

**UNITED
NATIONS**



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-04-75-PT
Date: 26 September 2012
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Decision: 26 September 2012

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTIONS FOR ADMISSION OF EVIDENCE
OF GH-102, GH-075, AND GH-093 PURSUANT TO RULE 92 *ter***

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for Goran Hadžić:

Mr. Zoran Živanović

Mr. Christopher Gosnell

1. **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 Motion for Admission of Evidence of GH-102 Pursuant to Rule 92 *ter*”, filed publicly with a confidential annex on 5 September 2012 (“First Motion”), and the “Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *ter* (GH-075 and GH-093)”, filed publicly with a confidential annex on 5 September 2012 (“Second Motion”) (collectively referred to as “Motion”). The Defence publicly filed its “Response to Prosecution Motions for Admission of Evidence of GH-075, GH-93 and GH-102 Pursuant to Rule 92 *ter*” on 18 September 2012 (“Response”).

A. Submissions

2. In the Motion, the Prosecution requests the admission of the evidence of GH-102, GH-075, and GH-093 pursuant to Rule 92 *ter* of the Rules of Procedure and Evidence of the Tribunal (“Rules”), arguing that the evidence is relevant and probative and meets the requirements for admission under that Rule. The Prosecution argues that admitting the evidence in this manner will enable it to present its case-in-chief in an efficient and expeditious manner, without compromising the fairness of the proceedings.¹ The Prosecution requests the admission of associated exhibits that, in its view, form an integral and inseparable part of the tendered Rule 92 *ter* statements.²

3. The Defence does not oppose the Motion in respect of GH-102 and GH-093.³

4. In respect of GH-075, the Defence points out that the tendered statement was taken in 2001 and signed by the witness after the contents were translated orally and that the Prosecution has not had the document translated for the witness to review and sign in his own language. The Defence requests that the statement be denied admission and that the Trial Chamber require the witness to appear as a full *viva voce* witness.⁴

5. In respect of GH-075, the Prosecution replies that the proposed Rule 92 *ter* statement contains formal indicia of reliability because the witness signed the English version after it was orally translated into Bosnian/Croatian/Serbian and the statement contains an attestation that the statement was read back to the witness and a certificate that the translation was done by a Registry-approved interpreter. The Prosecution also observes that the witness will be present in court to attest

¹ First Motion, paras 1, 7-15; Second Motion, paras 1, 7-9, 11-13.

² First Motion, paras 2, 16-17; Second Motion, paras 2, 10, 14.

³ Response, paras 6, 10.

⁴ Response, para. 7; *see also* Response, paras 8-9.

to the accuracy of the statement and that the Defence will have an opportunity to address its concerns in cross-examination.⁵

B. Applicable Law

6. Rule 92 *ter*—entitled “Other Admission of Written Statements and Transcripts”—provides as follows:

- (A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement or transcript of evidence given by a witness in proceedings before the Tribunal, under the following conditions:
 - (i) the witness is present in court;
 - (ii) the witness is available for cross-examination and any questioning by the Judges; and
 - (iii) the witness attests that the written statement or transcript accurately reflects that witness’ declaration and what the witness would say if examined.
- (B) Evidence admitted under paragraph (A) may include evidence that goes to proof of the acts and conduct of the accused as charged in the indictment.

The main objective of Rule 92 *ter* is to ensure an effective and expeditious trial, while simultaneously ensuring and respecting the rights of the accused.⁶

7. Although Rule 92 *ter* does not *per se* govern the admission of exhibits, the jurisprudence of the Tribunal permits the admission of exhibits where they accompany written statements or transcripts and form an “inseparable and indispensable” part of the evidence.⁷ In order to satisfy this requirement, the witness’s testimony must discuss the document, and the document must be one without which the witness’s testimony would become incomprehensible or of lesser probative value.⁸

⁵ Prosecution Request for Leave to Reply and Reply to Response to Prosecution Motions for Admission of Evidence of GH-075, GH-93 and GH-102 Pursuant to Rule 92 *ter*, 25 September 2012, para. 2.

⁶ *Prosecutor v. Stanišić and Župljanin*, Case No. IT-08-91-T, Decision on Prosecution’s Motions for Admission of Evidence Pursuant to Rule 92 *ter* (ST012 and ST019), 29 September 2009 (confidential) (“*Stanišić and Župljanin* Decision”), para. 18; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on the Application of Rule 92 *ter* of the Rules, 25 June 2007, p. 2; *Prosecutor v. Delić*, Case No. IT-04-83-T, Decision on Prosecution Motion to Admit Written Witness Statements under Rule 92 *ter*, 27 September 2007, para. 10.

⁷ *Stanišić and Župljanin* Decision, para. 18; *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-T, Decision on Confidential Prosecution Motion for the Admission of Prior Testimony with Associated Exhibits and Written Statements of Witnesses Pursuant to Rule 92 *ter*, 9 July 2008 (“*Lukić and Lukić* Decision”), para. 15; *Prosecutor v. Ljubičić*, Case No. IT-00-41-PT, Decision on Prosecution’s Motion for Admission of Transcripts Pursuant to Rule 92 *bis* (D) of the Rules, 23 January 2004, p. 3; *Prosecutor v. Đorđević*, Case No. IT-05-87/1-T, Decision on Prosecution’s Motion for Admission of Evidence Pursuant to Rule 92 *ter*, 10 February 2009 (“*Đorđević* Decision”), para. 5.

⁸ *Stanišić and Župljanin* Decision, para. 18; *Lukić and Lukić* Decision, para. 15; *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Decision on Prosecution’s Motion for the Admission of Written Evidence of Witness Slobodan Lazarević Pursuant to Rule 92 *ter* with Confidential Annex, 16 May 2008, para. 19; *Prosecutor v. Haraqija and*

8. The evidence sought to be admitted pursuant to Rule 92 *ter*, whether a written statement or a transcript of oral testimony, must fulfil the general requirements of admissibility of Rule 89(C): the proposed evidence must be relevant and have probative value.⁹

C. Discussion

9. GH-102's proposed Rule 92 *ter* statement contains information about the activities of alleged members of the alleged joint criminal enterprise in this case, the formation of political structures on the territories of the "Serbian Autonomous District Slavonia, Baranja and Western Srem" and the "Serb Krajina", the alleged distribution of weapons, and the activities of military and paramilitary formations. The tendered exhibits are discussed in the Rule 92 *ter* statement.¹⁰ The Trial Chamber notes, however, that two of the associated exhibits do not appear on the Prosecution's exhibit list.¹¹ The Prosecution has indicated that it will file a separate motion seeking leave to add them.¹² Except for the two documents presently not on the exhibit list, the Trial Chamber finds that the tendered statement and associated exhibits are relevant and have probative value and are appropriate for admission pursuant to Rules 89(C) and 92 *ter*.

10. GH-075's proposed Rule 92 *ter* statement contains information about the alleged takeover of Dalj, the creation of the "Serb Territorial Defence", alleged restrictions placed upon the movements of non-Serbs, and the alleged removal of civilians from Vukovar. The tendered exhibit is discussed in the Rule 92 *ter* statement. The Trial Chamber does not consider that the circumstances in which the statement was taken or signed render it unreliable. Any uncertainty about the accuracy of the statement written down in English can be addressed while the witness is in court. The Trial Chamber finds that the tendered statement and associated exhibit are relevant and have probative value and are appropriate for admission pursuant to Rules 89(C) and 92 *ter*.

11. GH-093's proposed Rule 92 *ter* statement contains information about the alleged takeover of Dalj, the formation of a "Serb Crisis Staff", and alleged crimes committed in the Dalj police buildings. The tendered exhibit is discussed in the Rule 92 *ter* statement. The Trial Chamber finds that the tendered statement and associated exhibit are relevant and have probative value and are appropriate for admission pursuant to Rules 89(C) and 92 *ter*.

Morina, Case No. IT-04-84-R77.4, Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *bis* and/or 92 *ter*, 2 September 2008 ("*Haraqija and Morina* Decision"), para. 12; *Đorđević* Decision, para. 5.

⁹ *Stanišić and Župljanin* Decision, para. 19; *Lukić and Lukić* Decision, para. 20; *Đorđević* Decision, para. 6; *Haraqija and Morina* Decision, para. 13.

¹⁰ It appears that Rule 65 *ter* number 04924 is discussed in paragraph 194 of the statement, not paragraph 192. It appears that Rule 65 *ter* number 00319 is discussed in paragraphs 191 and 204 of the statement.

¹¹ See Corrigendum to Prosecution Motion for Admission of Evidence of GH-102 Pursuant to Rule 92 *ter*, 25 September 2012 ("*Corrigendum*").


D. Disposition

12. Accordingly, the Trial Chamber, pursuant to Rules 54, 89(C), 92 *ter*, and 126 *bis* of the Rules, hereby

- (a) **GRANTS** the Prosecution leave to file the Reply;
- (b) **DECIDES** that the evidence of GH-102, GH-075, and GH-093 is appropriate for admission into evidence; and
- (c) **INFORMS** the parties that the Trial Chamber will make a final decision on whether to admit the evidence, if the conditions set forth in Rule 92 *ter* have been fulfilled when the witness is present in court.

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

Done this twenty-sixth day of September 2012,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]

¹² The Prosecution has assigned these documents “provisional” Rule 65 *ter* numbers 05866 and 05867. *See* First Motion, para. 17; Corrigendum, para. 1.