

UNITED
NATIONS

IT-04-81-T
D26738-D26736
02 December 2010

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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: 2 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: 2 December 2010

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC

**DECISION ON DEFENCE MOTIONS TO AMEND ITS
RULE 65 *TER* WITNESS LIST AND TO ADMIT
EVIDENCE PURSUANT TO RULE 92 *BIS***

The Office of the Prosecutor

Mr. Mark Harmon

Counsel for the Accused

Mr. Novak Lukić
Mr. Gregor Guy-Smith

Case No. IT-04-81-T

2 December 2010

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 “Defence Motion to Amend its Rule 65 *ter* Witness List and Motion for the Admission of Evidence Pursuant to Rule 92 *bis* with Public Annex A” filed publicly on 12 November 2010 (“Motion”), whereby the Defence requests leave to amend its Rule 65 *ter* Witness List and the admission into evidence of the written statement of Mr. Thomas Hansen (“Proposed Statement”);¹

NOTING the Defence’s submission that Mr. Hansen was inadvertently omitted from the Defence 65 *ter* list – a fact which was only discovered during the summer recess;²

NOTING the Defence submits that the Proposed Statement is relevant and of probative value as it furnishes evidence as to the shelling incident in Sarajevo on 18 June 1995, alleged in the Indictment as scheduled Incident A-7;³

NOTING the Defence further submits that, by requesting the admission of Mr. Hansen’s evidence through Rule 92 *bis*, no additional court time will be necessary and the trial will not be prolonged in any fashion;⁴

NOTING the “Prosecution’s Response to Defence Motion to Amend its Rule 65 *ter* Witness List and Motion for the Admission of Evidence Pursuant to Rule 92 *bis* dated 12 November 2010” filed publicly on 26 November 2010 (“Response”), in which the Prosecution does not oppose the Motion and notifies the Trial Chamber that it does not seek to cross-examine Mr. Hansen;⁵

RECALLING by reference the requirements pertaining to the amendment of the Rule 65 *ter* Witness List and to the admission of evidence under Rule 92 *bis* as set out in previous decisions of this Trial Chamber;⁶

¹ Motion, para. 1.

² Motion, para. 7.

³ Motion, paras 3, 6.

⁴ Motion, para. 8.

⁵ Response, paras 2-3.

⁶ See First Decision on Prosecution Motion for Leave to Amend its Rule 65 *ter* List, 6 October 2009, para. 7; Decision on Prosecution Motion for Leave to File a Sixth Supplemental Rule 65 *ter* Exhibit List, 3 November 2008; Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis*, 2 October 2008, paras 10-16; see also *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-T, Decision on Prosecution’s Motion for Leave to Amend The Rule 65 *ter* Witness List And For Disclosure of An Expert Witness Report Pursuant To Rule 94 *bis*, 3 August 2010, paras 4-5; *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Prosecution’s Motions for Admission of Written Evidence Pursuant to Rule 92 *bis*, 7 October 2010, paras 29-38.

FINDING that the Proposed Statement is *prima facie* relevant and of probative value and that it is in the interests of justice to allow the amendment of the Rule 65 *ter* Witness List;

CONSIDERING that the Proposed Statement does not go to proof of the acts and conduct of the Accused as charged in the Indictment;

CONSIDERING that the Proposed Statement is relevant and of probative value, as it relates to the scheduled incident A7, and that there are no factors militating against its admission;

CONSIDERING that the Proposed Statement is duly certified within the meaning of Rule 92 *bis* (B) of the Rules;

FOR THE FOREGOING REASONS and **PURSUANT TO** Rules 65 *ter*, 89 and 92 *bis* of the Rules, the Trial Chamber hereby:

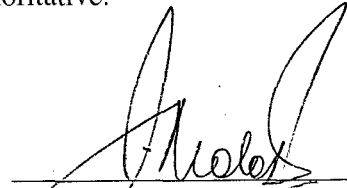
GRANTS the Motion;

GRANTS the Defence leave to add Mr. Thomas Hansen to the Defence Rule 65 *ter* Witness List;

ADMITS into evidence the Proposed Statement of Mr. Thomas Hansen; and

REQUESTS the Registry to assign an exhibit number to the Proposed Statement admitted into evidence.

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



Judge Bakone Justice Moloto
Presiding Judge

Dated this second day of December 2010

At The Hague

The Netherlands

[Seal of the Tribunal]