

**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 January 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: 15 January 2010

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC

**DECISION ON DEFENCE SUPPLEMENT MOTION
FOR RECONSIDERATION OF THE TRIAL
CHAMBER'S ORAL ORDER ON THE FILING OF THE
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 “Supplement to Mr. Perišić’s Motion for Reconsideration of the Trial Chamber’s Oral Order on the Filing of the 65 *ter*(G) List”, filed publicly on 11 January 2010 (“Motion”), wherein the Defence requests the Trial Chamber to reconsider its oral order of 12 November 2009 (“Oral Ruling”) regarding the setting of 10 January 2010 as the deadline for the Defence to comply with its obligations pursuant to Rule 65 *ter*(G) of the Rules of Procedure and Evidence (“Rules”);¹

NOTING the Defence submission that, since to date the Prosecution has not closed its case, and intends as well to recall one witness *viva voce* and seeks the admission of a written statement pursuant to Rule 92 *bis*, the Defence is not in a position to file its Rule 65 *ter*(G) materials on 11 January 2010;²

NOTING the Defence submission that it would be procedurally improper under the Rules for it to disclose its witnesses and exhibit lists to the Prosecution prior to the latter closing its case;

NOTING that the Defence requests the Trial Chamber to permit it to file its Rule 65 *ter*(G) lists 48 hours after the Prosecution’s formal notification of the closure of its case;³

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.⁴

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;⁵

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

² Motion, paras 5, 8 and 9.

³ Motion, para 11.

⁴ Emphasis added.

⁵ See, e.g. Decision on Motion for Reconsideration of the Trial Chamber’s Decision of 1 September 2008, 7 October 2008, para. 7.

CONSIDERING that the fact that the Prosecution has not officially closed its case to date and intends to recall one witness and add a new witness to its Rule 65 *ter* witness list 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 the Trial Chamber had previously clearly stated 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”;⁶

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

HEREBY GRANTS the Motion;

AMENDS its Oral Ruling regarding the deadline of 10 January 2010 and permits the Defence to file its Rule 65 *ter*(G) lists within 48 hours of the Prosecution’s formal notification of the closure of its case.

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



Judge Bakone Justice Moloto
Presiding Judge

Dated this fifteenth day of January 2010

At The Hague

The Netherlands

[Seal of the Tribunal]

⁶ Decision on Reconsideration of the Trial Chambers Oral Order on the Filing of the Rule 65*ter* (G) List, 15 December 2009.