



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: 15 October 2014
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: 15 October 2014

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON MOTION TO TREAT UNSWORN STATEMENT AS EVIDENCE

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

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”),

BEING SEISED of the “Motion to Treat Unsworn Statement as Evidence”, filed on 25 September 2014 (“Motion”) wherein the Accused requests that the Chamber give the statement which he made on 16 October 2012 pursuant to Rule 84 *bis* of the Tribunal’s Rules of Procedure and Evidence (“Statement” and “Rules”, respectively) the same consideration in its deliberations as it would give statements admitted pursuant to Rule 92 *quater*;¹

NOTING that the Accused argues that the Office of the Prosecutor (“Prosecution”), in its final brief, has made references to parts of the Statement as evidence;² that the Statement is similar to witness statements that are admitted pursuant to Rule 92 *quater*;³ and that unlike the Rule 84 *bis* statements which were made in the case of *Prosecutor v. Popović et al.* and which were treated by that Trial Chamber as submissions, the Statement is detailed and is corroborated by a large number of Defence witnesses;⁴

NOTING that on 8 October 2014, the Prosecution filed the “Prosecution Response to Motion to Treat Unsworn Statement as Evidence” (“Response”), arguing that the Motion should be denied;⁵

NOTING that the Prosecution submits, *inter alia*, that the assessment of unsworn statements given pursuant to Rule 84 *bis* is a discretionary function of the Chamber that can be exercised only in light of the totality of the evidence adduced at trial and that the Motion is therefore premature;⁶ that the Motion “ignores that Rule 84 *bis* provides an accused the opportunity to be heard by the Trial Chamber without having to appear as a witness, whereas Rule 92 *quater* establishes a standard for admitting as evidence the statements of unavailable persons”;⁷ that Rule 84 *bis* is not a substitute procedure intended to compensate for the fact that the Accused has chosen not to follow the various procedures laid down in the Rules in order to challenge the evidence against him;⁸ and

¹ Motion, paras. 1, 24, 29.

² Motion, paras. 20, 26.

³ Motion, para. 27.

⁴ Motion, para. 28.

⁵ Response, paras. 1, 9.

⁶ Response, para. 2, citing *Prosecutor v. Limaj et al.*, Case No. IT-03-66-A, Judgement, 27 September 2007 (“*Limaj et al.* Appeal Judgement”), para. 75.

⁷ Response, para. 3.

⁸ Response, para. 3, citing *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision Regarding Supplement to the Accused Prlić’s Rule 84 *bis* Statement, 19 February 2009 (“Prlić Trial Decision”), para. 18.

that the Accused's contention that the Statement is corroborated by a large number of Defence witnesses is unsupported;⁹

RECALLING that the purpose of Rule 84 *bis* is to give an accused the opportunity to be heard by the Chamber without having to appear as a witness,¹⁰ and that it is within the Chamber's discretion to ascribe the appropriate probative value to such a statement in light of the entire trial record;¹¹

CONSIDERING therefore that the Motion is premature and that the Chamber may only reflect its findings on the assessment of all the evidence adduced at trial in its final judgement;

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 84 *bis* of the Rules:

DISMISSES the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this fifteenth day of October 2014
At The Hague
The Netherlands

[Seal of the Tribunal]

⁹ Response, para. 4.

¹⁰ Prlić Trial Decision, para. 17; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR73.15, Decision on Jadranko Prlić's Interlocutory Appeal against the Decision regarding Supplement to the Accused Prlić's Rule 84 *bis* Statement, 20 April 2009 ("Prlić Appeal Decision"), para. 13 (referring to the Trial Chamber's finding and leaving it unturned); *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Judgement, 10 June 2010, ("*Popović et al.* Trial Judgement"), para. 25.

¹¹ Rule 84 *bis*(B) of the Rules. *See also*: Prlić Appeal Decision, para. 28; *Limaj et al.* Appeal Judgement, paras. 75, 78; *Popović et al.* Trial Judgement, para. 25.