



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: 26 November 2008

Original: English

**IN TRIAL CHAMBER I**

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

**Registrar:** Mr. Hans Holthuis

**Decision of:** 26 November 2008

**PROSECUTOR**

v.

**MOMČILO PERIŠIĆ**

***PUBLIC***

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**DECISION ON PROSECUTOR'S MOTION TO  
AUGMENT THE RULE 65 *TER* WITNESS SUMMARY  
IN RESPECT OF WITNESS BRETTON RANDALL**

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**The Office of the Prosecutor**

Mr. Mark Harmon  
Mr. Daniel Saxon

**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”);

**BEING SEISED** of “Prosecutor’s Motion to Augment the Rule 65*ter* Witness Summary in respect of Witness Bretton Randall”, filed publicly on 10 November 2008 (“Motion”), wherein the Prosecution seeks to augment the Rule 65*ter* witness summary in respect of Witness Bretton Randall;

**NOTING** Rule 65*ter*(E) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), according to which the Pre-Trial Judge shall order the Prosecution to file the list of witnesses it intends to call, including summaries of each witness’s expected testimony, as well as the list of exhibits it intends to offer;

**NOTING** that the Prosecution filed its list of witnesses and witness summaries and exhibit list on 23 February 2007;<sup>1</sup>

**NOTING** that the revised witness list, filed by the Prosecution on 29 September 2008, no longer includes Allen Borelli;<sup>2</sup>

**NOTING** that the Prosecution proposes to augment witness Bretton Randall’s Rule 65*ter* summary to include references to two categories of documents that would have been introduced through witness Allen Borelli and to two categories of documents not included in Bretton Randall’s original Rule 65*ter* summary;<sup>3</sup>

**NOTING** that the Trial Chamber is not in possession of a list of specific documents to be introduced through Bretton Randall and that such documents must be listed on the Prosecution’s Rule 65 *ter* exhibit list;<sup>4</sup>

**RECALLING** that if such documents are not listed on the Rule 65 *ter* exhibit list, the Trial Chamber may allow the documents to be admitted into evidence under *exceptional* circumstances

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<sup>1</sup> Prosecution’s Rule 65 *ter* Submission, 23 February 2007.

<sup>2</sup> Prosecution’s Submission of Revised Witness List, public with Confidential Annex A, 29 September 2008.

<sup>3</sup> Motion, para. 3.

<sup>4</sup> See Trial Chamber’s Clarification on Whether the Prosecution Must Request Leave to Amend the Rule 65 *ter* Exhibit List, 17 November 2008, para. 12. The Motion is unclear whether all the concerned documents are on the Prosecution’s Rule 65 *ter* exhibit list.

where the right of the Accused to have adequate time to prepare for his defence has not been prejudiced, good cause has been shown, and it is in the interests of justice to do so;<sup>5</sup>

**NOTING** “Mr. Perišić’s Response to Prosecution’s Supplemental 65*ter* Summary for Witness Bretton Randall”, filed publicly on 24 November 2008 (“Response”), in which the Defence opposes the Motion on the grounds that Mr. Randall is not qualified to discuss the documents that would have been introduced through Allen Borelli;<sup>6</sup>

**CONSIDERING** that it is for the Prosecution to determine which evidence should be led through a particular witness, and that the Defence is free to challenge Mr. Randall’s qualifications during cross-examination;

**CONSIDERING** that the revision of Mr. Randall’s witness summary provides an appropriate basis for the articulation of his evidence during proceedings, augmenting his witness summary would not prejudice the fairness of proceedings and a revised version of his witness summary has been provided with sufficient time for the Defence to prepare its cross-examination of witness Bretton Randall;

**FINDING** that, due to the amount of time intended to be used for the examination-in-chief of Bretton Randall,<sup>7</sup> it is appropriate that the Prosecution submit a list of these documents ten working days before the start of testimony, instead of the standard five day requirement set out in the “Guidelines on the Admission and Presentation of Evidence and Conduct of Counsel in Court”;<sup>8</sup>

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<sup>5</sup> Trial Chamber’s Clarification on Whether the Prosecution Must Request Leave to Amend the Rule 65 *ter* Exhibit List, 17 November 2008, para. 13.

<sup>6</sup> Response, paras 6-9.

<sup>7</sup> Motion, para. 7.

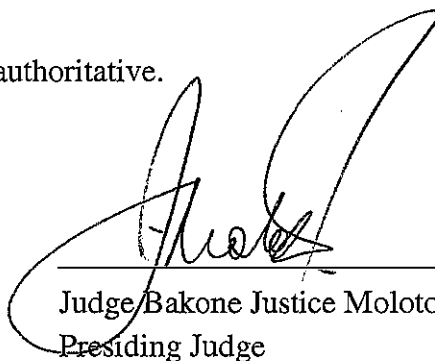
<sup>8</sup> Order for Guidelines on the Admission and Presentation of Evidence and Conduct of Counsel in Court, 29 October 2008, Annex, para. 1.

**PURSUANT TO** Rules 54 and 65 *ter* of the Rules

**HEREBY ALLOWS** the Prosecution to augment the Rule 65*ter* witness summary in respect of witness Bretton Randall and

**ORDERS** that the Prosecution shall submit a list of the documents to be used for the examination-in-chief of Bretton Randall 10 (ten) working days before the start of his testimony.

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



Judge Bakone Justice Moloto  
Presiding Judge

Dated this twenty-sixth day of November 2008

At The Hague

The Netherlands

**[Seal of the Tribunal]**