

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: 7 February 2011
Original: English

IT-04-81-T 27363
D 27363-D27359 A)
07 FEBRUARY 2011

IN TRIAL CHAMBER I

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

Registrar: Mr. John Hocking

Decision of: 7 February 2011

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC

**DECISION ON MR. PERIŠIĆ'S SECOND AND THIRD
MOTIONS REGARDING MFI DOCUMENTS WITH
CONFIDENTIAL ANNEX**

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 seized of “Mr. Perišić’s Second Motion Regarding MFI Documents with Confidential Annex”, filed partially confidentially on 10 January 2011 (“Second Motion”) and of “Mr. Perišić’s Third Motion Regarding MFI Documents”, filed publicly on 20 January 2011 (“Third Motion”) and hereby renders its Decision.

I. SUBMISSIONS

1. In its Second and Third Motions the Defence informs the Chamber that it now has the proper translations of numerous documents previously marked for identification (“MFI”) by the Trial Chamber.¹ The Defence seeks leave to (i) attach official translations to D55, D56, D57, D75, D299, D324, D354, D462, D463, D464, D467, D502; (ii) replace the existing B/C/S version of D184 with the complete one bearing document Id 1D13-0515; (iii) attach the complete CLSS translations to D200, D271, D276, D277, D278, D279, D280, D281, D282, D283, D284, D285, D286, D287, D288; (iv) replace the existing pages of transcription and English translation of D352; (v) replace the existing translations of D330,² D440, D441, D442, D455 and D510 with the revised CLSS translations.³ The Defence seeks the admission of all the aforementioned documents into evidence. Furthermore, it seeks admission into evidence of D94.⁴

2. The Prosecution in its Response does not oppose the admission of the documents in the Motion but for document D510.⁵

II. APPLICABLE LAW

3. The Trial Chamber recalls the law applicable to the present Motions as set out in a previous decision of this Trial Chamber.⁶

III. DISCUSSION

¹ Second Motion, para. 6; Third Motion, paras 4-6.

² Third Motion, para. 4. Concerning document D330, the Defence seeks the admission into evidence of the following pages (in B/C/S): 2-5, 7, 11-14, 19, 20, 23, 27, 30, 34, 54, 60, 69, 72, 74, 77, 80, 81, 82 and 93, whose translation in e-court is uploaded under Doc ID 1D21-0084.

³ Second Motion, para 6. Concerning documents D462, D463, D464 and D467, the Defence communicated to the Chambers Legal Officer via email that the existing versions were replaced with the respective official translations attached in the Annex to the Motion; Third Motion, paras 2-6.

⁴ Second Motion, Part III; Third Motion, para. 3, Part III.

1. Documents MFI'd Pending Official Translations

4. The Trial Chamber notes that the following documents: D55, D56, D57, D75, D299, D324, D354, D462, D463, D464, D467 and D502 were MFI'd pending official translations.⁷ The Defence submits that the official translations have now been uploaded into e-court and it therefore seeks permission to attach these official translations to the original versions in e-court and replace the existing translations.⁸ The Trial Chamber finds that the Defence has complied with its obligation and therefore admits these documents into evidence.

2. Documents MFI'd Pending CLSS Translation of Complete Document

5. The Defence submits that the complete CLSS translations of documents D200, D271, D276, D277, D278, D279, D280, D281, D282, D283, D284, D285, D286, D287 and D288 are now available and have been uploaded into e-court.⁹ The Trial Chamber notes that these documents were MFI'd pending a completion of CLSS translations.¹⁰ The Trial Chamber is satisfied that this condition for admission of D200, D271, D276, D277, D278, D279, D280, D281, D282, D283, D284, D285, D286, D287 and D288 has been met. The Trial Chamber is also satisfied that the conditions stipulated in Rule 89 of the Rules of Procedure and Evidence ("Rules") have been fulfilled and therefore admits them into evidence.

3. Documents MFI'd Pending Revised CLSS Translations

6. The Defence submits that D330, D440, D441, D442, D455 and D510 were MFI'd due to translation issues.¹¹ The Defence submits that it has been provided with revised translations from CLSS and has uploaded them into e-court.¹² It therefore requests that they be substituted for the ones currently on record and admitted into evidence.¹³ The Trial Chamber notes that these documents were MFI'd pending the verification of their English translations. The Trial Chamber is satisfied that the condition for admission of D330, D440, D441, D442 and D455 has been met and therefore admits them into evidence. In relation to D510, the Trial Chamber notes that the Prosecution states that it would not oppose its admission provided it receives a stipulation as agreed

⁵ Response to Mr. Perišić's Third Motion Regarding MFI Documents" filed publicly on 02 February 2011 ("Response").

⁶ Decision Regarding Outstanding Documents Marked for Identification, 21 December 2009, paras 9-13.

⁷ Second Motion, para. 1; Third Motion, paras 4-6.

⁸ Second Motion, para. 6; Third Motion, para. 4.

⁹ Second Motion, para. 3.

¹⁰ T. 9966; 10888-10889.

¹¹ Second Motion, para. 5; Third Motion, paras 5-6.

¹² Second Motion, para. 5; Third Motion, paras 5-6.

¹³ Second Motion, para. 5; Third Motion, paras 5-6.

in a meeting between the parties.¹⁴ The Trial Chamber defers its ruling on this document pending receipt by the Prosecution of that stipulation.

4. D94

7. The Trial Chamber notes that D94 was MFI'd pending the Parties resolving their disagreement relating to the document.¹⁵ The Defence submits that the disputed issue between the Parties relating to document D94 has now been resolved and it therefore now seeks the admission of D94 into evidence.¹⁶ The Trial Chamber finds D94 relevant and of probative value and admits it into evidence.

5. D184

8. In relation to D184, the Defence submits that it was MFI'd because the B/C/S version of the document as uploaded in e-court did not have the first page of the document.¹⁷ On 26 August 2009, the entire document along with its first page was uploaded into e-court bearing the number Doc Id 1D13-0515.¹⁸ The Defence therefore requests the substitution of the previous B/C/S version with the new one and its admission into evidence.¹⁹ The Trial Chamber finds the Defence has complied with its obligation and admits the document into evidence

6. D352

9. The Chamber notes that D352 was MFI'd because an official CLSS translation was missing.²⁰ The Defence submits that a revised B/C/S transcription and an official CLSS translation are now available and have been uploaded into e-court. The Trial Chamber is satisfied that the conditions for admission are satisfied and D352 is therefore admitted into evidence.

IV. DISPOSITION

PURSUANT TO Rules 54 and 89 of the Rules, the Trial Chamber:

GRANTS the Motions;

¹⁴ Response, para. 3. The Prosecution states that in a meeting it had with the Defence on 13 January 2011, the latter agreed to insert a stipulation to the effect that the initials noted after the first handwritten note in the document are MP which corresponds to Momčilo Perišić.

¹⁵ T. 6221-6222.

¹⁶ Third Motion, para. 3.

¹⁷ Second Motion, para. 2.

¹⁸ Second Motion, para. 2. T. 8847.

¹⁹ Second Motion, para. 2.

²⁰ Second Motion, para. 4.

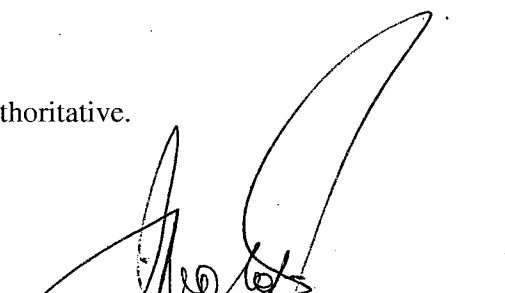
ADMITS the following documents into evidence and removes their MFI status:

D55, D56, D57, D75, D94, D184, D200, D271, D276, D277, D278, D279, D280, D281, D282, D283, D284, D285, D286, D287, D288, D299, D324, D330, D352, D354, D440, D441, D442, D455, D462, D463, D464, D467 and D502;

DEFERS its ruling on the admission of D510;

GRANTS the Defence requests to substitute the previous translations with the new ones where applicable.

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



Judge Bakone Justice Moloto
Presiding Judge

Dated this seventh day of February 2011

At The Hague

The Netherlands

[Seal of the Tribunal]