

**UNITED
NATIONS**



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: 15 December 2009

Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr. John Hocking

Decision of: 15 December 2009

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC

**DECISION ON RECONSIDERATION OF THE TRIAL
CHAMBER'S ORAL ORDER ON THE FILING OF THE
RULE 65 *TER* (G) LIST**

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 the “Mr. Perišić Motion for Reconsideration of the Trial Chamber’s Oral Order on the Filing of the 65*ter* (G) List”, filed publicly on 10 December 2009 (“Motion”), wherein the Defence requests the Trial Chamber to reconsider its oral order of 12 November 2009 (“Oral Ruling”), setting the date limit for the Defence’s compliance with its obligations pursuant to Rule 65*ter* (G) of the Rules of Procedure and Evidence (“Rules”) on 15 December 2009;¹

NOTING that the Defence submission that, since to date the Prosecution has not closed its case, it “would not be in a position to appropriately assess the evidence against it, and thus, the evidence it intends on leading”;²

NOTING that the Defence requests that the Trial Chamber allows it to file its Rule 65 *ter*(G) lists, as described in the Oral Ruling, within 72 hours of the Prosecution formal notification of the closure of its case;³

NOTING the “Prosecution Preliminary Submission regarding Defence Motion for Reconsideration of the Trial Chamber’s Oral Order on the Filing of the 65 *ter*(G)”, filed publicly on 11 December 2009 (“Response”), wherein it states that it will “not oppose a temporary vacation of the 15 December disclosure date to a date which allows sufficient time for the Prosecution to file its response and the Chamber to determine the Motion;”⁴

NOTING further that the Prosecution submits that it remains concerned that it receives the Rule 65 *ter* material with sufficient time to prepare for the Defence case;⁵

NOTING that Rule 65 *ter*(G) of the Rules provides in its relevant part that

[...] *after the close of the Prosecutor’s case* and before the commencement of the defence case, the pre-trial Judge shall order the defence to file the following:

(i) a list of witnesses the defence intends to call [...]

(ii) a list of exhibits the defence intends to offer in its case, stating where possible whether the Prosecutor has any objection as to authenticity. The defence shall serve on the Prosecutor copies of the exhibits so listed.⁶

¹ See Hearing of 12 November 2009, T. 9736-9738.

² Motion, para 5.

³ Motion, para 6.

⁴ Response, para. 1. The Prosecution submits that it wishes to postpone a more comprehensive response within the two weeks time limit provided by the Rules.

⁵ Response, para. 2.

⁶ Emphasis added.

NOTING that a 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 and that such circumstances may include new facts or arguments that have arisen since the issuance of a decision;⁷

CONSIDERING that the fact that the Prosecution has not officially closed its case to date constitutes a particular circumstance which justifies the reconsideration of the Oral Ruling as far as the obligations of the Defence pursuant to Rule 65 *ter*(G) are concerned;

CONSIDERING that, once it has officially closed its case, the Prosecution may submit its concerns as to the time needed for its preparation of the Defence case and, if good cause is shown and in light of its discretion, the Trial Chamber will consider how to appropriately amend its Oral Ruling in its relevant parts.

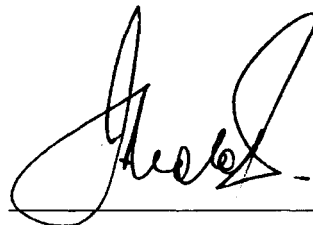
PURSUANT TO Rules 54 and 65 *ter*(G) of the Rules;

HEREBY GRANTS Motion in part and

AMENDS its Oral Ruling in relation to the date limit of 15 December 2009, allowing the Defence to file its Rule 65 *ter* (G) lists within 48 hours of the Prosecution formal notification of the closure of its case;

AFFIRMS the Oral Ruling in its remaining parts.

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



Judge Bakone Justice Moloto
Presiding Judge

Dated this fifteenth day of December 2009

At The Hague

The Netherlands

[Seal of the Tribunal]

⁷ See, e.g. *Prosecutor v. Perišić*, Case No. IT-04-81-T, Decision on Motion for Reconsideration of the Trial Chamber's Decision of 1 September 2008, 7 October 2008, para. 7.