



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

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**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***

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**DECISION ON MOTION TO TREAT UNSWORN STATEMENT AS EVIDENCE**

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**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*;<sup>1</sup>

**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;<sup>2</sup> that the Statement is similar to witness statements that are admitted pursuant to Rule 92 *quater*;<sup>3</sup> 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;<sup>4</sup>

**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;<sup>5</sup>

**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;<sup>6</sup> 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”;<sup>7</sup> 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;<sup>8</sup> and

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<sup>1</sup> Motion, paras. 1, 24, 29.

<sup>2</sup> Motion, paras. 20, 26.

<sup>3</sup> Motion, para. 27.

<sup>4</sup> Motion, para. 28.

<sup>5</sup> Response, paras. 1, 9.

<sup>6</sup> 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.

<sup>7</sup> Response, para. 3.

<sup>8</sup> 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;<sup>9</sup>

**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,<sup>10</sup> 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;<sup>11</sup>

**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.




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Judge O-Gon Kwon  
Presiding

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

**[Seal of the Tribunal]**

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<sup>9</sup> Response, para. 4.

<sup>10</sup> 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.

<sup>11</sup> 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.