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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: 4 February 2011

Original: English

IN TRIAL CHAMBER I

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

Registrar: **Mr. John Hocking**

Decision of: **4 February 2011**

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC

DECISION ON DEFENCE SUBMISSION REGARDING TRIAL CHAMBER'S DECISION ON DEFENCE FIRST AND SECOND BAR TABLE MOTIONS

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 "Mr. Perišić's Submission Regarding Decision on Defence Motion for the Admission of Evidence from the Bar Table and on Defence Motion to Amend 65*ter* List and Second Bar Table" filed publicly on 20 January 2011 ("Motion") and hereby renders its Decision.[1]

I. PROCEDURAL BACKGROUND

1. On 1 December 2010, the Trial Chamber issued its "Decision on Defence Motion for the Admission of Evidence from the Bar Table" ("Defence First Bar Table Decision") wherein it deferred its ruling on the admissibility of the following 65*ter* documents: 00011D, 00286D, 00499D, 00523D, 00554D, 01104D, 01261D, 02004D, 02013D, 02038D, 02141D, 05012D, 05015D, 06001D, 06002D, 06003D, 06464D and 07907.[2] The Trial Chamber admitted 65*ter* document 00993D into evidence but ordered the Defence to upload a better copy of its original B/C/S version.[3]

2. On the same day, the Trial Chamber issued its "Decision on Defence Motion to Amend its 65*ter* List and Second Bar Table Motion" ("Defence Second Bar Table Decision") wherein it deferred the ruling on the admissibility of Defence 65*ter* document 01145D pending the provision of the English translation.[4]

3. The Prosecution does not oppose the Motion.[5]

II. APPLICABLE LAW

4. The law on admission of the documents from the bar table has been set by the Trial Chamber in its previous decisions.[6]

[1] The Trial Chamber notes that the Motion was received by the Registry on 19 January 2011 but filed on 20 January 2011.
[2] Defence First Bar Table Decision, p. 6.
[3] Defence First Bar Table Decision, para. 5.
[4] Defence Second Bar Table Decision, paras 12, 16.
[5] The Trial Chamber notes that the Prosecution informed the Trial Chamber's Legal Officer on 2 February 2011 via email that it did not oppose the Motion.
[6] *See e.g.* Decision on Prosecution First Bar Table Motion, 5 October 2009 (confidential), paras 17-20.

III. SUBMISSIONS AND DISCUSSION

1. Documents Deferred Pending Visible Copies

5. The Trial Chamber deferred its ruling on the admission of 65*ter* documents 00286D, 00499D, 00523D, 01104D, 05012D and 05015D because the B/C/S copies uploaded in e-court were illegible.[7] In its Motion, the Defence submits that it has uploaded in e-court more visible copies of the documents.[8] The Trial Chamber is satisfied that the current versions of these documents meet the requirements of Rule 89 of the Rules of Procedure and Evidence ("Rules") and therefore admits them into evidence. In relation to 65*ter* document 00286D the Defence should however upload a complete English translation of this document.[9]

2. Documents Deferred Pending the Provision of Translations

6. The Trial Chamber deferred the admission of 65*ter* documents 01261D and 01145D pending the provision of their English translations.[10] The Trial Chamber notes that official translations of these documents have been uploaded in e-court[11] and admits the documents into evidence. In relation to 65*ter* document 00554D, the Trial Chamber notes that its admission was deferred pending the provision of a correct English translation.[12] The Defence submits it has uploaded a revised CLSS translation on e-court under Doc ID 1D21-0023.[13] The Trial Chamber is satisfied that 65*ter* document 00554D is of probative value and is therefore admitted into evidence.

3. Documents Deferred Pending their Uploading in e-court

7. The Trial Chamber notes that it deferred its ruling on the admission of 65*ter* documents 06001D, 06002D and 06003D since they were not uploaded in e-court.[14] The Trial Chamber is now satisfied that they have been uploaded in e-court along with their official translations.[15] After having reviewed the documents, the Trial Chamber also finds that the documents meet the requirements of Rule 89 of the Rules and admits them into evidence.

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[7] Defence First Bar Table Decision, paras 5, 7. In relation to 65*ter* document 00286D the illegibility of the B/C/S copy was reflected in the English translation, *ibid*, para. 5.
[8] Motion, paras 3, 6.
[9] *See* Defence First Bar Table Decision, para 5 where the Trial Chamber notes that the English translation of the document contains mostly clause "illegible".
[10] Defence First Bar Table Decision, para. 6; Defence Second Bar Table Motion, para. 12.
[11] *See also* Motion, para. 5.
[12] Defence First Bar Table Decision, para. 6.
[13] Motion, para. 4.
[14] Defence First Bar Table Decision, para. 7.
[15] Motion, para. 5.

4. Documents Deferred Pending Reliable Copies of the Original

8. In relation to 65*ter* documents 02004D, 02038D and 02141D, the Trial Chamber recalls that these documents were open source documents and were reproduced in an unreliable format. The Trial Chamber deferred its ruling on their admissibility pending the uploading of reliable copies of the original news sources.[16]

9. The Defence submits that 65*ter* documents 02004D and 02038D were originally obtained by the Perišić Defence Team using the "Factiva" news database with the assistance of the ICTY library staff, and were submitted in the format in which they were retrieved from Factiva.[17] The Defence submits that it was able to obtain a copy only of 65*ter* document 02004D from the New York Times website and has uploaded it in e-court as Document ID 1D21-0020.[18] The Trial Chamber notes that the content of documents 02004D and 02038D is identical and both were published on 17 February 1994, by the same author. Therefore, it is sufficient to only admit 02004D into evidence. The Trial Chamber is also satisfied that the format of document 02004D (ID 1D21-0020) is reliable and finds that the document is sufficiently relevant and of probative value to be admissible under Rule 89 of the Rules. .

10. As regards 02141D, the Trial Chamber notes that the Defence was unable to provide a reliable copy of the original news sources. The Defence instead submits that document 65*ter* 02141D can be found on the ICTY Electronic Disclosure System and that it has stipulated the admissibility of this document with the Prosecution.[19] The Defence contends that this document is highly relevant to this case as it relates to particular portions of the testimony of witness Vukšić who testified on circumstances of Perišić's dismissal after his speech in Gornji Milanovac.[20] Although the Trial Chamber's concerns as to the reliability of the format have not been addressed, the Trial Chamber will admit document 65*ter* 02141D in light of the fact that the parties agreed to its admission.

5. 00993D

11. In the Defence First Bar Table Decision, the Trial Chamber admitted 65*ter* document 00993D into evidence, but ordered the Defence to upload into e-court a better copy of its B/C/S original version.[21] The Defence now submits that it has uploaded a more visible copy and seeks the

[16] Defence First Bar Table Decision, para. 9.
[17] Motion, para. 7.
[18] Motion, para. 9.
[19] Motion, para. 10.
[20] Motion, para. 10; T. 12224/13 – 17.
[21] Defence First Bar Table Decision, para. 5.

admission of the document into evidence.[22] The Trial Chamber notes that 65*ter* document 00993D is already admitted into evidence as Exhibit D613 and therefore finds that the Defence request in relation to the admission of this document is moot. As regards, the current version uploaded into e-court bearing the number Doc Id 1D21-0016, the Trial Chamber is satisfied that it is more legible and should replace the previous version.

IV. DISPOSITION

12. For the reasons set out above and pursuant to Rule 89(C) of the Rules, the Trial Chamber hereby

GRANTS the Motion in part;

ADMITS into evidence the following documents with 65ter documents: 00286D, 00499D, 00523D, 00554D, 01104D, 01145D, 02141D, 01261D, 02004D, 05012D, 05015D, 06001D, 06002D and 06003D;

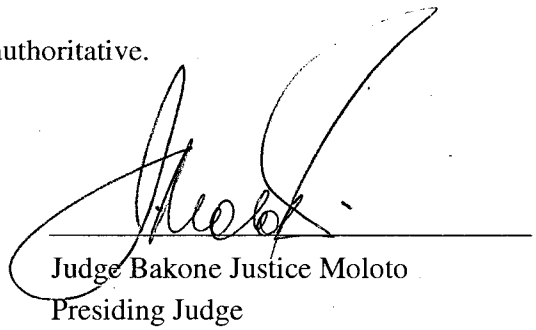
GRANTS the Defence requests to substitute the previous documents with the new ones where applicable;

DENIES the remainder of the Motion;

REQUESTS the Registry to assign exhibit numbers to the 65*ter* documents admitted into evidence.

[22] Motion, paras 6; p. 4.

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



Judge Bakone Justice Moloto
Presiding Judge

Dated this fourth day of February 2011
At The Hague
The Netherlands

[Seal of the Tribunal]