



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: 1 December 2010
Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr. John Hocking

Decision of: 1 December 2010

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC

**DECISION ON DEFENCE MOTION TO AMEND
65 TER LIST AND SECOND BAR TABLE**

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 “Defence Motion to Amend 65 *ter* List and Second Motion for the Admission of Evidence from the Bar Table”, filed publicly with public Annexes A and B on 8 November 2010 (“Motion”), and hereby renders its Decision.

I. SUBMISSIONS

1. In its Motion, the Defence requests leave to amend its Rule 65 *ter* exhibit list (“65 *ter* List”) with 35 additional documents listed in Annex B (“Proposed Documents”). It further requests that the Trial Chamber admit into evidence through the bar table the documents listed in Annex A, which are already on the Defence’s 65 *ter* List, and Annex B (collectively “Proposed Exhibits”).¹
2. The Defence submits that all the Proposed Exhibits are relevant and of probative value.²
3. As for the amendment of the 65 *ter* List, the Defence avers that the documents listed in Annex B came to the attention of the Defence during its case, either through a search of the electronic disclosure system (“EDS”) or by disclosure of the Prosecution.³
4. The Prosecution does not object to the Motion.⁴

II. APPLICABLE LAW

5. The Trial Chamber recalls its previous decisions setting forth the applicable law in relation to the amendment of a Rule 65 *ter* exhibit list⁵ and the admission of the documents from the bar table.⁶

III. DISCUSSION

(a) Amendment of the 65 *ter* List

6. The Trial Chamber first notes that the Proposed Documents consist of 19 excerpts from the military diaries of Ratko Mladić (“Mladić Diaries”)⁷ and other miscellaneous documents⁸. After

¹ Motion, para. 5.

² Motion, para. 4; Annexes A and B.

³ Motion, para. 3.

⁴ Prosecution Response to Defence Bar Table Motion dated 4 November 2010 and Defence Motion to Amend 65^{ter} List and Second Bar Table Motion dated 8 November 2010, filed publicly on 19 November 2010 (“Response”), para. 13.

⁵ Decision on Prosecution Motions for Leave to File a Third Supplemental Rule 65 *ter* Exhibit List with Annex A and a Fourth Supplemental Rule 65 *ter* Exhibit List with Annex A, 30 May 2008 (confidential), p. 4.

reviewing the Proposed Documents, the Trial Chamber finds that they relate to issues relevant to the Indictment such as the amount of assistance provided to the VRS by the VJ,⁹ the situation in Sarajevo in January 1994,¹⁰ the fall of Srebrenica,¹¹ the negotiations over the release of the French Pilots,¹² the role of the international community in resolving the crisis in the former Yugoslavia,¹³ the RS leadership's review of the Dayton peace process¹⁴ and the role and character of the Accused.¹⁵ The Trial Chamber is also satisfied of their probative value.

7. As to whether the moving Party has shown good cause for amending the 65*ter* List, the Trial Chamber notes that documents numbered 07063D to 07068D were disclosed to the Defence by the Prosecution on 12 July 2010,¹⁶ after the Defence filed its Rule 65 *ter* List. The Trial Chamber also notes that the documents related to the Mladić Diaries were not disclosed by the Prosecution to the Defence until 9 April 2010.¹⁷ The Trial Chamber notes however that the Defence did not sufficiently explain why the remaining documents contained in Annex B were not included on its original 65 *ter* List.

8. The Trial Chamber notes that the Prosecution has not objected to any of the Proposed Exhibits in the Defence's Motion.¹⁸ The Trial Chamber therefore finds that at this stage of the proceedings it is in the interests of justice to grant the Defence request for leave to amend its 65 *ter* List for all of the Proposed Documents even though it considers that the Defence did not properly argue its motion by showing good cause.

(b) Admission of Documents through the Bar Table

(i) Annex A

9. In relation to Proposed Exhibit 65 *ter* numbers 00815 and 00820, the Defence requests that the Trial Chamber reconsider its oral decision of 6 September 2010, which upheld the Prosecution's objection to the admission into evidence of the two documents or alternatively to admit them

⁶ See e.g. Decision on Prosecution's First Bar Table Motion, 5 October 2009 (confidential), paras 17-20.

⁷ 65 *ter* numbers 07074D-07091D, Motion, Annex B, pp 4-6.

⁸ 65 *ter* numbers 07059D-07073D and 01271D, Motion, Annex B, pp. 7-9.

⁹ 65 *ter* numbers 07075D, 07076D, 07078D, 07079D, 07081D, Motion, Annex B, pp 4, 5.

¹⁰ 65 *ter* number 07077D, Motion, Annex B, p. 4.

¹¹ 65 *ter* number 07083D, Motion, Annex B, p. 5.

¹² 65 *ter* numbers 07084D to 07086D, and 07089D, Motion, Annex B, p. 6.

¹³ 65 *ter* numbers 0704D, 07080D, 07082D, 07084D, Motion, Annex B, pp 4-6.

¹⁴ , 65 *ter* number 07091D, Motion, Annex B, p. 6.

¹⁵ 65 *ter* number 1271, Motion, Annex B, p. 9.

¹⁶ Motion, Annex B, pp 7-9.

¹⁷ Decision on Motion to Reopen the Prosecution Case and Tender Documents Through the Bar Table, 4 November 2010, para. 1

¹⁸ Response, para. 13.

through the bar table.¹⁹ The Trial Chamber recalls that it has an 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.²⁰ The Trial Chamber notes that it upheld the Prosecution's objection to the introduction of the exhibits through the testimony of Defence witness General Radojica Kadijević because the Defence was unable to demonstrate a nexus between the witness, a general in the VJ, and the documents, records of receipts for ammunition provided by the Republic of Serbia Ministry of Defence.²¹ The Trial Chamber does not consider that there has been a clear error of reasoning nor that particular circumstances exist that justify reconsideration in order to prevent an injustice. The Trial Chamber however finds that for the purpose of their admission through the bar table, Proposed Exhibit 65 *ter* numbers 00815 and 00820 are relevant and have sufficient probative value.

10. Proposed Exhibits P01106, P01107 and P01109 are open source documents initially marked for identification and later withdrawn by the Prosecution.²² The Defence now seeks their admission into evidence as they relate to the humanitarian and military situation in Srebrenica. The Trial Chamber finds them to be relevant and of probative value and admits them into evidence.

11. With regard to the admission of pages 50, 52, 53, 54 of exhibit P312, which are transcript pages of the 50th Session of the BiH SDS, the Trial Chamber notes that due to an administrative oversight, only certain pages of the Session transcript appeared as being admitted into evidence when in fact the complete transcript had been admitted on 12 March 2009.²³ The situation was corrected²⁴ and the Trial Chamber therefore finds that the Defence's request in relation to exhibit P312 is now moot.

12. Proposed Exhibit 65 *ter* number 01145D does not have its English translation. The Trial Chamber therefore defers its ruling on its admissibility until a translation is provided.

(ii) Annex B

13. The Trial Chamber is satisfied that Proposed Exhibit 65 *ter* numbers 01271, 07059D to 07065D, 07068D to 07072D and the excerpts from the Mladić Diaries, Proposed Exhibit 65 *ter*

¹⁹ Motion, Annex A.

²⁰ See e.g. Decision on Motion for Reconsideration of the Trial Chamber's Decision of 1 September 2008, 7 October 2008, para. 7.

²¹ T. 13566, 13569 and 13585

²² Decision on Prosecution's Motion to Remove "Marked for Identification" Designation of Exhibits and to Withdraw Additional Exhibits", 20 November 2009, p. 2; Prosecution's Motion to Remove "Marked for Identification" Designation of Exhibits and to Withdraw Exhibits with Annex A, filed publicly on 9 November 2009. Proposed Exhibits P01107 and P01109 are dated 13 July 1995 and 14 July 1995, respectively. Proposed Exhibit P01106 does not contain a date of publication but from its content appears to refer to the time right after the fall of Srebrenica.

²³ Oral Decision of 12 March 2009, T. 1441.

numbers 07074D to 07091D, are relevant and have sufficient probative value. These documents are therefore admitted into evidence.²⁵

14. Proposed Exhibit 65 *ter* numbers 07066D and 07067D are two “HVO Report[s] related to HVO Kiseljak Command of Ivica Rajic” and bear no seal, no stamp and are unsigned. The Trial Chamber is of the view that the Defence has failed to sufficiently show the reliability and authenticity of these documents. Proposed Exhibit 65 *ter* numbers 07066D and 07067D are therefore not admitted into evidence.

15. Proposed Exhibit 65 *ter* number 07073D is the “Interview Statement of Nenad Pavlović, 22 April 1995”. The document is signed by the recording clerk and another individual, however not by Nenad Pavlović. In these conditions, the Trial Chamber is not satisfied as to the reliability or authenticity of the document and Proposed Exhibit 65 *ter* number 07073D is not admitted into evidence.

IV. DISPOSITION

16. For the reasons set out above and pursuant to Rules 65 *ter* and 89 of the Rules of Procedure and Evidence, the Trial Chamber:

GRANTS the Motion in part;

ALLOWS the Defence to amend its Rule 65 *ter* exhibit list by adding 01271, 07059D, 07060D, 07061D, 07062D, 07063D, 07064D, 07065D, 07066D, 07067D, 07068D, 07069D, 07070D, 07071D, 07072D, 07073D, 07074D, 07075D, 07076D, 07077D, 07078D, 07079D, 07080D, 07081D, 07082D, 07083D, 07084D, 07085D, 07086D, 07087D, 07088D, 07089D, 07090D, and 07091D;

ADMITS the following Proposed Exhibits into evidence:

P01106, P01107, P01109 and Rule 65 *ter* numbers 00815, 00820, 01271, 07059D, 07060D, 07061D, 07062D, 07063D, 07064D, 07065D, 07068D, 07069D, 07070D, 07071D, 07072D, 07074D, 07075D, 07076D, 07077D, 07078D, 07079D, 07080D, 07081D, 07082D, 07083D, 07084D, 07085D, 07086D, 07087D, 07088D, 07089D, 07090D, and 07091D;

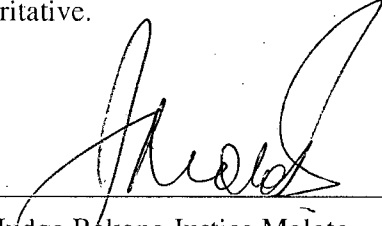
DENIES admission of Rule 65 *ter* numbers 07066D, 07067D, and 07073D;

²⁴ Correction in E-Court to Exhibit P00312, Internal Memorandum from CMSS, filed publicly on 24 November 2010.

DEFERS its ruling as to the admissibility of Rule 65 *ter* number 01145D; and

REQUESTS the Registry to assign exhibit numbers to the Proposed Exhibits admitted into evidence.

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



Judge Bakone Justice Moloto
Presiding Judge

Dated this first day of December 2010

At The Hague

The Netherlands

[Seal of the Tribunal]

²⁵ The Trial Chamber notes that Proposed Exhibit 65 *ter* number 07084D contains two separate documents, one referring to a Mladić Diary entry of 15 July 1995 and the other to a Mladić Diary entry of 22 September 1995. The two documents shall be admitted as distinct exhibits.