



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: 26 November 2008

Original: English

IN TRIAL CHAMBER I

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

Registrar: Mr. Hans Holthuis

Decision of: 26 November 2008

PROSECUTOR

v.

MOMČILO PERIŠIĆ

PUBLIC

**DECISION ON PROSECUTOR'S MOTION TO
AUGMENT THE RULE 65 *TER* WITNESS SUMMARY
IN RESPECT OF WITNESS BRETTON RANDALL**

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 “Prosecutor’s Motion to Augment the Rule 65ter Witness Summary in respect of Witness Bretton Randall”, filed publicly on 10 November 2008 (“Motion”), wherein the Prosecution seeks to augment the Rule 65ter witness summary in respect of Witness Bretton Randall;

NOTING Rule 65ter(E) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), according to which the Pre-Trial Judge shall order the Prosecution to file the list of witnesses it intends to call, including summaries of each witness’s expected testimony, as well as the list of exhibits it intends to offer;

NOTING that the Prosecution filed its list of witnesses and witness summaries and exhibit list on 23 February 2007;¹

NOTING that the revised witness list, filed by the Prosecution on 29 September 2008, no longer includes Allen Borelli;²

NOTING that the Prosecution proposes to augment witness Bretton Randall’s Rule 65ter summary to include references to two categories of documents that would have been introduced through witness Allen Borelli and to two categories of documents not included in Bretton Randall’s original Rule 65ter summary;³

NOTING that the Trial Chamber is not in possession of a list of specific documents to be introduced through Bretton Randall and that such documents must be listed on the Prosecution’s Rule 65 ter exhibit list;⁴

RECALLING that if such documents are not listed on the Rule 65 ter exhibit list, the Trial Chamber may allow the documents to be admitted into evidence under *exceptional* circumstances

¹ Prosecution’s Rule 65 ter Submission, 23 February 2007.

² Prosecution’s Submission of Revised Witness List, public with Confidential Annex A, 29 September 2008.

³ Motion, para. 3.

⁴ See Trial Chamber’s Clarification on Whether the Prosecution Must Request Leave to Amend the Rule 65 ter Exhibit List, 17 November 2008, para. 12. The Motion is unclear whether all the concerned documents are on the Prosecution’s Rule 65 ter exhibit list.

where the right of the Accused to have adequate time to prepare for his defence has not been prejudiced, good cause has been shown, and it is in the interests of justice to do so;⁵

NOTING “Mr. Perišić’s Response to Prosecution’s Supplemental *65ter* Summary for Witness Bretton Randall”, filed publicly on 24 November 2008 (“Response”), in which the Defence opposes the Motion on the grounds that Mr. Randall is not qualified to discuss the documents that would have been introduced through Allen Borelli;⁶

CONSIDERING that it is for the Prosecution to determine which evidence should be led through a particular witness, and that the Defence is free to challenge Mr. Randall’s qualifications during cross-examination;

CONSIDERING that the revision of Mr. Randall’s witness summary provides an appropriate basis for the articulation of his evidence during proceedings, augmenting his witness summary would not prejudice the fairness of proceedings and a revised version of his witness summary has been provided with sufficient time for the Defence to prepare its cross-examination of witness Bretton Randall;

FINDING that, due to the amount of time intended to be used for the examination-in-chief of Bretton Randall,⁷ it is appropriate that the Prosecution submit a list of these documents ten working days before the start of testimony, instead of the standard five day requirement set out in the “Guidelines on the Admission and Presentation of Evidence and Conduct of Counsel in Court”;⁸

⁵ Trial Chamber’s Clarification on Whether the Prosecution Must Request Leave to Amend the Rule 65 *ter* Exhibit List, 17 November 2008, para. 13.

⁶ Response, paras 6-9.

⁷ Motion, para. 7.

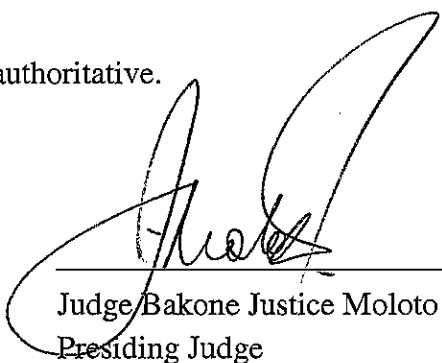
⁸ Order for Guidelines on the Admission and Presentation of Evidence and Conduct of Counsel in Court, 29 October 2008, Annex, para. 1.

PURSUANT TO Rules 54 and 65 *ter* of the Rules

HEREBY ALLOWS the Prosecution to augment the Rule 65*ter* witness summary in respect of witness Bretton Randall and

ORDERS that the Prosecution shall submit a list of the documents to be used for the examination-in-chief of Bretton Randall 10 (ten) working days before the start of his testimony.

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



Judge Bakone Justice Moloto
Presiding Judge

Dated this twenty-sixth day of November 2008

At The Hague

The Netherlands

[Seal of the Tribunal]