



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-04-74-T
Date: 12 February 2009
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, presiding
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Acting Registrar: Mr John Hocking

Decision of: 12 February 2009

THE PROSECUTOR

v.

Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ČORIĆ
Berislav PUŠIĆ

PUBLIC

**DECISION REGARDING SUPPLEMENT TO THE ACCUSED PRLIĆ'S RULE 84
BIS STATEMENT**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Karim A. A. Khan for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Čorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

I. INTRODUCTION

1. **TRIAL CHAMBER III** ("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 "Jadranko Prlić's Supplement to his Rule 84 *bis* Statement", filed by Counsel for the Accused Prlić ("Prlić Defence") on 9 December 2008 ("Motion"), in which the Prlić Defence requests that the Chamber admit into evidence a supplement to the approximately 600-page statement ("Supplement") submitted by the Accused Prlić pursuant to Rule 84 *bis* of the Rules of Procedure and Evidence ("Rules") and annexed to the Motion.

II. PROCEDURAL BACKGROUND

2. During the hearing of 5 May 2008, the Prlić Defence informed the Chamber that the Accused Prlić was foregoing an appearance as a witness in his own defence in order instead to make a statement within the meaning of Rule 84 *bis* of the Rules.¹ The Accused Prlić made this statement during the hearings of 5 and 6 May 2008.²
3. On 5 January 2009, the Office of the Prosecutor ("Prosecution") filed the "Prosecution Objection to Admission of Jadranko Prlić's Purported Supplement to his Rule 84 *bis* Statement" ("Prosecution Response"), in which the Prosecution objects to the admission of the Supplement.
3. On 5 January 2009, Counsel for the Accused Stojić ("Stojić Defence") filed "Bruno Stojić's Response to Jadranko Prlić's Supplement to his Rule 84 *bis* Statement" ("Stojić Defence Response"), in which the Stojić Defence requests that the Chamber deny the admission of the Supplement; alternatively, if the Chamber admits the Supplement, the Stojić Defence requests that it attach only minimal probative value to it, should it contradict the arguments put forth by the Stojić Defence.
4. By oral decision of 12 January 2009,³ the Chamber granted the Prlić Defence leave to file a reply to the Prosecution and Stojić Defence Responses. On 19

¹ Transcript in French ("T(F)") pp. 27454 and 27455.

² T(F) pp. 27456-27577.

³ T(F) p. 35159.

January 2009, the Prlić Defence filed “Jadranko Prlić’s Consolidated Reply to Prosecution’s & Bruno Stojić’s Response to Jadranko Prlić’s Supplement to his Rule 84 *bis* Statement” (“Reply”), in which it responds to the arguments put forth in the Prosecution and Stojić Defence Responses.

III. ARGUMENTS OF THE PARTIES

5. In the Motion the Prlić Defence claims that the Supplement is a written response by the Accused Prlić to the expert report of William Tomljanovich. Jadranko Prlić’s curriculum vitae is also attached to this Supplement.⁴ The Prlić Defence alleges that according to Tribunal jurisprudence, an Accused may give a Rule 84 *bis* statement at the end of the trial. Accordingly, the purpose of presenting the Supplement at the end of its case is to encapsulate that case.⁵
6. In support of the Motion, the Prlić Defence advances a general principle of law according to which an accused must have the opportunity to participate and state his views in his own trial.⁶ In this regard, it relies on a “fundamentally dissenting opinion of Judge Schomburg” on the right of accused to participate in the proceedings while being represented by counsel. Under this general principle of law, the Prlić Defence submits in particular that the accused are entitled to make a statement in order to participate in their own defence. The Prlić Defence also submits that the Accused Prlić has the requisite competence to make relevant observations since he held several positions within the executive bodies of the Croatian Community of Herceg-Bosna and the Croatian Republic of Herceg-Bosna.⁷
7. The Prlić Defence further argues that the Accused Prlić decided to submit the Supplement in view of the limited time the Chamber allocated to the Prlić Defence for its case, which precluded the Accused Prlić from both testifying himself and calling all of his witnesses.⁸
8. The Prlić Defence further argues that Rule 84 *bis* does not require that the statement of an accused be oral. Moreover, although this rule states that this

⁴ Motion, para. 1.

⁵ Motion, para. 4.

⁶ Motion, para. 2.

⁷ Motion, para. 3.

⁸ Motion, paras. 5 and 7.

statement shall be made after the opening statements of the parties, Tribunal practice has allowed the statement of an accused to be made at a later time.⁹

9. The Prlić Defence finally recalls that when the Accused Prlić made his statement, he had already informed the Chamber that he would be filing a supplement, and that the Chamber had imposed no deadline for him to do so.¹⁰
10. In the Prosecution Response, the Prosecution submits in particular that Rule 84 *bis* provides for one single statement from the Accused, which shall be made orally and at the outset of the trial.¹¹
11. According to the Prosecution, it would therefore be unreasonable for the Chamber to accept a second statement from the Accused Prlić which is in writing and 590 pages long.¹²
12. The Prosecution further argues that the Motion is intended to present the Accused Prlić's testimony without subjecting the Accused Prlić to cross-examination by the other parties.¹³
13. In support of the Stojić Defence Response, the Stojić Defence raises arguments similar to those of the Prosecution. It further submits that when the Accused Prlić made his statement on 6 May 2008, he did not ask for or obtain the leave of the Chamber to file a written statement at a later date.¹⁴
14. According to the Stojić Defence, the tardy admission of a written statement under Rule 84 *bis* would run counter to the requirement of an expeditious trial, since it would allow an accused to invoke Rule 84 *bis* to challenge evidence offered in the course of the trial at any stage of the proceedings while at the same time avoiding cross-examination.¹⁵ The Stojić Defence further submits that the admission of the Supplement at such an advanced stage, and the fact that it is presented in written form, would deprive Jadranko Prlić's Co-Accused of an opportunity to challenge its content.¹⁶

⁹ Motion, paras. 8 and 9.

¹⁰ Motion, para. 9.

¹¹ Prosecution Response, paras. 8 and 9.

¹² Prosecution Response, para. 5.

¹³ Prosecution Response, para. 12.

¹⁴ Stojić Defence Response, para. 7.

¹⁵ Stojić Defence Response, para. 13.

¹⁶ Stojić Defence Response, para. 15.

15. In the Reply, the Prlić Defence repeats the arguments already set out in the Motion. Refuting the Stojić Defence argument that the presentation of the Supplement at this advanced stage of the proceedings would prejudice the rights of the other Accused, the Prlić Defence recalls in particular that it submitted the Supplement before the other Accused began their cases. Accordingly, if the Stojić Defence wishes to respond to the Supplement, it will have an opportunity to do so during the presentation of its case.¹⁷
16. The Prlić Defence further submits that the Stojić Defence request to attach only minimal weight to the Supplement, in the event it contradicts any argument put forward by the Stojić Defence, is without foundation. The Prlić Defence argues that if all of the Co-Accused were entitled to exclude evidence that contradicts their defence, it would amount to granting them an automatic right of severance.¹⁸

C. Examination of the Merits

17. The Chamber first recalls that, subject to the leave and under the control of the Trial Chamber, Rule 84 *bis* of the Rules allows an accused to make an unsworn statement that is not subject to cross-examination. The purpose of this statement is to give an accused the opportunity to be heard by the Chamber without having to appear as a witness in his own case. This right is optional for the Accused who may decide whether or not to make use of it.
18. The Prlić Defence argues that the Accused Prlić decided to submit the Supplement because he was unable both to testify and to call all of his witnesses, given the limited time allocated by the Chamber. In this connection, the Chamber recalls that under the Decision on the Presentation of Defence Evidence of 25 April 2008 (“Decision of 25 April 2008”), it allocated the Prlić Defence 95 hours to present its case, taking into account the fact that the Accused Prlić had requested 24 hours to testify in his own case.¹⁹ This time therefore included the time to examine the Prlić Defence witnesses as well as the time that would be used by the Accused Prlić to appear as a witness. The Prlić Defence nonetheless decided that the Accused Prlić would give a

¹⁷ Reply, para. 7.

¹⁸ Reply, para. 8.

¹⁹ Decision of 25 April 2008, paras. 21 to 24.

statement under Rule 84 *bis* instead of giving evidence as a witness, so that it could have more time for its witnesses to appear.²⁰ The Chamber further recalls that a statement by the accused under Rule 84 *bis* is a supplementary right granted to him, which he may exercise if he so wishes, notwithstanding his other rights under the Statute of the Tribunal and the Rules.²¹ It is not, therefore, a substitute procedure intended to compensate for the fact that, in this specific instance, the Accused has chosen not to make use of the various procedures laid down in the Rules to challenge the evidence against him.

19. Moreover, having reviewed the Supplement, the Chamber finds that it has the appearance of an expert report of almost 600 pages on the structure and functioning of the HZ (HR) H-B, presented by the Accused Prlić in response to the testimony of Expert Witness William Tomljanovich, as the Prlić Defence acknowledges.
20. The Chamber would first recall that the Prlić Defence cross-examined Witness Tomljanovich when he appeared, at which time it tendered numerous documents. Furthermore, the Chamber considers that Rule 84 *bis* is not the appropriate procedure for requesting the admission of documents to rebut prosecution evidence. The Rules avail the Defence of several procedures for this purpose. Accordingly, during its case, the Prlić Defence could have called a witness to challenge the statements of William Tomljanovich. It could also have tendered an expert report through an expert witness in line with the specific procedure laid down in Rule 94 *bis* of the Rules. The Accused Prlić could also have appeared as a witness under Rule 85 (C) to make his observations in this connection.
21. The Chamber concludes that the procedure laid down in Rule 84 *bis* is not the appropriate avenue for the presentation of the Supplement. Consequently, the Chamber decides to deny the Motion.

²⁰ T(F) pp. 27454 and 27455.

²¹ See in particular *The Prosecutor v. Stakić*, Case No. IT-97-24-T, Order for Filing Motions and Related Matters, 7 March 2002, pp. 3 and 4.

FOR THESE REASONS

IN ACCORDANCE WITH Rule 84 *bis* of the Rules

DENIES the Motion.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twelfth day of February 2009
At The Hague
The Netherlands

[Seal of the Tribunal]