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ACCUSED'S TESTIMONY AND STATEMENTS IN JURISPRUDENCE OF INTERNATIONAL CRIMINAL COURTS AND TRIBUNALS

The article analyses jurisprudence of the international criminal courts and tribunals concerning accused's testimony under the oath and unsworn statements. In particular, the article addresses such issues as applicability of the privilege against self-incrimination, the right to communicate with the counsel in the course of the testimony, the timing of the testimony, and the probative value of the testimony and statements. This article can be a useful guide in drafting relevant legal norms and implementation of international standards in criminal justice into the national legislation on criminal procedure.

Key words: *accused's testimony; international criminal courts and tribunals; jurisprudence.*

В. М. Точиловський. Свідчення і показання обвинуваченого у судовій практиці міжнародних кримінальних судів та трибуналів

У статті аналізується судова практика міжнародних кримінальних судів і трибуналів щодо показань підсудного під присягою і його заявах без присяги. Зокрема, в статті розглядаються такі питання, як застосовність права не свідчити проти себе, права спілкуватися з адвокатом при дачі показань у суді, вибір часу для надання свідчень, а також доказова цінність свідчень і заяв. Стаття може стати корисним посібником при розробці відповідних правових норм та імплементації міжнародних стандартів в національне кримінально-процесуальне законодавство.

Ключові слова: *показання підсудного; міжнародні кримінальні суди і трибунали; судова практика.*

Introduction

The very first accused in the International Criminal Tribunal (ICTY) who decided to testify in his trial was immediately requested by the Presiding judge to take the oath to speak the truth:

[Presiding Judge]: Mr. [defence counsel], would you call your next witness, please?

[Defence counsel]: We call the accused Dusko Tadić …

[The Presiding Judge]: Sir, would you please take the oath that is being handed to you?

[The accused]: I solemnly declare that I will speak the truth, the whole truth and nothing but the truth.[1]

This must have been quite unusual experience for the accused from the former Yugoslavia, given its civil law traditions. In civil-law trials, the accused may question witnesses, make comments and statements without taking oath and he is not liable for perjury. It is even asserted that the giving untruthful testimony is a part of the accused's right to defence.[2]

In contrast, in common-law adversarial system, if the accused wants to testify, he is considered a witness in his case and shall testify under oath to speak the truth. He is subject to cross-examination and must answer questions truthfully. This approach was also adopted by the drafters of the Rules of Procedure and Evidence (Rules) of the UN International Criminal Tribunals. At the same time, both

[1] Tadić, Tr. Transcr., Case No. IT-94-0-T, T. Ch., 25 October 1996.

[2] Кримінальний процесуальний кодекс України. Науково-практичний коментар, О. Бандурка, Є. Блажівський, Є. Бурдоль та ін.; за заг. ред. В. Тація, В. Пшонки, А. Портнова. – Х. : Право, 2012, с. 284.

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the *ad hoc* Tribunals and the International Criminal Court (ICC) provide for possibility of unsworn statement of the accused.

Accused as a Witness in his Defence

Generally

Under Rule 85(C) of the ICTY, International Criminal Tribunal for Rwanda (ICTR), and Special Court for Sierra Leone (SCSL) Rules, the accused may appear as a witness in his own defence. Indeed, the provisions concerning witnesses cannot automatically apply to accused persons testifying under Rule 85(C) as the accused enjoys specific protection with regard to respect for the rights of the defence.[3] In particular, while Rule 85(C), which states that an "accused may appear as a witness in his or her own defence", could on its face be read as implying that the accused who chooses to testify in his own defence is subject to the same Rules as any other witness, there is a fundamental difference between being the accused, who might testify as a witness if he so chooses, and a witness.

Self-incrimination

According to the ICTY,[4] ICTR,[5] and SCSR[6] Statutes, accused has the "rights not to be compelled to testify against himself or to confess guilt". In the ICTY *Blagojević and Jokić* case, the Trial Chamber emphasised that it had the obligation to guarantee the right of the accused not to incriminate himself. To this end, prior to the accused's testimony, the Chamber shall advise him or her to consult with counsel and warn of all the consequences of testifying in his case.[7]

In accordance with Rule 74 of the ICC Rules ("Self-incrimination by a witness"), the Chamber shall notify a witness of the provisions of this rule before his or her testimony. In this regard, the Trial Chamber in the *Katanga and Ngudjolo* case pointed out, that such assurances under Rule 74 are meant to compel witnesses to answer questions when they object to do so on the ground that answering might tend to incriminate them. Once the accused voluntarily testifies under oath, he waives his right to remain silent and must answer all relevant questions, even if the answers are incriminating.[8] Thus, it would be inappropriate to apply this rule to the accused who has knowingly chosen to commit himself to answer all questions falling within the scope of cross-examination.[9] Accordingly, the testimony of the accused may be used as evidence against him in such case. However, the questions in cross-examination must be *strictly related to the charges in the accused case*. The questions should not be aimed at incriminating the accused in relation to facts and circumstances falling outside the scope of his case.[10] If the accused declines to answer a *permissible* question, the Chamber may draw any adverse inferences as appropriate.[11]

Under Article 93(2) of the ICC Statute, the Court shall have the authority to provide an assurance to a witness that he will not be prosecuted, detained or subjected to any restriction of personal freedom by the Court in respect of any act or omission that preceded the departure of that person from the requested State. Such assurances, however, are meant to facilitate the appearance of witnesses before the Court and are not applicable to the accused.[12]

Chamber's Control

[3] Galić, Judgement, Case No. IT-98-29-A, App. Ch., 30 November 2006, par. 17 (Galić Judgement); Kvočka et al., Judgement, Case No. IT-98-30/1-A, App. Ch., 28 February 2005, para. 125 (Kvočka Judgement).
[4] Article 21(4)(g).
[5] Article 20(4)(g).
[6] Article 17(4)(g).
[7] Blagojević and Jokić, Decision on Vidoje Blagojević's Oral Request, Case No. IT-02-60-T, T. Ch., 30 July 2004, p. 6 (Blagojević Decision).
[8] Katanga and Ngudjolo, Decision on the Request of the Defence for Mathieu Ngudjolo to Obtain Assurances with Respect to Self-Incrimination for the Accused, Case No. ICC-01/04-01/07, T. Ch., 13 September 2011, para. 7. (Katanga Decision).
[9] Ibid., para. 9.
[10] Ibid., para. 11 (emphasis added).
[11] Ibid., para. 8.
[12] Ibid., para. 6.

Rule 90(F) of the ICTY, ICTR, and SCSL Rules states that Trial Chambers "shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to (i) make the interrogation and presentation effective for the ascertainment of the truth; and (ii) avoid needless consumption of time". This provision gives Trial Chambers discretion in the administration of trials. In this regard, the ICTY Appeals Chamber pointed out that this provision also applies to the testifying accused.[13]

The Trial Chamber's discretion, however, is subject to a Trial Chamber's obligation to respect the rights of the accused.[14] In particular, accused's right to appear as a witness in his defence does not prevent a Trial Chamber from exercising its authority to control the conduct of a trial by imposing conditions on the right to appear as a witness, provided these conditions do not unreasonably interfere with the right to testify.[15] The accused's refusal to follow the procedure established in the Rules for the presentation of testimonial evidence constitutes an effective waiver to appear as a witness in his case.[16] In the ICTY Appeals Chamber view, if the accused was not permitted to give his evidence on his own, under oath and subject to cross-examination, he did not have a fair trial and his case should be remanded for retrial.[17]

Timing of the Accused's Testimony

Rule 85(C) of the ICTY and ICTR Rules does not provide for a timing of the accused's testimony. According to the practice of these two tribunals, the accused who choose to testify may determine when to do so. He cannot be compelled to testify prior to other defence witnesses.[18]

It was also noted that the consistent practice before these *ad hoc* tribunals was that accused who testify choose the timing of their testimony which, in most cases, was given at or near the end of the defence case.[19] This practice, however, did not create an enforceable right. At the start of the defence case, the Chamber may order the defence to indicate whether the accused intends to testify as a witness in his own defence.[20] In ordering a particular sequence of witnesses, a Chamber then shall consider the interests of justice and questions of judicial economy.[21]

In particular, under Rule 90 ("Testimony of Witnesses") of the ICTY and ICTR Rules,[22] the Trial Chambers have discretion to determine when the accused may testify in his own defence. It was noted, however, that this power must be exercised with caution, as it is, in principle, for both parties to structure their cases themselves, and to ensure that the rights of the accused are respected.[23] In the *Krajišnik* case, where the defence wanted the accused to testify with the numerous postponements, the Chamber cautioned that it may consider imposing a choice on the defence: to call the accused as its next witness prior to hearing other evidence, or to permanently strike from the its list of witnesses.[24]

[13] Galić Judgement, para. 18.
[14] Ibid.
[15] Blagojević and Jokić, Judgement, Case No. IT-02-60-A, App. Ch., 9 May 2007, para. 27 (Blagojević Judgement); Galić Judgement, paras 19, 20, 22.
[16] Blagojević Decision, p. 9.
[17] Blagojević Judgement, Partly Dissenting Opinion of Judge Shahabuddeen, paras. 1 and 9.
[18] See Bagosora et al., Decision on Motion to Compel Accused to Testify Prior to Other Defence Witnesses, Case No. ICTR-98-41-T, T. Ch., 11 January 2005, par. 5 (Bagosora Decision); Kordić and Čerkez, Decision on Prosecutor's Motion on Trial Procedure, Case No. IT-95-14/2-PT, T. Ch., 19 March 1999, p. 4 (Kordić Decision).
[19] Ntahobali, Decision on Motion for Disqualification of Judges, Case No. ICTR-97-21-T, the Bureau, 7 March 2006, para. 17 (Ntahobali Decision); Bagosora Decision, para. 5; Kordić Decision, p. 4.
[20] Brima et al., Order for Disclosure Pursuant to Rule 73 ter and the Start of the Defence Case, Case No. SCSL-04-16-T, T. Ch., 26 April 2006, p. 2.
[21] Ntahobali Decision, para. 17.
[22] Rule 90(F).
[23] Galić Judgement, para. 19.
[24] Krajišnik, Decision on Defence's Rule 74 bis Motion; Amended Trial Schedule, Case No. IT-00-39-T, T. Ch., 27 February 2006, para. 26.

Indeed, the evidence of the accused is likely to carry more weight if it is given at the beginning of his case.[25] In this regard, it is noteworthy that in May 2005 the SCSL judges adopted amendment to Rule 85(C), which provided that the accused person who chooses to testify should appear before calling defence witnesses.

Communications with Counsel During the Accused's Testimony

The ICTY Appeals Chamber repeatedly reiterated that there is a fundamental difference between the accused testifying on his own behalf and any other witness.[26] Some of the rules concerning the testimony of witnesses are inapplicable to the accused who testifies as a witness in his case are incompatible with his rights. The accused who testifies as a witness continues to enjoy his rights as the accused guaranteed to him, in particular his right to communicate with counsel at any stage of the proceedings.[27]

A decision on the extent of contact between the accused who chooses to testify and his counsel is vested in the Trial Chamber and is therefore discretionary.[28] Giving the magnitude, complexity and length of the trials before the International Tribunals, the accused must often consult with his counsel during the trial on the appropriate defence strategy or the significance of what is happening in the courtroom. To take away this right for an extended period of time could potentially undermine one of the most important basic rights of the accused and endanger the integrity and fairness of the proceedings as a whole.[29]

It was noted that, considering the specific circumstances of a multi-accused case and the importance of cross-examination for all parties, the Chamber may find it necessary to impose some restrictions during cross-examination and re-direct examination. In that regard, the communications between counsel and accused during those stages shall not include the discussion of the substance of his testimony. The exceptions to that restriction would be twofold: First, at any time during cross-examination or re-direct, counsel for the accused may apply *ex parte* to the Trial Chamber if he considers it necessary, for leave to discuss of any matter of substance. Similarly, should the accused wish to raise a matter of substance with his lawyer, he may communicate that request directly to his counsel who can then raise the matter with the Trial Chamber in the same manner, and *ex parte* if so wishes. Indeed, at all times counsel is free to communicate any filings, including exhibit lists, to his client.[30]

The ICTY and ICTR Appeals Chambers emphasised that a Trial Chamber should generally presume, absent evidence to the contrary, that conversations between the accused and his counsel will be appropriate.[31] In particular, during the course of cross-examination, communications between the accused and his counsel shall not include discussion of the substance of his testimony, save by leave of the Trial Chamber, which may, if necessary, be requested on an *ex parte* basis.[32] As to the concerns that counsel may coach the accused in order to tailor his testimony, the Appeals Chambers noted that the Prosecution might establish in cross-examination that the accused's reliability and/or credibility is in doubt or even destroyed because it appears from his testimony that during the course

[25] See, for instance, Milutinović et al., Tr. Transcr., Case No. IT-05-87, 22 June 2007, pp. 12814-12815; Mrksić et al., Tr. Transcr., Case No. IT-95-13/1, 21 June 2006, p. 10912; Orić, Tr. Transcr., Case No. IT-03-68, 23 May 2005, p. 8413.

[26] See Prlić et al., Decision on Prosecution's Appeal against Trial Chamber's Order on Contact between the Accused and Counsel during the Accused's Testimony pursuant to Rule 85(C), Case No. IT-04-74-AR73.10, App. Ch., 5 September 2008, para. 11 (Prlić Appeals Decision); Galić Judgement, para. 17; Kvočka Judgement, para. 125.

[27] Prlić Appeals Decision, para. 19; Galić Judgement, para. 17.

[28] Prlić Appeals Decision, para. 15.

[29] Ibid., para. 16.

[30] Popović et al., Tr. Transcr., Case No. IT-05-88, 26 January 2009, pp. 30637-30638.

[31] Prlić Appeals Decision, para. 18.

[32] Hadžić, Decision on Request for Access to and Communication with Counsel During Goran Hadžić's Testimony, Case No. IT-04-75-T, T. Ch., 2 July 2014, para. 15. See also ICC Katanga and Ngudjolo, Décision Relative a la « Requête Urgente de l'Accusation aux Fins de Prohibition des Contacts Entre les Accusés Mathieu Ngudjolo et Germain Katanga et Avec Leur Equipe de Défense Pendant la Durée de Leur Témoignage Sous Serment », Case No. ICC-01/04-01/07, T. Ch., 23 September 2011, para. 15

of his examination he was improperly coached by counsel on how to respond to certain questions.[33] Intentionally seeking to interfere with a witness's testimony is prohibited, and if evidence of this comes to light, a Trial Chamber can take appropriate action by initiating contempt proceedings and by excluding the evidence.[34] These actions need not be necessarily cumulative.[35] Similarly, the ICC Trial Chamber in the *Ntaganda* case pointed out that the Prosecution has the opportunity to seek to explore any instructions or preparation that may have taken place during its cross-examination of the accused, should the Prosecution have reason to believe that such communications may have been inappropriate.[36]

Unsworn Statement of the Accused

Generally

In July 1999, the ICTY adopted Rule 84 *bis* "Statement of the Accused" according to which the accused may voluntarily make a statement, not under oath, at the outset of the trial under control of the Chamber. The Rule reads as following:

(A) After the opening statements of the parties or, if the defence elects to defer its opening statement pursuant to Rule 84, after the opening statement of the Prosecutor, if any, the accused may, if he so wishes, and the Trial Chamber so decides, make a statement under the control of the Trial Chamber. The accused shall not be compelled to make a solemn declaration and shall not be examined about the content of the statement.

(B) The Trial Chamber shall decide on the probative value, if any, of the statement.

It was noted that the concept of Rule 84 *bis* was drawn from the civil law system where such statements by the accused can have the effect of shortening the proceeding by narrowing issues, eliminating those not disputed and clarifying matters.[37] In particular, in one of the ICTY cases the accused's statement, made after completion of the Prosecutor's case, confirmed facts previously presented by the Prosecutor through voluminous testimony and exhibits by numerous witnesses. Had the accused made such a statement before presentation of the Prosecutor's case, the length of the trial would have been shortened substantially and many witnesses who testified would not have been needed.[38]

A similar provision was incorporated into the ICC Statute. Namely, under Article 67(1)(h) of the Statute, the accused has the right to make an unsworn statement in his or her defence. This sub-paragraph, permitting the accused to make an unsworn statement, was introduced in the ICC Statute to addressed concerns of those states which permit or require the accused to do this.[39]

The unsworn statement of the accused can be used as evidence. In the *Mrksić* case, the pre-trial judge noted that the accused should be cautioned that whatever he says in the courtroom may be held against him.[40] Such statement may touch upon any aspect of the case against the accused. It may be used to rebut prosecution evidence,[41] including expert reports.[42]

[33] Prlić Appeals Decision, para. 17; Karemera et al., Decision on Interlocutory Appeal Regarding Witness Proofing, Case No. ICTR-98-44-AR73.8, App. Ch., 11 May 2007, para. 13 (Karemera Decision).
[34] Karemera Decision, para. 13.
[35] Prlić Appeals Decision, para. 18.
[36] Ntaganda, Decision on Further Matters Related to the Testimony of Mr Ntaganda, Case No. ICC-01/04-02/06, T. Ch., 8 June 2017, para. 20.
[37] Report of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, UN Doc. A/54/634 of 22 November 1999, para. 87.
[38] Ibid.
[39] The International Criminal Court, Making the Right Choices – Part V, Recommendations to the diplomatic conference, Amnesty International May 1998, AI Index: IOR 40/10/98, p. 62.
[40] Mrksić, Order for Filing of Motions and Related Matters, Case No. IT-95-13/1-PT, T. Ch., 2 September 2002, para. 7. See also Limaj et al., Judgement, Case No. IT-03-66-T, T. Ch., 30 November 2005, para. 636
[41] Prlić Appeals Decision, para. 17.
[42] Blagojevic and Jokic, Tr. Transcr., Case No. IT-02-60, 17 June 2004, p. 10923.

Rule 84 *bis* of the ICTY Rules does not prohibit unsworn statements of the accused being given by the accused in written form. The ICC Statute explicitly provides for the right of the accused to make "an unsworn *oral or written* statement".[43] Indeed, as emphasised by the ICTY Appeals Chamber, the admission of a written statement under Rule 84 *bis* would remain subject to the authorisation of the Trial Chamber, and under its control.[44] In particular, a Chamber may find that the accused could have used other procedures under the Rules to rebut the prosecution evidence and deny the admission of a supplement to his Rule 84 *bis* statement.[45]

The scope and length of such statements remain under the control of the Trial Chamber.[46] In particular, a Chamber may limit the length if the Rule 84 *bis* statement exceeds a reasonable length.[47] The Trial Chamber may stop the accused for the protection of others or in relation to a certain topic.[48] Similarly, in the ICC practice, whenever the accused wishes to make an unsworn statement, he shall inform the Chamber, which will decide on the appropriate moment and modalities for making the statement.[49]

In the ICTY *Prlić et al.* case, the Trial Chamber noted that, while it may not *compel* the accused to take an oath before making his opening statement, it may *allow* him to take an oath before making his opening statement if he so wishes.[50] The right of the accused to make an unsworn oral statement under Article 67(1)(h) of the ICC Statute does not affect his right to remain silent. When the accused makes an unsworn statement, he cannot be compelled to testify under oath. However, if the accused making an unsworn statement, consents to give evidence, he becomes subject to the same rules that apply to other witnesses.[51]

Timing of the Statement

In the *Kvocka et al*. case, the Trial Chamber opined that under Rule 84 *bis*, the accused cannot make his unsworn statement after the presentation of evidence has been completed.[52] In other ICTY case, however, the Chamber pointed out that such statement can be made at the end of a party's presentation of a case.[53] Later the ICTY Appeals Chamber confirmed that although 84 *bis* is placed as part of Rule 84 pertaining to opening statements, in practice, however, while most statements made pursuant to Rule 84 *bis* have taken place at the end of opening statements of the parties,[54] Trial Chambers have on occasion allowed accused persons to make such statements at later stages of the trial proceedings.[55] In some situations it may be appropriate to allow a Rule 84 *bis* statement after

[43] Article 67(1)(h) of the ICC Statute (emphasis added).
[44] Prlić Appeals Decision, paras. 14, 17.
[45] Ibid., para. 23.
[46] Ibid.
[47] Blagojevic and Jokic, Tr. Transcr., Case No. IT-02-60, 17 June 2004, p. 10923.
[48] Ibid., p. 10923., p. 10924.
[49] See, for instance, Katanga and Ngudjolo, Directions for the Conduct of the Proceedings and Testimony in Accordance with Rule 140, Case No. ICC-01/04-01/07, T. Ch., 20 November 2009, para. 12.
[50] Prlić Decision on Praljak Defence Notice Concerning Opening Statements under Rules 84 and 84 bis, Case No. IT-04-74-T, T. Ch., 27 April 2009, p. 8 (Prlić Decision).
[51] See Katanga and Ngudjolo, Directions for the Conduct of the Proceedings and Testimony in Accordance with Rule 140, Case No. ICC-01/04-01/07, T. Ch., 20 November 2009, para. 51.
[52] Kvocka et al., Tr. Transcr., Case No. IT-98-30/1, 26 March 2001, p. 9449, at http://157.150.195.168/x/cases/kvocka/trans/en/010326ed.htm.
[53] Mrksić, Order for Filing of Motions and Related Matters, Case No. IT-95-13/1-PT, T. Ch., 2 September 2002, para. 7.
[54] Prlić Appeals Decision, para. 16, with reference to Đorđevic, Case No. IT-05-87/1, 27 January 2009, pp. 227-242; Perišić, Tr. Transcr., Case No. IT-04-81, 3 October 2008, pp. 424-432; Haxhiu, Tr. Transcr., Case No. IT-04-84-R77.5, 24 June 2008, p. 20; Šešelj, Tr. Transcr., Case No. IT-03-67-T, 8 November 2007, p. 1855; Martić, Tr. Transcr., Case No. IT-95-11, 13 December 2005, pp. 295-319; Mrkšić et al., Tr. Transcr., Case No. IT-95-13/1, 11 October 2005, pp. 520-530; Milosevć, Tr. Transcr., Case No. IT-01-54, 14-15 February 2000, pp. 225-509.
[55] Prlić Appeals Decision, para. 16, with reference to Stanišić and Simatović, Decision on Future Course of Proceedings, Case No. IT-03-69-PT, T. Ch., 9 April 2008, para. 14; Krajišnik, Tr. Transcr., Case No. IT-00-39, 31 August 2006, pp. 27500-27534; Blagojević and Jokić, Decision on Vidoje Blagojević's Oral Request, Case No. IT-02-60-T, T. Ch., 30 July 2004, p. 7; Mrkšić et al., Order for Filing of Motions and Related Matters, Case No. IT-95-13/1-PT, T. Ch., 28 November 2003, p. 3; Stakić, Order for Filing of Motions and Related Matters, Case No. IT-97-24-T, T. Ch., 7 March 2002, p. 3; Kvočka et al., Tr. Transcr., Case No. IT-98-30/1, 26 March 2001, pp. 9449-9473.

the presentation of the prosecution case. According to the ICTY Appeals Chamber, Trial Chambers retain the discretion to allow the accused to make Rule 84 *bis* statements in later stages of the trial in the interests of justice.[56]

Probative Value

Pursuant to Rule 84 *bis*, the Chamber shall decide on the probative value, if any, of the statement. It was noted that because a statement under this Rule is unsworn and is not subject to cross-examination, it generally carries less weight than the testimony given under oath and which is subject to cross-examination.[57] Like the *ad hoc* Tribunals, the ICC Chambers also give little or no weight to such statements. In the *Ngudjolo* case, at the closing hearings both accused addressed the Chamber with a statement under Article 67(1)(h). The Chamber decided that, while it had taken into account their unsworn statements, only those statements they made under oath during the trial must be considered as evidence within the meaning of Article 74(2) of the ICC Statute.[58]

Generally, a solemn declaration before a statement is given is significant, in terms of its possible probative value, only if it is accompanied by sanctions for false testimony, and that only in cases where there is provision for this sanction could such a statement have more probative value than an unsworn statement.[59] While Rule 84 *bis* does not provide for any sanction against the accused for false testimony, it is not impossible that the accused could be prosecuted for false testimony under Rule 77.[60]

Conclusions

Like in civil-law jurisdictions, the accused in international criminal courts and tribunals may make unsworn statements. However, the Chambers of the UN Tribunals and the ICC give little or no weight to such statements. On the other hand, when the accused choses to testify as a witness under the oath, he waives his privilege against self-incrimination and is subject to cross-examination. Such testimony under the oath is assessed by the Chambers as a testimony of any other witness but can be affected by its timing.

This article can be a useful guide for those drafting relevant legal norms and implementation of international standards in criminal justice into the national legislation on criminal procedure.

[56] Prlić Appeals Decision, para. 16.
[57] Blagojevic and Jokic, Tr. Transcr., Case No. IT-02-60, 17 June 2004, p. 10923., p. 10924.
[58] ICC, Prosecutor v. Ngudjolo, Trial Chamber, Judgment pursuant to Article 74 of the Statute, Case No. ICC-01/04-02/12, 18 December 2012, para. 67.
[59] Prlić Decision, para. 11.
[60] Ibid.