to the jurisprudence of the Tribunal, the Trial Chamber has inherent discretionary power to reconsider a previous decision if there has been a clear error of reasoning or if particular circumstances exist that justify reconsideration in order to prevent an injustice.¹¹ Such circumstances may include new facts or arguments that have arisen since the issuance of a decision.¹²

⁶ Motion, para. 5.

⁷ Motion, para. 6.

⁸ Motion, para. 9.

⁹ Motion, paras. 10, 11.

¹⁰ Email Correspondence of 26 September 2008,

¹¹ See *Prosecutor v. Milan Martić*, Case No. IT-95-11-A, Decision on Motion for Reconsideration of Oral Decision Issued on 29 February 2008, 10 March 2008 para. 5; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR108bis.3, Confidential Decision on Request of Serbia and Montenegro for Review of the Trial Chamber’s Decision of 6 December 2005, 6 April 2006, para. 25, fn. 40; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Motion for Reconsideration of Oral Decision Dated 24 April 2007 Regarding Evidence of Zoran Lilić, 27 April 2007, para. 4.

¹² See *Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, Decision on the Prosecution’s Motion for Reconsideration of the Chamber’s Decision on Admission of Documentary Evidence, 13 February 2008 (“*Delić Decision*”), para. 9; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Second Decision on the Admission of Documentary Evidence

8. In relation to Aspect 1, the Trial Chamber notes that in the Original Motion, the Prosecution explained neither why there are a number of intercepts which appear to be identical on their face, nor the differences among them. Therefore, based on the information available to the Trial Chamber,¹³ it concluded that some of the intercepts were duplicates. In the present Motion, the Prosecution provides the Trial Chamber with more information, including detailed explanation of the differences among the intercepts which look alike and the evidential importance thereof, while admitting that some are indeed duplicates.¹⁴ Based on this information, the Trial Chamber is satisfied that those identified by the Prosecution for reconsideration are indeed not duplicates.¹⁵ The Trial Chamber emphasises that from the outset, the Prosecution should have provided sufficient information so as to enable the Trial Chamber to discern the difference of each intercept and the significance thereof to the Prosecution's case. However, the Trial Chamber also takes into account the Prosecution's submission that the taking of judicial notice of the said intercepts would relieve it of calling some witnesses and thereby expedite the trial, and the particular circumstances of this case involving a considerably large number of witnesses. In light of these factors, the Trial Chamber finds that the additional information and explanation provided by the Prosecution justify the requested reconsideration in order to prevent unnecessary prolongation of the case. The Trial Chamber further recalls its finding in the Impugned Decision that except for the issue of duplicates, the intercepts in question meet all the criteria for judicial notice of documentary evidence under Rule 94 (B).¹⁶

9. With respect to Aspects 2 and 3, the Trial Chamber recalls that its ruling was based on the impropriety of the filing, and not on substantive grounds. The Trial Chamber did not take judicial notice of the relevant intercepts since the Trial Chamber was unable to examine them due to the lack of their translation or the existence of the risk that the intercept proffered to the Trial Chamber was not that of which the Prosecution asked judicial notice to be taken. As the Trial Chamber did not examine the substance of these intercepts, it considers the part of the Motion concerning Aspects 2 and 3 to constitute a new motion for judicial notice of the relevant intercepts rather than a

submitted by the Prosecution (Dretelj and Gabela), 18 January 2008 (signed 12 December 2007), p. 4 fn. 4 with further references.

¹³ This consists of English translations of the intercepts provided by the Prosecution to the Trial Chamber's legal staff, and the Annexes to the Original Motion containing descriptions of the intercepts, their Rule 65 *ter* numbers, their ERN-numbers and their exhibit numbers in other cases in which the intercepts have been admitted.

¹⁴ See Motion paras 5-11 and Annex A to the Motion. The Prosecution also provided the Trial Chamber's legal staff with the B/C/S originals of the intercepts.

¹⁵ Intercepts 3, 11, 15, 22, 25, 26, 27, 33, 35, 38, 39, 41, 42, 44, 45, 46, 47 and 52. The Prosecution does not specify in Annex A to the Motion whether it requests reconsideration in relation to Intercept 45, although it does so in relation to the other intercepts. In light of paras 8 and 12 of the Motion, the Trial Chamber understands that the Prosecution seeks reconsideration in respect of Intercept 45.

¹⁶ Impugned Decision, paras 9, 11.

motion for reconsideration.¹⁷ The Trial Chamber recalls in this respect the legal standards for the taking of judicial notice of documentary evidence pursuant to Rule 94 (B) as set out in the Impugned Decision.¹⁸ As the concerned intercepts are relevant to issues in the current proceedings, sufficiently specified, and have been admitted into evidence in some prior trials,¹⁹ the Trial Chamber is satisfied that all the criteria are met to take judicial notice of these intercepts.²⁰

10. Finally, the Trial Chamber notes that as regards Intercepts 36 and 43, the Prosecution submits that the ERN numbers of their B/C/S versions mentioned in the Original Motion were incorrect, and “requests reconsideration”.²¹ The Trial Chamber regards this to be clerical errors, and accepts the corrections made by the Prosecution in the present Motion.

IV. DISPOSITION

11. For the reasons set forth above, and pursuant to Rules 54 and 94(B) of the Rules, the Trial Chamber **GRANTS** the Motion, and **DECIDES** as follows:

- (1) The Trial Chamber takes judicial notice of the following intercepts: 3, 8, 11, 15, 22, 25, 26, 27, 33, 35, 38, 39, 41, 42, 44, 45, 46, 47, 48, 51 and 52;²²
- (2) The Prosecution shall file a consolidated corrected list of all the intercepts judicially noticed through the Impugned Decision and the present Decision, grouping intercepts which record the same conversation; and

¹⁷ See *Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, Decision on the Prosecution’s Motion for Reconsideration of the Chamber’s Decision on Admission of Documentary Evidence, 13 February 2008, para. 11.

¹⁸ Impugned Decision, paras 4-7.

¹⁹ Annex B to the Motion.

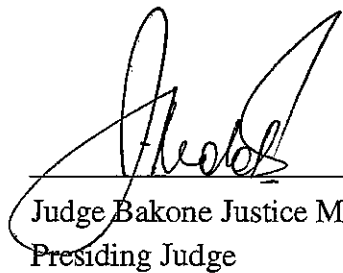
²⁰ Intercepts 8, 48 and 51.

²¹ Annex A to the Motion, p. 13.

²² The Trial Chamber has already taken judicial notice of Intercepts 36 and 43 in the Impugned Decision.

REQUESTS the Registry to assign exhibit numbers to the said consolidated corrected list and all the intercepts judicially noticed through the Impugned Decision and the present Decision.

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



Judge Bakone Justice Moloto
Presiding Judge

Dated this seventh day of October 2008

At The Hague

The Netherlands

[Seal of the Tribunal]