

A

**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: 19 August 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: 19 August 2009

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC

**DECISION IN RESPECT OF SREBRENICA AGREED
FACTS**

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”) is seised of the “Joint Submission in Respect of Srebrenica Agreed Facts”, filed publicly with confidential annexes on 24 July 2009 (“Motion”), and hereby renders its Decision.

I. SUBMISSIONS

1. On 31 May 2007, James Castle, then counsel for the Accused and Prosecution Senior Trial Attorney Mark Harmon (“Parties”), jointly submitted an agreement which contained matters of fact agreed upon by the Parties in relation to the charges in the Indictment on Srebrenica (“Agreement”).¹

2. Prior to the commencement of trial, Mr. Castle informed the Trial Chamber that due to translation difficulties and miscommunication between himself, who at the time was working in The Hague and Denver, and the Accused, who was on provisional release in Belgrade, it transpired that the Accused had in fact not consented to the facts contained in the Agreement.²

3. Following additional negotiations between the Prosecution and the current counsel for the Accused, the Parties reached a new agreement concerning Srebrenica (“New Agreement”), which contains fewer facts than the Agreement.

4. In the Motion, the Parties request the Trial Chamber to permit the withdrawal of the Agreement and its substitution with the New Agreement. The Prosecution also asks to be allowed to call a limited number of additional witnesses, as identified in confidential Annex C, in relation to the facts covered by the Agreement but not recorded in the New Agreement. Alternatively, the Prosecution seeks permission to call appropriate substitute witnesses in the event that witnesses identified in confidential Annex C will be unable or unavailable to testify.³ The Defence does not object to this request.⁴

II. APPLICABLE LAW

5. Article 8 of the Tribunal’s Code of Professional Conduct for Counsel Appearing Before the International Tribunal (“Code of Conduct”) provides that when representing a client, counsel shall

¹ Parties Joint Submission: Agreements on Matters of Fact, 31 May 2007.

² Motion, para. 10, Confidential Annex D, paras 10-15. *See also* Status Conferences T. 280-297 (2 September 2008), T. 321-322 (24 September 2008).

³ Motion, paras 6 and 20.

⁴ Motion, para. 20.

abide by the client's decisions concerning the objectives of representation, consult with the client about the means by which those objectives are to be pursued, and seek or accept only those instructions which emanate from the client.

6. Rule 65 *ter* (H) of the Rules of Procedure and Evidence ("Rules") provides that "[t]he pre-trial Judge shall record the points of agreement and disagreement on matters of law and fact". In addition, Rule 65 *ter* (M) provides that "[t]he Trial Chamber may *proprio motu* exercise any of the functions of the pre-trial Judge".

7. Rule 89(C) provides that "[a] Chamber may admit any relevant evidence which it deems to have probative value".

III. DISCUSSION

8. The Trial Chamber is puzzled by the admission of the former counsel that the Accused "did not agree to nor approve" the Agreement before the counsel had signed it.⁵ However, due to the lack of objection on the part of the Prosecution to withdraw the Agreement, the Trial Chamber does not find it necessary to pronounce on the validity of the former counsel's representation of the Accused in this case. Instead, the Trial Chamber finds that good cause has been shown to allow the withdrawal of the Agreement.

9. As regards the New Agreement, the Trial Chamber has carefully assessed the facts it contains and has found them of relevance and probative value to the current case.

IV. DISPOSITION

10. On the basis of the reasoning set forth above, and recalling the discretionary power of the Trial Chamber in relation to the agreed facts, the Trial Chamber decides as follows.

PURSUANT TO RULES 65 *ter* (H), 65 *ter* (M) 89(C) of the Rules

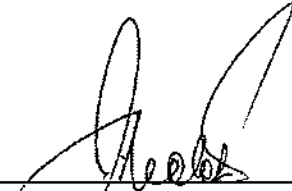
GRANTS the Motion; and

WITHDRAWS the Agreement from the evidence record;

ADMITS into evidence the agreed facts contained in the New Agreement as attached to the current Decision in Annex A.

⁵ Motion, confidential Annex D, para. 12.

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



Judge Bakone Justice Moloto
Presiding Judge

Dated this nineteenth day of August 2009

At The Hague

The Netherlands

[Seal of the Tribunal]

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC

ANNEX A TO

**DECISION IN RESPECT OF SREBRENICA AGREED
FACTS**

SREBRENICA AGREED FACTS

	<u>INDICTMENT – PARA 57</u>
1.	Between 12 July and about 17 July 1995, thousands of Bosnian Muslim men were captured by, or surrendered to, Bosnian Serb forces.
2.	From about early autumn 1995, the Bosnian Serbs engaged in a concerted effort to conceal the mass killings by relocating the primary graves to remote secondary gravesites.
3.	From July 1995 onwards, thousands of Bosnian Muslim civilian women, children and elderly men were bussed out of Potočari and other areas surrounding Srebrenica, under the control of VRS forces, to Kladanj and other non-Serb areas of BiH.
	<u>SCHEDULE D – PARA 1.1</u>
4.	12 July 1995: The bodies of nine men who had been killed were discovered on 12 July in a field near the river, about 500 metres from the UN Compound. The location where the bodies were found is on the west side of the main road. Budak is on the west side of the main road.
	<u>SCHEDULE D – PARA 1.2</u>
5.	12 July 1995: On the morning of 12 July corpses of nine or ten men were found about seven hundred meters from the UN Compound. The bodies were located behind the White House in the vicinity of an electrical station near a creek.
	<u>SCHEDULE D – PARA 1.3</u>
6.	13 July 1995: The bodies of six Bosnian Muslim women and five Bosnian Muslim men were found in a stream near the Express Bus Company Compound in Potočari.
	<u>SCHEDULE D – PARA 1.4</u>
7.	13 July 1995: One Bosnian Muslim man was taken behind a building

	near the "White House" and summarily executed.
	SCHEDULE D – PARA 1.4, SECOND PARAGRAPH
8.	The largest groups of Bosnian Muslim men from the column were captured on 13 July 1995; several thousand were collected in or near the Sandići Meadow and on the Nova Kasaba football field. The Bosnian Muslim men who had been separated from the women, children and elderly in Potočari (numbering approximately 1,000) were transported to Bratunac and subsequently joined by Bosnian Muslim men captured from the column.
9.	About one third of the Bosnian Muslim column was comprised of soldiers from the 28 th Division, and about two-thirds were Bosnian Muslim civilian men from Srebrenica.
	SCHEDULE D – PARA 2.1
10.	12 - 13 July 1995: Between 12 and 14 July more than 50 Bosnian Muslim men were summarily executed in and around the Vuk Karadžić School.
	SCHEDULE D – PARA 2.2
11.	13 July 1995: One mentally retarded Bosnian Muslim man, who was detained in a bus parked in front of the Vuk Karadžić School, was taken off the bus and executed, on 13 July.
	SCHEDULE D – PARA 2.4
12.	13 July 1995: Between 13 and 15 July a number of men were taken from the Vuk Karadžić School and murdered.
	SCHEDULE D – PARA 2.5
13.	Bosnian Muslim men from Potočari, who had spent the night on 13 July in Bratunac town, went the following day to various temporary detention facilities and execution sites in the Bratunac and Zvornik municipalities.

SCHEDULE D – PARA 3	
14.	Over a seven-day period from 12 July until about 19 July 1995, VRS and MUP forces participated in a planned and organised mass execution and burial of thousands of captured Bosnian Muslim men from the Srebrenica enclave. This organised killing operation occurred in several different locations in and around Srebrenica, Bratunac, and Zvornik.
15.	Some were killed individually or in small groups by the soldiers who captured them and some were killed in the places where they were temporarily detained.
SCHEDULE D – PARA 3.3	
16.	13 July 1995, Cerska Valley: On 13 July VRS and/or MUP soldiers transported about 150 Bosnian Muslim men to an area along a dirt road in the Cerska Valley, about three (3) kilometers from Konjević Polje, summarily executed them and, using heavy equipment, covered them with dirt.
SCHEDULE D – PARA 3.4	
17.	13 July 1995, Kravica Warehouse: In the evening hours, VRS and/or MUP soldiers summarily executed over 1,000 Bosnian Muslim men detained in a large warehouse in the village of Kravica. Automatic weapons, hand grenades, and other weaponry were used to kill the Bosnian Muslims inside the warehouse. Between 14 and 16 July 1995, heavy equipment arrived and removed the victims' bodies to two large mass graves located in the nearby villages of Glogova and Ravnice.
SCHEDULE D – PARA 3.5	
18.	14 July 1995, Orahovac (near Lazete): During the day of 14 July 1995, VRS personnel transported hundreds of Bosnian Muslim males from in and around Bratunac to the Grbavci School in the village of Orahovac. These Bosnian Muslim men had been captured from the column of men retreating from the Srebrenica enclave or separated in Potočari. On 14 July 1995, VRS personnel guarded and blindfolded the Bosnian Muslim males detained at the Grbavci School. In the early afternoon of 14 July 1995, VRS personnel transported these Bosnian Muslim males from the school at Grbavci to a nearby field, where VRS personnel ordered the prisoners off the trucks and summarily executed them with automatic weapons. Approximately 1,000 Bosnian Muslim males were killed. On 14 and 15 July 1995, VRS members used heavy

	equipment to bury the victims in mass graves at the execution site, while the executions continued.
	SCHEDULE D – PARA 3.6
19.	14 July 1995, The Petkovci School: VRS and/or MUP personnel transported at least 1,000 Bosnian Muslim males from detention sites in and around Bratunac to the school at Petkovci. These Bosnian Muslim men had been captured from the column of men retreating from the Srebrenica enclave or separated in Potočari. On 14 July 1995 and the early morning hours of 15 July 1995, VRS and/or MUP personnel struck, beat, assaulted and shot with automatic weapons some of the Bosnian Muslim males detained at the school.
	SCHEDULE D – PARA 3.7
20.	14 July 1995, The "Dam" near Petkovci: On or about the evening of 14 July 1995 and the early morning hours of 15 July 1995, VRS personnel drivers and trucks transported the surviving members of the group of at least 1,000 Bosnian Muslim males from the school at Petkovci to an area below the Dam near Petkovci. They were assembled below the Dam and summarily executed by VRS or MUP soldiers with automatic weapons. In the morning of 15 July 1995, VRS personnel used excavators and other heavy equipment to bury the victims.
	SCHEDULE D – PARA 3.8
21.	14 - 15 July 1995, Pilica School: VRS and/or MUP personnel transported a number of Bosnian Muslim males from detention sites in Bratunac to the school at Pilica. These Bosnian Muslim men had been captured from the column of men retreating from the Srebrenica enclave or separated in Potočari. On or about 14 and 15 July 1995, VRS military personnel shot and killed some of the Bosnian Muslim males who had arrived, or were being detained, at the school.
	SCHEDULE D – PARA 3.9
22.	On 14 July 1995, Bosnian Muslim prisoners from Bratunac were bussed to a school in the village of Pilica and detained there until 16 July 1995 when they were taken out of the school and loaded onto buses with their hands tied behind their backs.
23.	They were then driven to the Branjevo Military Farm where groups of

	10 were lined up and shot.
24.	Drina Corps Military Police were engaged in guarding the Bosnian Muslim prisoners in the buses that took them to the Branjevo Military Farm and Zvornik Brigade equipment was used for activities relating to the burial of the victims.
	SCHEDULE D – PARA 3.10
25.	16 July 1995, Pilica Cultural Centre: VRS personnel travelled a short distance to the village of Pilica and worked with other VRS and/or MUP personnel to summarily execute, with automatic weapons, approximately 500 men inside the Pilica Cultural Centre. These Bosnian Muslim men had been captured from the column of men retreating from the Srebrenica enclave or separated in Potočari. On 17 July 1995, VRS personnel retrieved the bodies of the victims from the Pilica Cultural Centre and transported them to the Branjevo Military Farm. On 17 July 1995, VRS personnel participated in the burial of the victims of the Pilica School executions in a mass grave at the Branjevo Military Farm.
	SCHEDULE D – PARA 3.11
26.	16 July 1995, Kozluk: On 15 or 16 July 1995, VRS and/or MUP soldiers transported about 500 Bosnian Muslim males to an isolated place near Kozluk and summarily executed them with automatic weapons. These Bosnian Muslim men had been captured from the column of men retreating from the Srebrenica enclave or separated in Potočari. On 16 July 1995, VRS soldiers buried the victims of the executions in a mass grave nearby.
	SCHEDULE D – PARA 4.1
27.	Nova Kasaba: On 27 July 1995 the United States Government took an aerial photograph of an area near Nova Kasaba, which showed the presence of disturbed earth in four distinct locations. Four primary, undisturbed graves in the Nova Kasaba area were exhumed in July 1996. The graves, located in two fields, contained the bodies of 33 male victims. Twenty-seven of the men had their hands tied behind their backs.
	SCHEDULE D – PARA 4.2
28.	Glogova: In the year 2000, the bodies of 12 men were founded in the

	Glogova L grave. The victims had been tied together in pairs and were shot.
	<u>SCHEDULE D - PARA 4.3</u>
29.	13 - 14 July 1995, Kravica Market: In Kravica, some trucks stopped by a supermarket on 13 July. The soldiers guarding the truck started mistreating people and hitting them through the canvas.
	<u>SCHEDULE D - PARA 5.1</u>
30.	19 July 1995, Nezuk: VRS personnel captured 11 Bosnian Muslim males from the column and summarily executed with automatic weapons 10 of them at a place near Nezuk.