



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

Case No.: IT-95-5/18-T

Date: 22 May 2012

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 22 May 2012

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON PROSECUTION'S MOTION FOR THE ADMISSION OF
TWO INTERCEPTS FROM THE BAR TABLE**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Standby Counsel

Mr. Richard Harvey

THIS 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 “Prosecution’s Motion for the Admission of Two Intercepts from the Bar Table”, filed on 15 May 2012 (“Motion”), and hereby issues its decision thereon.

1. In its “Scheduling Order on Close of the Prosecution Case, Rule 98 *bis* Submissions, and Start of the Defence Case” issued on 26 April 2012 (“Scheduling Order”), the Chamber ordered the Office of the Prosecutor (“Prosecution”) to file any evidence-related motions by 4 May 2012.

2. On 14 May 2012, the Chamber issued its “Decision on Prosecution’s First Bar Table Motion for the Admission of Intercepts” (“First Bar Table Decision on Intercepts”) disposing of the “Prosecution’s First Bar Table Motion for the Admission of Intercepts with Public Appendix A and Confidential Appendix B” filed on 19 April 2012 (“First Bar Table Motion on Intercepts”), wherein it stated the following in paragraph 18:

The Chamber notes that the English translation for the document with Rule 65 *ter* number 30919 has not been uploaded into e-court. As such, the Chamber cannot assess the relevance, probative value, or authenticity of this document or whether it may be admitted. While the Chamber notes that the Prosecution is tendering 65 *ter* 30928 as an intercept which corroborates the content of other intercepts, given that it has yet to be authenticated, the Chamber will not admit it at this stage.

3. In the Motion, the Prosecution first submits that the English translation of 65 *ter* 30919 has been uploaded into e-court,¹ The Prosecution then requests the Chamber to take judicial notice of the authenticity of 65 *ter* 30919 pursuant to Rule 94(B) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) on the basis that this intercepted conversation was authenticated and admitted in the *Tolimir* case.² The Prosecution further submits that it omitted to inform the Chamber in the First Bar Table Motion on Intercepts that 65 *ter* 30928 was authenticated and admitted in the *Popović et al.* and *Tolimir* cases and, having done so now, requests that judicial notice of the authenticity of 65 *ter* 30928 be taken pursuant to Rule 94(B) of the Rules.³

4. On 17 May 2012, the Accused’s legal adviser informed the Chamber by email that the Accused did not wish to respond to the Motion.⁴

¹ Motion, para. 2.

² Motion, paras. 3–4.

³ Motion, paras. 5–7.

⁴ On 16 May 2012, the Chamber’s legal officer communicated to the parties by email the Chamber’s decision that the Accused should respond to the Motion by no later than 17 May 2012, if he so wished.

5. The Chamber first notes that the English translation of 65 *ter* 30919 has now been uploaded into court and the Chamber may thus now proceed with examining whether the intercepted conversation may be admitted from the bar table.
6. The Chamber recalls once again that it considers intercepts to be a special category of evidence given that they bear no indicia or authenticity or reliability on their face, and that their authenticity and reliability are established by further evidence, such as hearing from the relevant intercept operators or the participants in the intercepted conversation themselves.⁵
7. In relation to establishing the authenticity of both 65 *ter* 30919 and 30928, the Chamber notes that, in the First Bar Table Motion, the Prosecution provided no indicators as to the authenticity of 65 *ter* 30919,⁶ and only argued that indicators of the reliability of 65 *ter* 30928 had been provided through the testimony of a witness who could speak to its substance.⁷ For neither of these intercepts did the Prosecution request, in the First Bar Table Motion on Intercepts, that judicial notice of their authenticity be taken under Rule 94(B) of the Rules.
8. The Chamber considers that the request in the Motion to take judicial notice of the authenticity of 65 *ter* 30919 and 30928 pursuant to Rule 94(B) is a new evidence-related request which should have been filed before the deadline of 4 May 2012 imposed by the Chamber in the Scheduling Order.
9. Accordingly, the Chamber, pursuant to Rule 54 of the Rules, hereby **DENIES** the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-second day of May 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

⁵ Decision on the Prosecution's First Motion for Judicial Notice of Documentary Evidence Related to the Sarajevo Component, 31 March 2010, para. 9.

⁶ First Bar Table Motion on Intercepts, Appendix A, pp. 59–60.

⁷ First Bar Table Motion on Intercepts, confidential Appendix B, paras. 12–14.